



Still Here

Defending the rights of homeless
EU citizens after Brexit and Covid-19

 Public Interest
Law Centre

July 2021

About PILC

PILC exists to challenge systemic injustice through legal representation, strategic litigation, research and legal education. We specialise in public law, actions against public authorities and public inquiries, bringing cases to court for individuals and grassroots groups who have been treated unfairly. We hold government and public bodies to account, challenging unlawful policies and practices. We also undertake research-led advocacy and communications in our priority areas, which include migrant destitution, austerity, state surveillance and violence against women.

PILC is a member of the Law Centres Network.

EEA homeless rights project (2018-21)

PILC's EEA homeless rights project was set up with a grant from the Oak Foundation in 2018. The aim of the project has been to monitor and defend the rights of homeless European Economic Area (EEA) nationals in the context of the United Kingdom's departure from the European Union (EU) and policies aimed at deporting EU rough sleepers.

The project initially focused on developing strategic legal challenges to law, policies and practices infringing the rights of marginalised EEA nationals and on supporting the homelessness sector to adopt a rights-based approach to work with this group. Between 2018 and 2020 we ran a telephone advice line for homeless EU citizens and those supporting them. We also offered second-tier advice to frontline organisations and conducted regular building-based and street outreach sessions. In 2019-2020 PILC employed a dedicated worker supporting homeless EEA nationals to navigate the EU Settlement Scheme.

As the project developed, we undertook an increasing amount of research and advocacy around the rights of homeless EU citizens. We have led efforts to secure equal treatment for destitute migrants during Covid-19, coordinating advocacy to local and central government. In August 2020, we co-authored a research report into support for non-UK nationals during the pandemic. We have continued to monitor and oppose policies targeting homeless non-UK nationals for deportation.

About the author of this report

This report was written by Benjamin Morgan, research and communications coordinator at PILC, with input from Rahath Abdar, Jean Demars, Kasia Makowska, Helen Mowatt and Isabella Mulholland.

© Public Interest Law Centre, July 2021

Design and layout: dennis@kavitagraphics.co.uk

Cover Photograph:

© John Harris/reportdigital.co.uk

Acknowledgements	1
Foreword	2
Summary	3
1 Introduction	5
1.1 Report structure	5
1.2 Context: Brexit and the end of free movement	5
1.3 Why do some EU citizens living in the UK end up homeless?	6
1.4 Which EU citizens are most at risk?	6
1.5 What next for homeless EU citizens after Brexit?	7
1.6 Homeless EU citizens and the homelessness sector	9
2 Research methodology	12
3 Thematic analysis of rights and entitlements issues	17
3.1 Access to housing	17
3.2 Support for survivors of domestic violence	20
3.3 Welfare benefits	21
3.4 Employment	24
3.5 Access to healthcare	27
3.6 Community care	30
4 Defending homeless EU citizens' right to remain	35
4.1 Deportation, 'administrative removal', 'reconnection' and 'voluntary return'	35
4.2 Issues with the EU Settlement Scheme	39
5 Destitute EU citizens and the Covid-19 pandemic	44
6 Defining and advancing a rights-based approach to work with homeless EU citizens	47
6.1 Introduction	47
6.2 How the homelessness sector works with homeless EU citizens	47
6.3 What would a rights-based approach look like?	49
Conclusion	53

Acknowledgements

We would like to express our gratitude to the Oak Foundation, which funded PILC's EU homeless rights project. We are also grateful to the Open Society Foundation, the Paul Hamlyn Foundation and The AB Charitable Trust for funding other aspects of PILC's work around non UK-national destitution.

Special thanks are due to: the homelessness and advice workers and volunteers who participated in 'problem-identifying' sessions; Housing Action Southwark and Lambeth (HASL), whose model continues to be an inspiration; Mihai Calin Bica and Sylvia Ingmire from the Roma Support Group, with whom we have worked closely over the past three years; and the Housing and Immigration Group (HIG), Child Poverty Action Group (CPAG), Chartered Institute for Housing (CIH), Public Law Project, Bindmans LLP and Matthew Gold Solicitors for producing timely and accurate legal information about changes in the law affecting homeless EU citizens.

