

**Uncertain futures:
the EU settlement scheme and
children and young people's
right to remain in the UK**

Contents

Summary	3
Legal advice and assistance for children and young people and for complex cases	5
Support for children in local authority care and young care-leavers	7
a. Identifying children and young people who need support.....	7
b. Citizenship applications for children in care.....	8
c. Who should help separated children and young people to apply?	9
d. Availability of legal aid for looked after children and children in care.....	10
e. Duties to care leavers	11
Documentary issues	12
a. Demonstrating nationality.....	12
b. Demonstrating residence	13
Eligibility of family members	14
Exercise of discretion	16
Discretionary grounds for refusal	16
Administrative review and the right of appeal	17
Grants of pre-settled status & understanding of the system	19
Entitlement and access to benefits	20
Families with derivative rights	21
Pathways to citizenship	22
Recommendations	23

Summary

There are an estimated 727,000 EU national children under the age of 18 living in the UK and an additional 239,000 UK-born children of EU national parents.¹ Children represent 32% of the estimated 3.8 million individuals who may have to engage with the EU settlement scheme, a new process designed for European nationals² and their family members to demonstrate their right to remain in the UK before the end of the Brexit transition period (which will be 31 June 2021 or 31 December 2020 depending on whether the UK leaves the EU with a deal or not). The government has confirmed that in the event of a ‘no deal’ scenario, the EU settlement scheme will still run and the basis for qualifying will remain the same.³ Under the scheme, individuals will be granted ‘settled status’ if they can demonstrate their nationality and that they have been resident in the UK for five years (subject to criminality checks). Those who cannot demonstrate five years residence will be granted ‘pre-settled status’ with the option to subsequently apply for settled status.

This is the largest-scale registration programme the UK has ever seen and presents a huge challenge for the Home Office. If the scheme does not function effectively and/or individuals do not apply to it, there is the risk that hundreds of thousands of children and young people will find themselves ‘undocumented’, without legal status after the relevant period. They will then be subject to policies that were introduced under the government’s ‘hostile environment’ agenda, and will be unable to work, to drive, or to open a bank account, and will be effectively barred from college, university and secondary healthcare.

For over 18 months, Coram Children’s Legal Centre (CCLC) has raised concerns with government about the potential obstacles that many European national children and families will need to overcome in order to gain status through the settlement scheme.⁴ During that time, we have welcomed the government’s acknowledgement of the challenges facing particular vulnerable groups, including children in care and care leavers, and concessions such as the announcement in January that no fee would be charged to those applying under the scheme.

However, a number of our concerns remain. In November and December 2018, CCLC was one of the organisations involved in the Private Beta stage of the settlement scheme pilot, through which we supported 72 European nationals and their national family members to apply for status through the scheme. The average application took between one and a half to two hours to complete. At the more extreme end, where there were documentary or technical problems, applications took up to 10 hours to complete, and required legal advice, technical support and practical assistance with gathering evidence. CCLC advised an additional 30 to

¹ Migration Observatory, ‘Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?’, 2018, at <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

² In this report, ‘European national children’ is used to identify all children in the UK with an EU free movement right. This includes nationals of Switzerland and the European Economic Area. The EU settlement scheme was amended to be accessible to citizens of countries in the EEA and Switzerland in the statement of changes to the Immigration Rules HC 1919, published on 7 March 2019.

³ DExEU, Policy Paper: Citizens’ Rights – EU Citizens in the UK and UK Nationals in the EU (6 December 2018), para. 11

⁴ For previous CCLC briefings on this issue, see <https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/>

40 people who then did not make an application: because they were too vulnerable, because there were insurmountable documentary issues within the scope of the pilot or because they had an alternate route, such as making a permanent residence application or making a nationality application, which was in their best interests.

Based on our legal knowledge and experience during Private Beta 2, CCLC considers the following children to be particularly at risk:

- **Children, young people and families with complex cases**, including those who are separated from their family and cases where, for example, eligibility is unclear for non-European family members, where there has been domestic violence or where the applicant had a criminal record. These individuals will need support to ascertain whether it is appropriate to make an application (they may, for example, have existing rights to British nationality) and/or to complete their applications. This will be work that is regulated by the Office of the Immigration Services Commissioner (OISC), and there is currently no long term statutory funding (i.e. legal aid) to provide this support.
- **Children who are unable to prove their nationality or length of residence in the UK.** Children in care, for example, may struggle to obtain proof of their length of residence or may require parental consent to obtain nationality documents. Where children are dependent on rights derived from their parents to make an application, then they may be placed at risk where there is domestic abuse or exploitation.
- **Children with an existing claim to automatic acquisition of British citizenship or a case to register at discretion** whose rights and entitlements may be time-limited or hard to evidence.
- **Children in care who are only granted pre-settled status** and subsequently leave care, who risk falling out of status and becoming subject to the hostile environment

Children and young people face a number of barriers to settlement, some of which are the result of policy decisions made by the Home Office in designing the scheme, and others which are pre-existing practical obstacles. A lack of legal advice and assistance is likely to exacerbate these problems, and we are concerned about potential for poor decision-making and the absence of a right of appeal in the event of the UK leaving the EU without a withdrawal agreement. This report outlines the barriers to settlement demonstrated by the work CCLC has done with children and young people and makes recommendations for the ways in which the government can ensure that these barriers can be overcome as the EU settlement scheme is rolled out.

Legal advice and assistance for children and young people and for complex cases

Although the Government has repeatedly asserted that the application process will be 'straightforward and streamlined',⁵ some cases are complex and the individuals will need detailed legal advice. During the Private Beta 2 pilot, CCLC advised on 21 cases (26%) that we deemed to be legally complex, and a further 20 (25%) where the child or young person had documentary issues that could not be resolved within the time frame of the pilot. More than half of the cases seen by CCLC required advice from a legal professional whose expertise was far beyond the level of competency prescribed by the Office of the Immigration Services Commissioner (OISC level one).

Some cases were complicated because a child or young person was separated from their family. In other cases the applicant was a victim of domestic abuse, had a criminal record or the eligibility of their non-European family members was unclear. While legal aid will be reinstated for separated children's immigration and nationality cases (and it is expected that this will cover applications to the EU settlement scheme),⁶ these cases will not be brought back into scope for young people over 18 or for vulnerable families, and there are no public plans to change this. The Home Office has committed £9 million of funding to support vulnerable groups to access the scheme but this is only guaranteed for the first year that the scheme is running and is not an adequate substitute for state-funded immigration legal aid on an ongoing basis.

There is a particular need for legal advice on nationality issues, which are not within the scope of legal aid. European national children born in the UK are automatically British if one of their parents was already a UK citizen or had permanent residence when they were born. Children can subsequently register as British citizens if they were born in the UK and they can prove that their parents become settled or naturalised before the child turned 18, or that they were born in the UK and lived here for ten continuous years.

An estimated 239,000 EU national children were born in the UK. Some may be UK citizens automatically and about 169,000 will have a parent who had been in the UK for five or more years, but in light of the difficulties faced in securing permanent residence documents in recent years, it is not a given that the parents will be able to prove their permanent residence. The Migration Observatory has estimated that at least 55,000 children whose parents report them to be UK citizens will in fact have to register.⁷

⁵ Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, section 5.1. at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf

⁶ See <https://www.childrenslegalcentre.com/separated-children-legal-aid/>. CCLC, alongside other children's charities, engaged extensively with the Ministry of Justice in the last quarter of 2018 regarding the Statutory Instrument that would bring this change into law and received reassurances that EU settlement scheme applications would be within the scope of legal aid for separated children. The SI has not yet been laid.

⁷ Migration Observatory, 'Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?', 2018

Some nationality matters are legally complex, or present significant evidential challenges. Section 3(8) Immigration Act 1971 puts the burden of establishing citizenship on the person making the claim to it.⁸ This burden applies to any application to register, naturalise, or be recognised as a British citizen. In practice, this means that although a person may in theory qualify for British citizenship – for example, through automatic acquisition because of their parent’s exercise of Treaty rights at the time of their birth – if they cannot gather the requisite evidence they will not be recognised as British.

Case study: Anna

Anna is a 24 year old with profound learning disabilities whose parent contacted CCLC for advice on the EU settlement scheme. Her father came to the UK from Spain aged one, and later married a Spanish national. Anna was born in the UK and requires full-time care. Anna’s father was self-employed at the time of her birth in 1995, and as such Anna will be British by automatic acquisition if evidence of her father’s work can be provided. No one in the family was aware of Anna’s potential claim to British nationality but one of CCLC’s experienced solicitors was able to provide free legal advice, using charitable funding. Anna’s parents are both now retired, and are extremely worried about their on-going access to the Personal Independence Payment that their daughter receives and that supplements the cost of her care.

Under the present system, it is not clear how those who may automatically be British will be identified. There are likely to be significant numbers of European national children and young people who could fall under these nationality provisions but who do not know their own rights.

Cases can also be complicated by the question of whether or not an individual meets the suitability requirements. These requirements relate to Home Office deportation policy in place at the time of the offence. Home Office policies in this area have changed frequently, from a threshold of a two-year custodial sentence in early 2009 to the simple ‘non-exercise or misuse’ of Treaty rights since October 2015.⁹ Depending on how an applicant’s offending history intersects with changes to Home Office policy, an application under the settlement scheme could lead to an automatic referral to Immigration Enforcement for deportation to be considered, no matter the age or vulnerability of the applicant. A case is further complicated where an applicant has an overseas conviction. It is difficult for adult applicants to determine whether or not a past conviction committed abroad falls under one of the categories of compulsory declaration, for example as a ‘violent’ offence. In these cases caseworkers must have regard to separate guidance, which while published online does not help applicants as it is heavily redacted.¹⁰

⁸ See HM Passport Office, Guidance on dealing with applications from children born in UK to European Union nationals, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/374616/TreatyRightsPolicy.pdf

⁹ Suitability guidance for the public testing phase available at <https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>

¹⁰ ACRO, Criminal casework requests to ACRO for criminal activity checks abroad https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560589/ACRO-v2_0.pdf

Legal aid should be available for individuals with complex cases. Legal aid is means tested, and as such would only be available to those who need legal representation but cannot pay for it privately. Not only would this mean that vulnerable individuals receive comprehensive advice about their options, but it would also safeguard the ability of vulnerable applicants to exercise their appeal rights (see section 7 below for more on appeal rights), and avoid them appearing at Tribunal as litigants in person. Appellants in receipt of legal aid are also exempt from paying a fee for their Tribunal hearing, which, in the current immigration system, is £140 for an oral hearing.¹¹

Recommendation 1: Legal aid should be made available for complex cases (including both the original application and the appeals process).

Support for children in local authority care and young care-leavers¹²

a. Identifying children and young people who need support

There are currently 75,420 looked after children in England¹³ but no information on how many could make applications under the EU settlement scheme because nationality data is not collected. The Home Office has estimated that there are approximately ‘5,000 EU children in care in the UK’, not including care leavers, an estimate ‘based on ONS data on the proportion of EEA citizens per local authority and government data on volumes of children in care per local authority’.¹⁴

Research conducted by CCLC in 2016 found that many local authorities were not routinely collecting information on the nationality of children in their care, nor on their immigration status. To do so is not compulsory, and CCLC found a similar issue when asking local authorities to identify the number of non-asylum seeking migrant children in their care.

Through a series of Freedom of Information (FOI) requests, CCLC found that one in three local authorities in England did not know how many children in their care may be directly affected by Brexit.¹⁵ This is extremely concerning as identifying this group is a crucial first step to ensuring that they can access the support they need and do not fall through the gaps.

Local authorities may find that identifying children in care who are the family members of European nationals but not a European national themselves a particular challenge. These children and young people are at particular risk of losing their existing rights under EU law.

¹¹ Fees Guidance: First-tier Tribunal (Immigration and Appeals Chamber)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711003/t495-eng.pdf

¹² In this section ‘children in care’ is taken to include children who are being looked after by Children’s Services under section 20 of the Children Act 1989 or are formally in care.

¹³ Department for Education, Statistics: looked-after children, at
<https://www.gov.uk/government/collections/statistics-looked-after-children>

¹⁴ Immigration: EU Nationals: Written question – 222791, 18 February, at
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-02-18/222791>

¹⁵ https://www.childrenslegalcentre.com/wp-content/uploads/2018/03/European-national-children-in-care_March2018Final.pdf

Recommendation 2: Local authorities should take positive steps to identify European national children in their care and those who are family members of European nationals, and assist them to access identity documents, legal advice and representation where necessary. They should ensure that they have recorded information about how many children in their care are European nationals or the family member of a European national.