This research benefitted from conversations with: Professor Charlotte O'Brien and Dr. Alice Welsh at the University of York's EU Rights and Brexit Hub; Fiona Costello from the Centre for the Study of Global Human Movement at the University of Cambridge; Dr. Louise Humphries and Inese Brencane at GYROS; Dr. Agnieszka Radziwinowiczówna of the Centre of Migration Research at the University of Warsaw; Dr. Eve Dickson of UCL; Jess Turtle and Matt Turtle from the Museum of Homelessness; Dr. Paul Rekret of Richmond American University; Dr. Michał P. Garapich of the University of Roehampton; and Marley Morris and colleagues from the Institute of Public Policy Research (IPPR). Charlotte O'Brien and Fiona Costello were kind enough to read and comment on a draft.

All errors in this report are the author's.

This report is dedicated to the EU citizens and family members we have worked with over the past four years, and the memory of those we have lost.

Foreword

by Professor Charlotte O'Brien, York Law School, University of York. Principal Investigator, EU Rights and Brexit Hub.

A perfect storm of discrimination and disadvantage is brewing for homeless EU nationals in the UK. The combined consequences of austerity, Brexit, the pandemic, ever-more punitive immigration rules and moves to weaken the legal protections offered by judicial review threaten the human rights, wellbeing and lives of this dispossessed cohort.

This report is a wonderful body of work: beautifully written, richly researched and powerfully argued. It provides a vital voice of advocacy for homeless EU nationals—the forgotten Europeans. In bringing together practical experiences from advice, casework and litigation with academic analysis, it provides unflinching insight into life at the sharp end of some of the UK's most punitive and inhumane laws and

policies. It is also infused with rich theoretical reflection. It shows us the huge value of bringing together 'doing' and 'thinking'.

Above all, this forensic report is a piercing *cri de coeur*—a call to the homelessness sector to re-evaluate its role, purpose and relationship with immigration enforcement. It calls for a fundamental shift in the sector's centre of gravity—from a culture of technocratic contract fulfilment in which individuals are seen as making claims upon a charitable administration towards a rights-based approach animated by a commitment to root-and-branch social change. And it urges us all to shake off any apathetic acceptance of the unacceptable.

Summary

The United Kingdom's departure from the European Union has been a cause of fear and uncertainty for many EU citizens living in the UK. But Brexit has not affected all EU citizens equally. The end of free movement is likely to have particularly severe consequences for those who were already marginalised, including: working-class and negatively racialised EU citizens and non-EU family members; those in precarious or informal work; victims of labour exploitation; those experiencing physical illness, disability, mental distress or substance-misuse issues; and survivors of domestic abuse.

This report examines key rights issues affecting socially and economically excluded European Union citizens in the context of Brexit and the Covid-19 pandemic, with a focus on those at risk of rough sleeping. It is based on original research, as well as casework and litigation undertaken through PILC's EEA homeless rights project (2018-21).

Our key findings are as follows:

- Many EU citizens experienced destitution and rights abuses before Brexit, with working-class EU citizens from Central and Eastern Europe and those racialised as non-white particularly at risk
- Restrictions on EU citizens' right to social assistance and the 'gatekeeping' of entitlements by statutory agencies were key drivers of homelessness
- Changes to the law as a result of Brexit will exacerbate the poverty and hyper-exploitation experienced by homeless EU citizens, making it more difficult for many of the very poorest to meet their basic needs and have a decent and dignified standard of living
- Homeless and otherwise marginalised EU citizens have struggled to access the EU Settlement Scheme. As a result, an unknown but significant number will become undocumented migrants during 2021. These EU citizens will be subject to the 'hostile environment'. They will lose access to essential services and social provision and could end up being deported
- With notable exceptions, the homelessness sector in the shape of local authorities and commissioned service providers is failing homeless EU citizens. The opportunity presented by Covid-19 to 'bring everyone in' has only partly been grasped
- The government's new rough sleeping rule, which represents a revival of previous unlawful policies aimed at deporting homeless EU citizens, is likely to further damage this group's already-fragile trust in support services
- A culture change is needed: the homelessness sector must discard passive, 'pragmatic' and technocratic thinking about EU homelessness in favour of a rights- and social justice-based approach. It needs to break decisively with its history of cooperating with, or acquiescing in, policies that amount to state violence against non-UK nationals
- At this crucial juncture, the sector must challenge government policy by asserting the right to shelter—and to remain—of all EU citizens living in the UK.