Recommendation 3: Guidance for Home Office caseworkers should take into account the vulnerabilities and likely evidential issues of separated children and young people.

b. Citizenship applications for children in care

For many separated children and young people, the UK is the only home they have ever known. As a corporate parent, a local authority has a duty to act in a child's and care leaver's best interests and secure the best possible outcomes for them. This includes helping them to secure the most permanent form of status that they can. Because of this, local authorities should be making every attempt to facilitate legal advice on nationality as well as on children's EU law rights. There are routes under nationality law that disappear on a young person's 18th birthday – crucially including the right to register as a British citizen at the discretion of the Secretary of State (under section 3(1) British Nationality Act 1981). There is no way to make use of this discretion as an adult. Advising on these options is not work that can be undertaken at OISC level one.

In addition, there is a concern for children in care that decisions on which immigration or nationality route to take for them are made on the basis of cost rather than of the child's best interests. There is now no fee for the EU Settlement Scheme, but when there was to be a fee the Home Office saw fit to create a fee exemption for looked after children. There is no fee exemption for a child's application to register as a British citizen, which is currently £1,012.

Case study: Aleksandr

Aleksandr is a 14 year old Lithuanian child who has been in care since before his first birthday. He lives with his long-term foster carer and has no contact with his birth family, who no longer live in the UK. Aleksandr's foster carer contacted CCLC with questions about the settlement scheme, but it was clear that Aleksandr, who has grown up here and whose future clearly lies in the UK, wanted to become British and it would be in his best interests to do so as quickly as possible. The settlement scheme is not currently a route to British citizenship for children like Aleksandr, and other routes are closed to him because he was not born in the UK. Using charitable funding our qualified solicitor was able to advise Aleksandr that he could make a discretionary application to the Home Office. However, the fee for this is £1,012. There is no fee exemption for children in care, and Aleksandr's local authority has said it does not want to pay this as he can make an application under the settlement scheme for free.

c. Who should help separated children and young people to apply?

CCLC is particularly concerned about the support that may or may not be provided to children who are looked after by children's services and young care leavers. For children in care, the government's statement of intent (SOI) states that local authorities will be able to apply 'on behalf of a looked-after child'.¹⁶ The information for local authorities published on gov.uk on 31 January 2019 also states that:

*In England, the Department for Education has confirmed that, once the scheme is fully open by 30 March 2019, local authorities should make EU Settlement Scheme applications on behalf of their looked after children. This has not yet been confirmed in Wales, Scotland and Northern Ireland with discussions taking place. If you are a local authority in England we will be engaging with you on this through our existing communications channels.*¹⁷

The second Private Beta phase included 19 applications made for looked after children by five different local authorities. Applicants were aged between 5 and 17 and comprised six different nationalities.¹⁸

However, the OISC has made clear that advice relating to whether an individual meets the requirements of the settlement scheme constitutes regulated immigration advice.¹⁹ Local authority staff will therefore be limited to giving out general information and helping children to gather evidence – they are prohibited from providing advice on eligibility for the scheme, or from completing the applications. Social workers will not be able to lawfully apply on behalf of children and vulnerable adults, and will certainly lack the specialist knowledge needed to do so. It is crucial that communications materials and guidance published by government departments all accurately reflect this. Looked after children and care leavers will need advice on nationality routes as well as their rights as European nationals or family members, and may have complex cases that fall outside the competency of an adviser accredited to the basic level introduced by OISC for this scheme.²⁰

Every application CCLC made on behalf a child in care or care leaver during Private Beta 2 included detailed nationality advice, and several included advice on the suitability criteria. If looked after children are completing settlement scheme applications on their own and without legal advice, they will also not be fully aware of their options. This could result in an

¹⁶ 'Within the meaning of section 22(1) of the Children Act 1989, section 17(6) of the Children (Scotland) Act 1995, section 74(1) of the Social Services and Well-being (Wales) Act 2014 or article 25(1) of the Children (Northern Ireland) Order 1995'. See Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, section 4.4.

¹⁷ Home Office, 'Introduction for local authorities: how to use the toolkit in your network', published 31 January 2019. Available at <https://www.gov.uk/government/publications/eu-settlement-scheme-community-leaders-toolkit/toolkit-introduction-how-to-use-the-local-authorities-toolkit-in-your-community-or-network>

¹⁸ Immigration: EU Nationals: Written question – 222791, 18 February, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-02-18/222791>

¹⁹ Office of the Immigration Services Commissioner, Immigration Assistance, 18 October 2018, at <https://www.gov.uk/government/publications/immigration-assistance>.

²⁰ In January 2019 OISC announced the launch of a scheme for not-for-profit and charitable organisations to apply for a new, EU settlement scheme only level one accreditation. This will not meet the needs of separated children and young people with complex cases. <https://www.gov.uk/government/publications/application-for-level-1-eu-settlement-scheme-registration>

incorrect grant of pre-settled status, being refused outright or potentially missing another legal avenue available to them, such as applying for British citizenship.

Statistically, looked after children and care leavers are more likely to engage the suitability criteria than other children and young people. In the year ending 31 March 2018, 4% of children aged 10 years or over (1,510 children) who were looked after for at least 12 months were convicted or subject to youth cautions or youth conditional cautions during the year, similar to 2017 and 2016 (both 5%). According to the Department of Education, 'looked after children (who have been looked after for at least 12 months) are five times more likely to offend than all children.'²¹ These children and young people will need to receive advice on the impact of any criminal record on their settlement scheme application *before an application is made*. This is particularly true of children in juvenile detention, to whom local authorities have a continuing duty of care.²²

d. Availability of legal aid for looked after children and children in care

There need not be any risk of social workers making EU settlement scheme applications on behalf of looked after children, as those children's immigration cases were brought back into the scope of free legal support funded by central government last year.²³ As such, local authorities do not need to shoulder the financial burden of seeking legal advice and assistance for them.

In July 2018 the Ministry of Justice announced the reintroduction of legal aid for separated children with immigration issues, including European national children. Although the regulations bringing this change into force have not yet been laid, the Legal Aid Agency is operating a presumption in favour of granting exceptional case funding (ECF – legal aid outside of scope) for all looked after children. Unlike applications to the EU settlement scheme, applications for ECF are not regulated work, so social workers can make these applications. There is also no reason why local authorities should not also seek to apply for ECF on behalf of care leavers in need of more detailed advice.

Recommendation 4: The Home Office should work collaboratively with other government departments, including the Department for Education and Ministry of Justice, to ensure that children in care who may be eligible to make applications under the EU settlement scheme receive legally-aided immigration advice.