1 Introduction

1.1 Report structure

This research report examines rights issues affecting some of the most marginalised EU citizens living in the UK: those experiencing, or at risk of, rough sleeping.

It begins with a thematic analysis of six key areas relating to social rights and welfare provision:

- housing;
- support for survivors of domestic abuse;
- welfare benefits;
- employment;
- healthcare;
- community care.

Three further sections analyse policies targeting homeless EU citizens for deportation, the EU Settlement Scheme and the impact of Covid-19.

The report's final section argues that there is an urgent need for the homelessness sector to adopt a rights- and social-justice based approach to its work with EU citizens after Brexit—and outlines what such an approach might look like.

1.2 Context: Brexit and the end of free movement

EU Directive 2004/38/C, otherwise known as the Citizens' Rights Directive or 'free movement' directive, permits European Economic Area (EEA)¹ nationals to move across borders within the EEA without requiring permission.²

Over the past two decades, millions of EU citizens have taken advantage of free-movement rights to come to the UK to work, study and—in many cases—settle. In 2019, an estimated 3.7 million EU citizens lived in the UK, making up more than 5% of the population.³

After the accession to the EU of the so-called A8⁴ and A2⁵ countries in 2004 and 2007 respectively and the extension of free-movement rights to citizens of those states, the labour migration of EU citizens to the UK became the subject of intense politicization.

In the context of economic crisis and 'austerity' cuts to social provision, EU migrants were represented by politicians and the media⁶ as 'benefits tourists' and a drain on public services. In the 2000s and 2010s both of the UK's main political parties, as well as the far right, encouraged a widespread perception of the large-scale migration of EU citizens to the United Kingdom as damaging to the UK's economy, society and culture.⁷

This 'moral panic' reached its peak in the run up to the 2016 referendum on the UK's membership of the EU. During the referendum campaign, migration from Central and Eastern Europe in particular was mobilised as a figure for a putative loss of national sovereignty.⁸ In the same period, the Home Office, local authorities and some homelessness charities pursued policies that led to the detention and deportation (technically, 'administrative removal') of homeless EU citizens.

The 'Brexit' referendum, held on 23 June 2016, resulted in a 52%-48% vote in favour of the UK leaving the European Union. The UK left the EU on 31 January 2020.

With the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, the UK government has introduced a single immigration system for all non-UK nationals, ending the ‘preferential’ treatment of EU citizens under UK law.⁹

1.3 Why do some EU citizens living in the UK end up homeless?

Before Covid-19, EU citizens were estimated to make up 22% of the total number of rough sleepers in England, with the proportion of EU rough sleepers rising to nearly 50% in London.¹⁰ Many more EU citizens occupied accommodation that was overcrowded, unsanitary or otherwise unsuitable, or had no stable accommodation.

A range of intersecting factors contribute to homelessness and housing insecurity among EU citizens living in the UK. Some of these factors are the same as those that drive homelessness and poverty among the wider population. They include: the high cost of private rental accommodation and the decline of secure tenancies;¹¹ a chronic shortage of social housing; the generalisation of precarious forms of employment;¹² wage stagnation; and severe inadequacies in the UK’s social-assistance system.¹³

Other factors are particular to EU citizens. One of these is the legal exclusion of many Europeans living in the UK from access to large parts of the welfare state, including most benefits, statutory homelessness assistance and local-authority housing allocations.

Before Brexit, EU citizens were not subject to the ‘no recourse to public funds’ (NRPF) regime, which exposes hundreds of thousands of non-UK nationals to poverty, hyper-exploitation and abuse.¹⁴ Yet many were in practice excluded from social assistance. From 2013 the UK government introduced a ‘highly publicised raft of reforms’ amounting to ‘a programme of declaratory discrimination’ against EU citizens in the UK. These reforms were designed to make EU free movement ‘less free’ by allowing only ‘economically active’ EU citizens to access social assistance—and strictly policing what qualified as ‘economic activity’.¹⁵

Key changes to EU citizens’ entitlements included: a stricter Habitual Residence Test (HRT) for means-tested benefits claimants; the exclusion of EU jobseekers from Housing Benefit and Universal Credit; and the introduction of the Genuine Prospects of Work (GPOW) test, intended to limit the length of time during which EU citizens could claim benefits while unemployed. EU citizens ‘engaged in low-paid, precarious and atypical work’ have been excluded from residence rights ‘and consequently from access to welfare benefits’ by restrictive interpretations of the notion of ‘worker’.¹⁶

Many people who have migrated to the UK from poorer countries have little financial (e.g. contingency savings) or social (e.g. support from family and friends) capital to fall back on in hard times. Even before the government’s 2013-14 reforms, a single event such as loss of employment or the end of a tenancy was often enough to reduce the most precarious EU citizens to destitution.¹⁷ The advance of ‘welfare bordering’ has made this issue worse, leaving many thousands—including people who have lived and worked in the UK for years—without access to any kind of statutory safety net.

As our report shows, other factors contributing to homelessness and destitution among EU citizens in the UK include: direct and indirect discrimination; difficulties accessing bank accounts and national insurance numbers (NINOs); not being able to meet the bureaucratic requirements (e.g. references and background checks) of renting at the formal end of the private rented sector; language issues—compounded by the frequent failure of statutory agencies to provide interpreters; lack of knowledge of rights and entitlements; lack of familiarity with systems and bureaucracies (e.g. navigating formal self-employment); the ‘gatekeeping’ of rights and entitlements by statutory agencies; financial obligations to family back home; trafficking and modern slavery; the fact that some accommodation is tied to casual or seasonal employment; and a lack of linguistically and culturally appropriate provision around mental health, substance abuse and addictions. The Covid-19 pandemic has brought many of these issues into sharp relief.

1.4 Which EU citizens are most at risk?

This report identifies three overlapping groups of EU citizens at disproportionate risk of destitution and rights abuses:

- 1.4.1 Working-class EU citizens from Central and Eastern Europe:** a significant proportion of those who have migrated to the UK from A8 and A2 countries since 2004 work at the so-called ‘lower end’ of the UK labour market. They include workers who have found themselves at the sharp end of Central and Eastern European countries’ transitions from socialism to a neoliberal capitalist economy.¹⁸ Working-class migration to the UK from these countries (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia) has taken various forms, including short-term, seasonal and ‘shuttle’ migration and, for many, long-term settlement. Such EU citizens have often been characterised as ‘low-skilled economic migrants’, with such language helping cement their status as the principal targets of popular Euroscepticism. (The actual picture is far more complex than this reductive and pejorative characterisation implies.)¹⁹ Working-class Central and Eastern European EU citizens work in a range of UK employment sectors, including social care, healthcare, agriculture, food processing, construction, retail, cleaning and hospitality—often for low pay and in unpleasant or unsafe conditions. Many work in the informal economy and/or have little or no job security; others are victims of trafficking and modern slavery. Secondary literature, our casework experience, interviews with support organisations and analysis of statistical data²⁰ all suggest that this group is disproportionately affected by homelessness and housing insecurity. Working-class Central and Eastern European EU citizens have also been disproportionately targeted for immigration-enforcement action, including through the 2016-17 ‘abuse of right’ policy.
- 1.4.2 Negatively racialised EU citizens and the non-EU family members of EU citizens:** it is often assumed that ‘EU citizens are white and ethnically European’, with such assumptions ‘ignoring the ways in which European identity is deeply enmeshed in colonial projects.’²¹ Media narratives around Brexit have helped perpetuate the idea that being middle-class, being white and being European ‘go together.’²² Yet many EU citizens living in the UK either identify or may be racialised as non-white. They include EU passport holders of Latin American or African origin, Roma EU citizens and, in some circumstances, non-Roma Central and Eastern European EU citizens.²³ Many qualifying non-EU family members of EU citizens and derivative EU rights-holders also identify or are racialised as non-white. The specificity of the experiences of EU citizens and family members who may be racialised as non-white is often ignored, despite evidence that structural racism exposes them to increased risk of various kinds of harm, including destitution, immigration detention and deportation.
- 1.4.3 Female EU citizens:** the system of EU free-movement rights privileges certain types of labour and economic activity (e.g. paid, full time) over others. This may disadvantage women, ‘whose relationship with the paid labour market is often disrupted by informal caring responsibilities’. It has been noted that ‘instead of being treated as citizens in their own right, through the recognition of the economic value of care and domestic work, women’s claims to social rights linked to EU citizenship are often recognised through their own or their partners’ paid employment only.’²⁴ Although male EU citizens are more likely than women to sleep rough, ‘hidden homelessness’ is an issue that particularly affects women.²⁵ Those women who do sleep outside are at increased risk of violence and exploitation and may be less likely to access street-based services.²⁶ Section 3.2 of this report looks at one aspect of the impact of gender on EU-citizen homelessness: the experiences accessing statutory support of EU citizens who become destitute as a result of domestic or intimate-partner violence or abuse.