²¹ Department for Education, Children looked after in England (including adoption), year ending 31 March 2018, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757922/Children_looked_after_in_England_2018_Text_revised.pdf

²² If the child receives a custodial sentence, the responsibilities of the local authority will depend on the child's care status. If the child is subject to a Care Order under section 31 of the Children Act 1989, s/he remains looked after and there is no change to his/her legal status and the local authority continues to be responsible for planning and reviewing the care plan. If the child was an accommodated child, s/he will lose their looked after status whilst serving the custodial sentence as they are not being accommodated in a placement provided by the local authority. Children in these circumstances, will however, be entitled to consideration as a former looked after child in custody.

²³ Ministry of Justice, Written statement - HCWS853, 12 July 2018. at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/>

Recommendation 5: In communications to local authorities, the Home Office should make clear the need for social workers to seek legal help rather than making applications for children themselves in contravention of Immigration and Asylum Act 1999.

e. Duties to care leavers

Care leavers are a particularly vulnerable social group and the Children and Social Work Act 2017 extended some local authority duties (such as the provision of a personal adviser) to care leavers aged up to 25. Since 1 April 2018, local authorities have had a duty to take reasonable steps to offer local authority support to every care leaver on an annual basis – a duty which means local authorities should track care leavers for longer than in the past and should be doing so to facilitate applications under the settlement scheme.²⁴ Local authority confirmation of the care leaver’s former care status and residence in the UK is likely to be crucial in successful applications, and assistance with applying for passports may also be important (as noted under ‘documentary issues’ below). The pathway plans of European national (and family member) children leaving care must include concrete information about how local authorities will support future applications – for example for settled status, where a child in care is only granted pre-settled status in the first instance.

Local authorities also have duties to children in care and care leavers who are not European nationals themselves but who are the family member of a European national. These children’s rights under the settlement scheme require either the active participation of the European national family member or proof of compelling practical or compassionate reasons why the family member is not participating in the child or young person’s application. These cases will be complex and will require expert legal advice.

Recommendation 6: Local authorities should ‘track’ care leavers still aged under 25 and invite them to contact the responsible local authority to explore if their might be able to provide them with further advice and assistance in accessing the EU settlement scheme, as per the ‘local offer’ outlined in the Children and Social Work Act 2017.

Recommendation 7: The Home Office and Department for Education should consider joint communications materials targeted at children in care and care leavers to inform children and young people who are European nationals (or their family members) of their rights, and of their local authority’s on-going duties towards them with regard to the settlement scheme.

²⁴ Section 3 of the Children & Social Work Act 2017. See Department for Education, Extending Personal Adviser support to all care leavers to age 25 Statutory guidance for local authorities, February 2018, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683701/Extending_Personal_Adviser_support_to_all_care_leavers_to_age_25.pdf

Documentary issues

CCLC has repeatedly highlighted cases where children may be eligible for the settlement scheme but are unable to prove this entitlement because they do not have evidence of either their nationality or their length of residence.²⁵ In March 2019 the Minister for Immigration confirmed that the Home Office could in theory accept “alternative evidence of identity and nationality where the applicant is unable to provide the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.”²⁶ This would bring the EU settlement scheme into line with procedures for making applications under other parts of the Immigration Rules. However, we do not yet know how this will work in practice, and from CCLC’s experience children and young people can face a number of issues documenting both nationality and residence.

a. Demonstrating nationality

At present, it is not possible to apply to the settlement scheme without a passport or ID demonstrating nationality, and there are no known plans to change this. Some children will be unable to prove nationality because they require both parents’ consent to obtain this in their country of origin. For example, the single parent of a Polish child will usually need a court order confirming that they have sole parental responsibility of the child. However, the no-order principle in family law²⁷ across the UK prevents the courts from making this order unless there is a contest between parents. An application to the family court is costly, there is no legal aid available and it can be very slow. Even before the creation of the settlement scheme this was an issue for children in care, but Brexit has made this situation urgent. Furthermore, some European countries require applications for documents to be made in person, making the process of establishing nationality costly and burdensome.

Case study: Abiola

Abiola is a French national child with severe health complications. Her document has expired and her mother has lost her birth certificate. She has been told that she must retrieve this from the town hall in France where her birth was registered before being issued with a new passport in London. Abiola has no contact with her father, and she cannot travel. Her mother cannot leave her to make the trip because she has to be fed with a feeding tube and no one else is trained to do this.

Nationality documents will be a particular issue for children in care. Waltham Forest, one of five local authorities involved in the pilot Private Beta 2, made no applications for children in care during the five weeks of the pilot because no children had the requisite nationality documents.²⁸ There is often a substantial cost to obtaining passports (an application for a Danish passport within the UK, for example, is £121, while an Italian passport costs

²⁵ See past briefings at <https://www.childrenslegalcentre.com/promoting-childrens-rights/policy/brexit-childrens-rights/>

²⁶ HC written statement HCWS1388, 7 March 2019, Volume 655 col 52WS

²⁷ No order principle is found in s1(5) Children Act 1989 “...a court... shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all”

²⁸ See oral evidence to the Home Affairs Committee (12 February 2019) from Abigail Adieze, Head of Service, Families and Home Directorate, Waltham Forest Borough Council, at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/eu-settlement-scheme/oral/96447.html>

£103.40), and CCLC is concerned that an additional financial burden will fall on vulnerable care leavers.

Case study: Joao

Joao is a child whose estranged father is Portuguese. Joao's mother (who holds a passport from Guinea-Bissau) fled his father, who was violent, in 2014. Joao's mother has a biometric family member card that was issued in 2014 but Joao has no documents at all. The agency supporting Joao and his mother advised absolutely no contact between Joao / his mother and Joao's estranged father due to the previous violence. Joao is unable to get a Portuguese passport without the active participation of both his parents in his nationality registration application.

Recommendation 8: The Home Office should consult with the EU Commission on problems with accessing nationality documents and should have regard to its findings in guidance produced for both local authorities and for caseworkers on the exercise of discretion.

Recommendation 9: To ensure that no child falls through the gaps, the government should consider introducing a separate system that would ensure all children in the care of local authorities and care-leavers are granted settled status without having to meet the requirements of the EU settlement scheme.

b. Demonstrating residence

Where the settlement scheme's automated data checks do not provide proof of residence, adults and children may struggle to provide documents to otherwise demonstrate their residence. This circumstance was foreseen in the statement of intent, which lists documents that would be acceptable proof of residence. However, these documents are all those which are held by adults: tenancy agreements, benefit payments, and payslips, for example. Where a child is making an application with their family, this will not usually present a problem. However, where a child is making an application separately from their family (for example in the case of family breakdown), or in cases where one parent holds all paperwork in their name (including in cases of domestic abuse) children and vulnerable adults will struggle to make applications under the system.