1.5 What next for homeless EU citizens after Brexit?

Brexit has been a drawn out, agonised process. The legal implications of its different stages have often been unclear to the lawyers, academics and policy professionals who are paid to understand them. Since 2016 the government has repeatedly failed to provide information that could have helped individuals, communities, public services, local authorities, legal advisers and charities prepare for the UK’s departure from the EU.

For homeless and marginalised EU citizens and those supporting them, understanding what Brexit means is vitally important. The rights of EU citizens have become more differentiated as a result of the UK’s departure from the EU. As of June 2021, EU citizens living in the UK enjoy different rights depending on their immigration status. Homeless and otherwise marginalised Europeans are likely to find themselves at the sharp end of this system of differentiated rights.

Below we briefly sketch some key Brexit milestones and their possible implications for homeless and marginalised EU citizens.

Britain formally left the EU at 11pm on **31 January 2020**. The period between **1 February and 31 December 2020** was designated as a 'transition period'. During this period, EU citizens' rights under the 2016 EEA regulations continued.

The Brexit transition period came to an end at 11pm on 31 December 2020. However, in late 2020 the government announced that a set of 'temporary protection regulations' would preserve many of the rights of some EU citizens living in the UK until 30 June 2021.

The period **1 January 2021–30 June 2021** has been dubbed a 'grace period'. The Grace Period Regulations preserved the rights of residence of those EU nationals and their family members who were 'lawfully resident' in the UK before 11pm on 31 December 2020.

Such EU nationals and their qualifying family members were given until 30 June 2021 to apply to the EUSS if they wished to continue living the UK. In the meantime, the rights they enjoyed under the now-repealed EEA Regulations 2016 (included eligibility for benefits and homelessness assistance and the right to free NHS secondary care) were preserved.

The government refused to guarantee during the 'grace period' the status of EU citizens resident in the UK before 11pm on 31 December 2020 but unable to establish that they were exercising treaty rights on this date.

As of June 2021:

- **EU citizens and qualifying family members with Settled Status** have the right to apply for social assistance and to use public services (e.g. NHS hospital care) on the same terms as UK citizens. They can also work in the UK without restriction. They have the right to remain indefinitely—though this right may be lost if an individual is absent from the UK for more than five years in a row. People with SS can have their status revoked if they are convicted of a 'serious criminal offence'.
- **EU citizens and qualifying family members with Pre-Settled Status** have the right to access public services on the same terms as UK citizens and can work without restriction. Their right to social assistance was less clear as of June 2021 (see section 3.3). People with PSS can lose their status if they absent from the UK for more than 2 years in a row and may have their status revoked if they are convicted of a 'serious criminal offence'.
- **EU citizens and qualifying family members without Settled or Pre-Settled Status who were 'lawfully resident' before 11pm on 31 December 2020** and relevant family members retained the rights they enjoyed before Brexit but were required to apply to the EUSS before the deadline of 30 June 2021. They were able to continue to work and access public services during the 'grace period'.
- **People without Pre-Settled or Settled Status who were *not* lawfully resident before 11pm on 31 December 2020** did not have their rights guaranteed during the 'grace period'. Such EU citizens may have faced difficulty in accessing services such as healthcare and employment, during the period 31 December 2020 – 30 June 2021. They were eligible to apply to the EUSS before the 30 June deadline, but were not eligible for welfare benefits or homelessness assistance in the meantime. The government indicated that it would not seek to remove such EU citizens from the UK during the 'grace period'.
- **New arrivals from the EU after 1 January 2021** need a valid national passport (or, until 1 October 2021, a valid national ID) to enter the UK. If they are planning to live and work in the UK they will also need to apply for a visa before they arrive. Short trips, including for business, may not require a visa. All visas issued to new arrivals from the EU will have a no recourse to public funds (NRPF) condition.²⁷

Many homeless EU citizens are likely to fall into the category of people whose rights were not guaranteed during the 'grace period'. A significant number are likely to fail to resolve their immigration status before the EUSS deadline and will be effectively become undocumented migrants in 2021.

Some homeless EU citizens who *have* been granted Settled or Pre-Settled Status may experience difficulties demonstrating their status as a result of the government's refusal to issue physical proof of status. Concerns have been raised about a possible Windrush-style scenario in which such EU citizens may be unable to prove their right to work or access vital provision.²⁸

1.6 Homeless EU citizens and the homelessness sector

At this crucial time, relatively few voices are speaking up on behalf of homeless and excluded EU citizens. Migrants'- and human rights organisations have tended in the past to see issues relating to EU citizens' rights in the UK as somewhat beyond their purview—though this is changing as the potential consequences of Brexit become clearer. EU citizens' advocacy groups have not put economically marginalised Europeans at the centre of their campaigning efforts around Brexit.

Meanwhile, the UK homelessness sector in the shape of statutory and commissioned services is not, broadly speaking, meeting the needs of homeless EU citizens. Over the past decade parts of the sector have encouraged a conception of rough sleeping among EU citizens as a deliberate 'choice' often amounting to 'antisocial behaviour'. Until 2017 it was widely held among state agencies and mainstream homelessness NGOs that 'reconnection' to countries of origin (and failing that, forced removal) was often the best solution to EU-citizen destitution. Between 2010 and 2017, some local authorities and homelessness charities worked with the government to deport homeless EU citizens.²⁹

It has been known for at least a decade that 'traditional solutions to homelessness [...] structured around the needs of the population that are entitled to claim benefits and housing support' do not work in the cases of many homeless non-UK nationals,³⁰ and that there is therefore a 'need for bespoke services tailored to the specific needs of homeless migrant groups'.³¹

Few such specialised projects have materialised, however. Those that did come into being between 2010 and 2020 often focused on 'reconnecting' or forcibly removing EU rough sleepers. The prevailing response to EU homelessness over the past decade is symbolic of how many parts of the local-government and third sectors no longer operate (where they ever did) within a human-rights and social-justice frame.

Lack of knowledge of EU citizens' rights and entitlements remains a serious problem across statutory and commissioned services, as well as in non-commissioned charities, day centres and soup kitchens. The (incorrect) blanket assumption that EU citizens 'have NRPF' is widespread among homelessness workers. As in other parts of the statutory sector (e.g. NHS, JobCentre Plus, DWP), culturally and linguistically appropriate provision is the exception rather than the rule.

The sector's emphasis on 'reconnection', failure to resource appropriate support and involvement in deportation policies have undermined many homeless EU citizens' trust in statutory and commissioned services. 'Pragmatic', passive and 'best interests' approaches to EU homelessness have frequently failed to uphold even the basic rights of marginalised EU citizens, let alone foster socially-just outcomes.

The final section of this report seeks to define and advance a *rights-based approach* to working with homeless EU citizens after Brexit and Covid-19. In doing so it raises difficult but (in our view) important questions about the past, present and future role of homelessness charities and local authorities in relation to this group. It challenges the sector, along with migrants'- and human-rights practitioners, to stand up for the human and social rights of marginalised EU citizens at a moment of severe threat.