CCLC is also concerned that a number of vulnerable groups will be negatively impacted by the current functioning of the automated data checks, used to verify length of residence:

- A number of benefits are not included in the automated data checks, including Child Benefit (which can only be paid to one person – the person considered to have the main responsibility for caring for a child) and Child Tax Credit. This disproportionately impacts on women who are more likely to be receiving these benefits.
- Disabled people and their carers who rely on welfare benefits will need to provide additional proof of residence. This places an additional burden on these groups who may struggle to provide relevant documentation.
- Currently, Universal Credit can only be used as proof of residence for the main recipient. This impacts on women who are less likely to be in receipt of it, and particularly those who are in abusive or controlling relationships.

There will also be circumstances in which individuals do not start to work or claim benefits until several months or years after they first arrive, for example because of maternity leave, other caring responsibilities, or taking time to learn English before beginning work. In these cases the automated data checks will return incomplete information about how long a person has been in the UK, and individuals may not know to supplement this data with additional evidence such as tenancy agreements.

Problems may also arise with demonstrating residency if, for example, a child has been in care for fewer than five years. In June 2018 the government stated that ‘we recognise that some applicants may lack documentary evidence in their own name for various reasons, and we will work flexibly with applicants to help them evidence their continuous residence in the UK by the best means available to them’.²⁹ We understand, for example, that for children, young people and families receiving local authority support, a letter confirming the length of the local authority’s involvement with the individual can be provided, which is very welcome. However, to ensure casework consistency, such workarounds should be detailed in casework guidance.

Case study: Francesca

Francesca is an Italian national who arrived in the UK six years ago with two infant children to join her extended family. Francesca was living with her mother in law, and did not claim benefits or work for the first two years that she was in the UK. Once her younger child reached four years old she applied for a National Insurance number so that she could work. However, she then did not work or make any benefit claims for a further year. Francesca thought she was only entitled to pre-settled status because she had only worked for two years, even though she has been in the UK for six. CCLC assisted her to gather evidence of her previous residence, including school correspondence and medical records, and with support from a legal adviser Francesca was granted settled status.

Eligibility of family members

We remain concerned that those who are non-European family members estranged from a European national will not be able to benefit from the settlement scheme because they will not have the required evidence of their family member’s settlement or residence in the UK.

Most children registering through the settlement scheme will be European nationals themselves, but non-European national step-children and other relatives may also be in the UK as a dependent family member of an European national. Those who are reliant on their status as family members will be required to ‘provide evidence of that relationship for the relevant period’ as well as ‘evidence of [the family member’s] continuous residence in the UK’ for the full five year period in order to gain settlement.

The statement of intent states that proof of status of the European national under the settlement scheme is required. As such, a non-European national victim of domestic violence may have to wait until their violent partner has applied before making their own application.

²⁹ Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 5.6

To determine this, they would need to contact their partner and request the application number to complete their own application, even where they may be the primary carer of European national children. It is unclear whether the Home Office will check their own records of applicants where someone is unable to contact their family member for this evidence. This may result in vulnerable people finding the scheme effectively closed to them (if, for example, they are estranged from their family member) or being forced to contact abusive spouses or parents.

There is also a potential requirement to attend an interview in Annex 2.³⁰ If the family member does not attend that interview then factual inferences can be drawn. It is unclear how a child separated from a European national would be able to exert influence over that family member to ensure that they attend. We therefore welcome confirmation, given in March 2019, that “the Secretary of State must not decide that the applicant does not meet the eligibility requirements for indefinite leave to enter or remain or for limited leave to enter or remain on the sole basis that the applicant or [family member] failed on at least two occasions to comply with an invitation to be interviewed.”³¹

Recommendation 10: The Sol states that the government ‘will accept alternative evidence of the EU citizen’s identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons’, but further guidance on what constitutes compelling practical or compassionate reasons is required. Where necessary, the Home Office should take a pragmatic, flexible approach and make reasonable enquiries to secure relevant evidence/information themselves where applicants are unable to provide evidence of a family member’s identity or residence.

Case study - Halima

Halima, a Somali woman living with her Dutch husband, emailed the Migrant Children’s Project advice line as she is experiencing economic abuse and coercive control. Her husband has been working since she arrived in the UK with their child, Abdi, 3 years ago. A second child, Farah, was born in the UK in 2017. Halima lives with her husband who is abusive and is seeking a divorce. He does not want to assist her with any application and although the couple live together he keeps his documents locked away so that she cannot reach them. Neither child has European identity documents although it appears both may be eligible for Dutch nationality. Halima doesn’t want to leave because her family member permit granted for six months to allow her entry to the UK has expired and she is afraid of immigration control. When she approached social services she was told they could not help her without a valid document. It is unclear how she will be able to register for settlement, although she is entitled to do so as she is still a family member. She cannot exert any pressure on her husband to assist her and the children, and if he chooses to wait until the final day of registration then she will be in the UK unlawfully and further trapped in her current position. Without Dutch nationality documents, she cannot ensure that her children are registered for settlement in good time either.

³⁰ Introduced to Appendix EU in the statement of changes to the Immigration Rules HC 1919

³¹ Statement of changes to the Immigration Rules HC 1919, p. 60

Exercise of discretion

In the foreword to the Sol published in June 2018, Home Secretary Sajid Javid wrote that *'Throughout, we will be looking to grant, not for reasons to refuse, and caseworkers will be able to exercise discretion in favour of applicants where appropriate, to minimise administrative burdens.'*³² We do not yet know the extent to which Home Office caseworkers are abiding by the spirit of this statement. In other areas of UK Visas and Immigration, the principle of discretion is unevenly applied. For example, despite some case law acknowledging that for certain groups of children a grant of indefinite leave to remain rather than temporary leave to remain will be in their best interests, Home Office policy makes clear that it considers the onus to be on the applicant to provide evidence as to why a grant of indefinite leave to remain would be justified. It is therefore difficult to apply for discretionary indefinite leave to remain, or subsequently challenge a refusal to grant, without legal representation. In 2015/16, the grants of discretionary indefinite leave to remain dropped from 160 in the previous year to just 25.³³ If the same principle is applied to discretionary grants of settled status under the settlement scheme, use of discretion is likely to be lower than the threshold outlined in the Sol.