Endnotes to introduction

- 1 The EEA includes the 27 member states of the EU (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) as well as Iceland, Liechtenstein and Norway. Switzerland is not a member of the EU or EEA but Swiss nationals enjoy broadly the same rights as EEA nationals. For brevity, this report uses 'EU citizens' as a shorthand encompassing EEA nationals, Swiss nationals and the qualifying non-EEA family members of EEA nationals (the latter also enjoy EU free movement rights and are eligible to apply to the EU Settlement Scheme).
- 2 Article 6 of the Citizens' Rights Directive states that 'Union citizens [and qualifying family members] shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.' Under Article 7, those residing for more than three months should either be workers or self-employed persons, students, 'self-sufficient' persons, the qualifying family members of any of the foregoing or qualifying jobseekers. Directive 2004/38/EC. Accessible via: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038>
- 3 Vargas-Silva and Walsh, EU migration to and from the EU, Migration Observatory, October 2020. Accessible via: <https://migrationobservatory.ox.ac.uk/resources/briefings/eu-migration-to-and-from-the-uk>
- 4 The A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.
- 5 The A2 countries are Bulgaria and Romania.
- 6 See e.g. *Evening Standard*, UK 'most lucrative destination' for Romanian and Bulgarian migrants, December 31, 2013; and Radziwinowiczówna, Galasińska 'The Vile Eastern European': Ideology of Deportability in the Brexit Media Discourse, *Central and Eastern European Migration Review*. Accessible via: <http://www.ceemr.uw.edu.pl/articles/vile-eastern-european-ideology-deportability-brexite-media-discourse>
- 7 Fox, Morisanu, and Szilassy (2012) The racialisation of the new European migration to the UK, *Sociology*. 46(4): 680-695.
- 8 See e.g. Dunin-Wasowicz, Post-Brexit hate crimes against Poles are an expression of long-standing prejudices and contestation over white identity in the UK, LSE Blog, 29 Sept 2016.
- 9 Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020.
- 10 Rough Sleeping Snapshot in England, Autumn 2019. Accessible via: www.gov.uk/government/publications/rough-sleeping-snapshot-in-england-autumn-2019/rough-sleeping-snapshot-in-england-autumn-2019
- 11 See e.g. Fitzpatrick, Mackie and Wood (2019) Homelessness prevention in the UK: Policy briefing. UK Collaborative Centre for Housing Evidence: Glasgow.
- 12 See e.g. Jones, Ahmed, Madoc-Jones, Gibbons, Rogers and Wilding M (2019) Working and homeless: exploring the interaction of housing and labour market insecurity. *Social Policy and Society*, 19(1):121-132.
- 13 See e.g. Loopstra, Reeves, Barr, Taylor-Robinson, McKee and Stuckler (2016) The impact of economic downturns and budget cuts on homelessness claim rates across 323 local authorities in England, 2004–12. *Journal of Public Health*, 38(3): 417–425.
- 14 See e.g. Dickson, Jolly, Morgan, Qureshi and Stamp (2020) Local Authority Responses to people with NRPf during the pandemic. University of Wolverhampton. Accessible via: <https://wlv.openrepository.com/handle/2436/623914>; Dickson and Rosen (2020) Punishing those who do the wrong thing': Enforcing destitution and debt through the UK's family migration rules, *Critical Social Policy*. Accessible via: <https://journals.sagepub.com/doi/full/10.1177/0261018320980634>; Gardner (2020) Migrants with No Recourse to Public Funds' Experiences During the COVID-19 Pandemic, JCWI; Accessible via: <https://www.jcwi.org.uk/Handlers/Download.aspx?IDMF=17805c35-d3bc-4251-9ada-6dfdae8dbca6>; Morgan (ed.) A Migrant With No Recourse to Public Funds on Being Made Homeless During a Pandemic, Novara Media, 28 May 2020. Accessible via: <https://novaramedia.com/2020/05/28/a-migrant-with-no-recourse-to-public-funds-on-being-made-homeless-during-a-pandemic/>
- 15 O' Brien (2017), *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK*, Bloomsbury.
- 16 See Duda-Mikulín (2019) *EU Migrant Workers, Brexit and precarity: Polish women's perspectives from inside the UK*, Policy Press, p.39; 'Chapter 12: Migrant homelessness' in Crisis (2018) *Everybody in: how to end homelessness in Great Britain*. London: Crisis. Accessible via: <https://www.crisis.org.uk/ending-homelessness/the-plan-to-end-homelessness-full-version/solutions/chapter-12-ending-migrant-homelessness/>; FEANTSA, The 'working poor' and EU free movement: the notion of 'worker' in the context of low-wage and low-hour employment. Accessible via: <https://www.feantsa.org/download/working-poor-within-the-eu1026919265820446116.pdf>
- 17 Garapich (2008) Between the Local and Transnational: EU Accession States Migrants in the London Borough of Hammersmith and Fulham, CRONEM, University of Roehampton.
- 18 Garapich (2013) Homo sovieticus revisited: anti-institutionalism, alcohol and resistance among Polish homeless men in London, *International Migration*, 52(1):100-117.
- 19 See e.g. Parutis, 'Economic Migrants' or 'Middling Transnationals'? East European Migrants' Experiences of Work in the UK, *International Migration*, 52(1): 36-55
- 20 See e.g. The Greater London Authority's CHAIN (Combined Homelessness And Information Network) annual reports. Accessible via: <https://data.london.gov.uk/dataset/chain-reports>
- 21 Tapini and Erel, From insecurity to insecurity: Black and Ethnic Minority Europeans in the UK, *Open Democracy*, 21 April 2017. Accessible via: <https://www.opendemocracy.net/en/can-europe-make-it/from-insecurity-to-insecurity-black-and-ethnic-minority/>
- 22 '[White middle class EU] migrants are [seen as] 'good migrants'. They are [seen as] good for the British economy. They belong. They are self-mastering liberal subjects. They are white. These things not only intersect, but constitute one