During Private Beta testing we saw that, where requested, the Home Office did exercise discretion. For example, a child in care whose evidence had slight omissions, and where a person was very close to accruing five years' residence in the UK. But in these cases an experienced immigration adviser assisted the applicants in these cases to request that the Home Office exercise its discretion. It is not clear how the scheme will operate for individuals who are not receiving this support. The exercise of discretion is framed by the Sol as an important safeguard against poor decision-making. However, key to making this vision of a flexible, user-focused system is an appeal right (covered further below).

Recommendation 11: The Home Office should consult widely on the provision of guidance for caseworkers on the exercise of discretion, and particularly on the definition of compelling practical or compassionate reasons. Guidance should clearly outline circumstances in which it will be appropriate to waive or relax documentary requirements, and guidance should include an emphasis on taking a pragmatic approach.

Discretionary grounds for refusal

Rule EU16(a) of Appendix EU provides that where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application) their application can be refused 'provided that it is proportionate to do so'.³⁴ It is not currently possible to challenge a refusal order, other than by judicial review. Refusing an application on the basis of a mistake,

³² Home Office, Statement of Intent (above), foreword p. 2

³³ See Coram Children's Legal Centre, 'This is my home': Securing permanent status for long-term resident children and young people in the UK, 2017 at <https://www.childrenslegalcentre.com/this-is-my-home/>

³⁴ Home Office, EU Settlement Scheme public beta phase: suitability requirements, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772102/EUSS-public-beta-suitability.pdf

or even the presentation of false information, represents a significant dilution of the rights that European nationals and their family members currently enjoy.

The ability to refuse on ‘suitability grounds’ in this way is likely to adversely affect vulnerable individuals such as victims of trafficking exploitation who may be unaware of criminal offences committed in their name (such as benefit fraud) or who lack detailed recollection of crimes committed as part of their exploitation. It will also affect victims of domestic violence and as such will have an indirectly discriminatory effect on women.

Recommendation 12: Caseworkers making decisions on EU settlement scheme applications should receive specialist training on trafficking, exploitation and domestic violence.

Administrative review and the right of appeal

Decisions made by the Home Office under the EU settlement scheme do not currently attract a tribunal appeal right, though one will be introduced if the UK leaves the EU with an agreement on 29 March 2019.³⁵ As the Home Office indicated in its Sol, primary legislation is required to make provision for such a right.³⁶ The availability of an appeal right for the scheme was agreed to in the Draft Withdrawal Agreement between the EU and the UK currently awaiting approval by the UK Parliament.³⁷ The government has confirmed that in the event of a ‘no deal’ scenario, the settlement scheme will still run and the basis for qualifying will remain the same. However, in the event of a ‘no deal’ there will be no appeal right.³⁸

With no right of appeal, the only options would be an internal administrative review or full-blown judicial review³⁹ as remedies to challenge a refusal of settlement under the scheme. Judicial review is a process by which the courts review the lawfulness of a decision made or action taken by a public body. Whilst a vital legal safety net, it is a lengthy and extremely costly process. Administrative review is a mechanism whereby another official in the Home Office reviews the papers from the initial decision for casework errors. An application for administrative review costs £80, and is refunded if the review is upheld. The decision can then be changed if there is an error. At present, a system of administrative review under this scheme is available for some kinds of decisions only: administrative review is available for

³⁵ A Tribunal appeal is an oral or paper process in the First-tier Tribunal (Immigration and Asylum Chamber) where all aspects of the merits of the initial decision are considered by an independent tribunal judge. The judge can substitute a new decision for the Home Office decision

³⁶ Home Office, Statement of Intent (above), para 5.19

³⁷ As required under section 13 of the European Union Withdrawal Act 2018. If a Withdrawal Agreement is secured, in the event of a refusal, it will be possible to ask for an administrative review of decision and ultimately there will be a right of appeal for those applying from 30 March 2019. See Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 5.18

³⁸ DExEU, Policy Paper: Citizens’ Rights – EU Citizens in the UK and UK Nationals in the EU (6 December 2018), para. 11

³⁹ A process in which a judge reviews a decision on the basis of narrow legality grounds (e.g. procedural fairness, human rights) rather than providing a consideration of the full merits. The judge can declare a decision unlawful and the decision then has to be retaken afresh by the Home Office.

refusals on eligibility grounds, and for grants of pre-settled status rather than settled status. Administrative review is not available for refusals on suitability grounds.⁴⁰

In complex cases where the applicant is asking for discretion to be exercised, administrative review is not an adequate system of redress. By contrast, a right of appeal provides a route to an independent assessment of the evidence, and under the Tribunal Procedure Rules allows individuals justice to summons individuals, or require disclosure of evidence. As such, appeal rights are a critical safeguard.

The available evidence suggests the growing use of administrative review has resulted in a system where individuals are less likely to succeed in overturning their negative immigration decision. Before access to the tribunal was severely restricted by provisions in the Immigration Act 2014, around 49% of appeals were successful. Whereas, over the same period in 2015/16, the success rate for administrative reviews conducted in the UK was 8%, falling to just 3.4% the year after.⁴¹ The use of internal administrative review in other parts of the immigration system has been shown to be flawed, due to lack of staff, quality assurance and oversight. In 2016 the Chief Inspector of Borders and Immigration, conducting an independent review of the system, stated that “overall there was significant room for improvement in respect of the effectiveness of administrative review in identifying and correcting case working errors, and in communicating decisions to applicants”.⁴²

Case study: Hilla

Hilla is a 23 year old from Finland who suffers from poor mental health. Hilla was in care as a child but not for long enough to qualify for substantial support as a care leaver. Hilla has three spent convictions relating to the possession of drugs, two of which took place while she was under 18 and the last of which, when she was 19, resulted in a suspended sentence of two months. She was referred to CCLC for support under the settlement scheme during Private Beta 2. However, with no appeal right in place during the testing phases Hilla was advised to wait until the scheme opens fully on 30 March, and even then to make an application with assistance from a legal adviser.

By the end of Private Beta 2, the administrative review system had not been adequately tested; only 11 applications for review had been received and decided by the time of publication of the Home Office’s report on the test phase. Of these, ten requests were upheld, and the applicants were granted settled status where they had previously been granted pre-settled status only.⁴³

⁴⁰ See Immigration Rules Appendix AR (EU): Administrative Review for the EU Settlement Scheme.

⁴¹ Public Law Project, No Deal, No Appeal: A draft amendment to the Immigration and Social Security Co-ordination (EU Withdrawal) at <https://publiclawproject.org.uk/wp-content/uploads/2019/01/PLP-Briefing-on-Immigration-and-Social-Security-Co-ordination-Bill-2019.pdf>

⁴² See the report published after the 2015 inspection of the Home Office’s administrative review systems. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549244/ICIBI_report_on_admin_reviews_May_2016.pdf. The system was re-inspected in 2017, and the Independent Chief Inspector found that the systems and processes had improved.

⁴³ EU Settlement Scheme private beta testing phase 2 report at <https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2/eu-settlement-scheme-private-beta-testing-phase-2-report#administrative-review>

Recommendation 13: There is no clear rationale for weakening the procedural protections for European nationals in the event of a ‘no deal’ Brexit. The government should commit to the provision of a statutory appeal right for applications made under the settlement scheme in the event of a ‘no deal’.

Grants of pre-settled status & understanding of the system

If an applicant has been in the UK for less than five years, or is only able to demonstrate residence for less than five years, they will be granted ‘pre-settled status’ rather than ‘settled status’, for a period of five years. The onus will then be on them to apply for settled status once they become eligible to do so, five years after their residence in the UK began.

However, individuals granted pre-settled status are not provided with information through the online portal or in their grant letter explaining what data was used to calculate their residence or presence in the UK, nor when their ‘residence’ in the UK was accepted as having begun. CCLC is concerned that the non-provision of this information will lead to uncertainty for applicants about when they should apply for settled status.

A number of the clients CCLC assisted in PB2 demonstrated significant confusion about what pre-settled status means. CCLC is of the view that many individuals will be granted pre-settled status simply because they are vulnerable and unable to provide the required documentation to prove their eligibility for settled status. There is also a concern that many will simply accept a grant of pre-settled status without understanding its implications and what future steps would need to be taken to secure settled status. CCLC is particularly concerned about the potential for young people, who may have access the scheme whilst children in care, subsequently leaving care and not being clear about the need to take further steps to secure settled status.

Pre-settled status cannot be renewed and if vulnerable groups granted pre-settled status do not, or are unable, to take steps to apply for settled status they risk being left with no immigration status at all.

Recommendation 14: Grants of pre-settled status should include the date of the applicant’s accepted start of residence, to aid applicants in knowing when they are eligible to apply for settled status.

Recommendation 15: The government should consider introducing a legal presumption in favour of those applying to convert pre-settled status to settled status, as called for by the Joint Council for the Welfare of Immigrants.⁴⁴

⁴⁴ Joint Council for the Welfare of Immigrants, *Guaranteeing Settled Status for EEA Nationals*, February 2019 at <https://www.jcwi.org.uk/guaranteeing-settled-status-for-eea-nationals>

Online only status documents, data retention and data sharing

CCLC is concerned that the use of an online-only status will create a number of practical difficulties for the individuals holding that status, and that the interaction of this new status with both government agencies and private organisations is unclear. Currently, the online status can only be shared with an employer, but European nationals will be required to demonstrate their right to rent, their right to have a bank account and hold a driving license. There is a lack of clarity around this functionality.

It is currently unclear how long someone's data will be held, and the purposes for which the data gathered can be used. The data sharing agreement that applicants under Private Beta 2 were asked to authorise was staggeringly broad, informing applicants that the Home Office "may also share your information with other public and private sector organisations in the UK and overseas." When asked to provide further information about the organisations and individuals that might be given access to applicants' personal data, the Home Office refused to provide the information on the basis that doing so would prejudice the prevention or detection of crime (Section 31(1)(a) Freedom of Information Act 2000) and the operation of immigration controls (Section 31(1)(e) Freedom of Information Act 2000).⁴⁵

CCLC is also concerned that some vulnerable clients have not received the communications they had expected from the Home Office, most notably including an email confirming a grant of status in several cases, where a log in to the online portal shows a grant has been made. It is unclear whether this failure in communication is a technical error, the result of the spam filters on clients' email inboxes or another human issue, but nevertheless demonstrates that there is a margin of error in digitising immigration status that will impact vulnerable applicants.

Recommendation 16: the Home Office should handle applicants' data in a transparent and privacy-minded manner, in line with the spirit and letter of the General Data Protection Regulation. The Home Office should make clear what of applicants' data it holds, what it will do with it, and how long it will retain this data.

Entitlement and access to benefits

It is unclear how the new status will be used to demonstrate an entitlement to welfare benefits. The government has stated that those granted settled status will be afforded the 'same rights and access to benefits, education and healthcare services' as those with indefinite leave to remain⁴⁶ but this has not yet been confirmed by changes to policy or law. A grant of settled status in itself is not equivalent to having permanent residence under the Immigration (EEA) Regulations 2016, and nor is it the same as indefinite leave to remain granted outside the settlement scheme – it remains to be seen if the HMRC/DWP online

⁴⁵ Freedom of Information request, made on 20 November 2018, at https://www.whatdotheyknow.com/request/settled_status_app_data_privacy

⁴⁶ Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report of Session 2017–19, February 2018, at <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1075/107502.htm>

claim procedure for universal credit, for example, will be able to interface with the Home Office's data store and, if so, whether a grant of settled status will accord the same rights as permanent residence.

It is also unclear what individuals who are granted pre-settled status will be eligible for. Entitlement for income-based benefits is currently linked to a European national being economically active, and the government has not provided any information to suggest that this cease to be the case during any transition period after Brexit. This may result in individuals and families being refused financial support to which they are entitled, which is already a concern for European nationals who struggle to demonstrate that they meet the habitual residence test. With the entitlements of people who are granted leave under the EU settlement scheme currently so unclear, the NRPf network has highlighted that European nationals who have children, or who have care needs, may require social services' support if they are unable to access benefits and homelessness assistance.⁴⁷

Recommendation 17: The government should provide clear and accessible information for both local authorities and individuals applying to the EU settlement scheme regarding eligibility for benefits for those with either pre-settled status or settled status.

Families with derivative rights

CCLC welcomes confirmation, provided on 7 March 2019, that children and carers with derived rights under Regulation 16 of the Immigration (EEA) Regulations 2016 (as amended) will be able to make applications under the EU settlement scheme. These include:

- A Zambrano carer, who is a non-EU citizen who is the primary carer of a British citizen in the UK and also currently derives a right of residence from wider EU law;
- Others who rely on the on-going residence rights of a Zambrano carer, for example that carer's non-British children;
- A Chen carer, who is a primary carer of a self-sufficient EU citizen child or children in the UK;
- An Ibrahim/Teixeira child, who is a child of a former EU citizen worker and is in education in the UK, and an Ibrahim/Teixeira carer is the primary carer of such a child; and
- Others who need a right of residence in the UK in order for a Chen or Ibrahim/Teixeira child to remain in the UK (e.g. other children of the primary carer).

The Sol outlined that where 'Chen' carers and 'Ibrahim/Teixeira' children or carers were not eligible to apply for status under the EU settlement scheme, provision would otherwise be made in the Immigration Rules 'for them to apply for leave to remain, consistent with the Withdrawal Agreement.'⁴⁸ Zambrano carers and family members dependent on the carer's derivative rights were not protected by the Draft Withdrawal Agreement, and were only brought into the scope of the settlement scheme on 7 March 2019. They are likely to have a

⁴⁷ NRPf Network Factsheet, Helping European Union residents to protect their rights after Brexit, at <http://www.nrpfnetwork.org.uk/Documents/EU-Settlement-Scheme.pdf>

⁴⁸ Home Office, EU Settlement Scheme: Statement of Intent, 21 June 2018, Section 6.11

narrower window in which to protect their rights through the settlement scheme in ‘no deal’ scenario. Those with a Zambrano right of residence will only be able to apply from 1 May 2019, and need to apply on paper forms which the Home Office will make available on a case-by-case basis. It remains to be seen how the application scheme will work for Zambrano carers once open to them, and how high the evidential burden will be.

Pathways to citizenship

The government’s Sol, stated that “Holders of settled status (indefinite leave to remain) under the scheme will be able to apply for British citizenship if they wish and otherwise meet the requirements for this”. The requirements, however, include “the required period of *lawful* residence in the UK: five years if they are not the spouse or civil partner of a British citizen, the last with no time restriction on their stay in the UK” (emphasis added).⁴⁹ However, a grant of settled status is not proof of lawful presence – it is simply a test of presence. It is not clear from the Sol or any subsequent publications whether the government intends to make the necessary changes to guidance and legislation to create a pathway to citizenship under the scheme, and there is no indication as yet of when or how this could happen.

Pathways to citizenship may be of particular importance to children who have grown up in the UK and may consider themselves British. Continued uncertainty surrounding the intersection of the settlement scheme and nationality law is likely to have a disproportionate impact on children.

Case study: Luis

Luis is a Spanish-Polish 17 year old who came into care when he was 16. He has lived in several different countries but has been in the UK since he was 12 – it is the most stable home he has had. His parents are not together; he is not in contact with his father and his mother is not well enough to care for him. Luis wants to remain in the UK in the long-term and wants to become British, but although he can apply for settled status under the settlement scheme this year, he will not be able to apply to naturalise until he has held lawful status for five years – which will be five years from the grant of settled status. Despite living here since he was 12, Luis will not be able to become British until he is 22 at the earliest.

Recommendation 18: The Home Office should clarify routes to British citizenship for settlement scheme applicants, and produce clear guidance for applicants.

⁴⁹ Statement of Intent, 21 June 2018, paragraph 7.7

Recommendations

1. Legal aid should be made available for complex cases (including both the original application and the appeals process).
2. Local authorities should take positive steps to identify European national children in their care and those who are family members of European nationals, and assist them to access identity documents, legal advice and representation where necessary. They should ensure that they have recorded information about how many children in their care are European citizens or the family member of a European national.
3. Guidance for Home Office caseworkers should take into account the vulnerabilities and likely evidential issues of separated children and young people.
4. The Home Office should work collaboratively with other government departments, including the Department for Education and Ministry of Justice, to ensure that children in care who may be eligible to make applications under the EU settlement scheme receive legally-aided immigration advice.
5. In communications to local authorities, the Home Office should make clear the need for social workers to seek legal help rather than making applications for children themselves in contravention of Immigration and Asylum Act 1999.
6. Local authorities should 'track' care leavers still aged under 25 and invite them to contact the responsible local authority to explore if their might be able to provide them with further advice and assistance, as per the 'local offer' outlined in the Children and Social Work Act 2017.
7. The Home Office and Department for Education should consider joint communications materials targeted at children in care and care leavers to inform children and young people who are European nationals (or their family members) of their rights, and of their local authority's on-going duties towards them with regard to the settlement scheme.
8. The Home Office should consult with the EU Commission on problems with accessing nationality documents and should have regard to its findings in guidance produced for both local authorities and for caseworkers on the exercise of discretion.
9. To ensure that no child falls through the gaps, the government should consider introducing a separate system that would ensure all children in the care of local authorities and care-leavers are granted settled status without having to meet the requirements of the EU settlement scheme.
10. The Sol states that the government 'will accept alternative evidence of the EU citizen's identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons' but further guidance on what constitutes compelling practical or compassionate reasons is required. Where necessary, the Home Office should take a pragmatic, flexible approach and make reasonable enquiries to secure relevant evidence/information themselves where applicants are unable to provide evidence of a family member's identity or residence.
11. The Home Office should consult widely on the provision of guidance for caseworkers on the exercise of discretion, and particularly on the definition of compelling practical or compassionate reasons. Guidance should clearly outline circumstances in which it

will be appropriate to waive or relax documentary requirements and guidance should include an emphasis on taking a pragmatic approach.

12. Caseworkers making decisions on EU settlement scheme applications should receive specialist training on trafficking, exploitation and domestic violence.
13. There is no clear rationale for weakening the procedural protections for European nationals in the event of a 'no deal' Brexit. The government should commit to the provision of a statutory appeal right for applications made under the settlement scheme in the event of a 'no deal'.
14. Grants of pre-settled status should include the date of the applicant's accepted start of residence, to aid applicants in knowing when they are eligible to apply for settled status.
15. The government should consider introducing a legal presumption in favour of those applying to convert pre-settled status to settled status
16. The Home Office should handle applicants' data in a transparent and privacy-minded manner, in line with the spirit and letter of the General Data Protection Regulation. The Home Office should make clear what of applicants' data it holds, what it will do with it, and how long it will retain this data.
17. The government should provide clear and accessible information for both local authorities and individuals applying to the EU settlement scheme regarding eligibility for benefits for those with either pre-settled status or settled status.
18. The Home Office should clarify routes to British citizenship for settlement scheme applicants, and produce clear guidance for applicants.

For more information, please contact

Marianne Lagrue, Policy Manager, Marianne.lagrue@coramclc.org.uk

Kamena Dorling, Group Head of Policy and Public Affairs,
Kamena.dorling@coramclc.org.uk