- another.' De Noronha, Race, Class and Brexit: thinking from detention, Verso Blog, 9 March 2018. Accessible via: <https://www.versobooks.com/blogs/3675-race-class-and-brex-it-thinking-from-detention>; Morgan and Radziwinowicz, Post Brexit, Post Covid-19, which EU citizens are at risk of deportation?, The Justice Gap, 1 June 2020. Accessible via: <https://www.thejusticegap.com/post-brex-it-post-covid-19-which-eu-citizens-are-at-risk-of-deportation/>
- 23 Fox, Morisanu, and Szilassy.
- 24 Duda-Mikulín, p.41.
- 25 Bretherton (2017), Reconsidering Gender in Homelessness, *European Journal of Homelessness*, 11(1). Accessible via: https://www.feantsaresearch.org/download/feantsa-ejh-11-1_a1-v045913941269604492255.pdf
- 26 Bretherton and Pleace (2018) Women and Rough Sleeping: a critical review of current research and methodology, University of York. Accessible via: <https://www.mungos.org/publication/women-and-rough-sleeping-a-critical-review/>
- 27 The NRPF Network has raised the issue of statutory decision makers distinguishing between those eligible and not eligible for mainstream benefits, given that 'no physical documentation will be issued to EEA nationals and many post-December arrivals will enter as visitors through e-gates'. NRPF Network (2020) Councils likely to incur costs providing safety-net support to EEA nationals after free movement ends. Accessible via: <https://www.nrpfnetwork.org.uk/news/eea-nationals-dec-2020>
- 28 3 Million (2021) #DeniedMyBackup is discriminatory - challenge the Government today, Crowdjustice page. Accessible via: <https://www.crowdjustice.com/case/deniedmybackup-discriminatory-eu-citizens-brex-it/>
- 29 Morgan, 'I didn't know I could be illegal: the policies that target rough sleepers', Open Democracy, 17 February 2020. Accessible via: <https://www.opendemocracy.net/en/openjustice/unlawful-state/i-didnt-know-i-could-be-illegal-the-policies-that-target-rough-sleepers/>
- 30 Homeless Link (2010) Homelessness amongst Migrant Groups: A Survey of Homelessness and Refugee Agencies across England.
- 31 Fitzpatrick, Johnsen and Bramley (2012) Multiple Exclusion Homelessness amongst Migrants in the UK, *European Journal of Homelessness* 6(1).

2 Research Methodology

This report is based on:

- Analysis of data gleaned from advice, casework and litigation undertaken through PILC's EU homeless rights project (2018-2021)
- Focus groups with organisations supporting homeless EU citizens
- Notes from sector roundtables and conferences
- Analysis of Freedom of Information requests
- Desk-based research, including a literature review and analysis of key policy documents

Advice and casework

Between 2018 and 2021 PILC advised 1562 clients through our EU homelessness and EUSS projects. We provided representation or complex legal casework to 186 of these clients and assisted 798 of them to apply to the EU Settlement Scheme. We ran building-based outreach surgeries in partnership with 11 organisations. More than 30 other organisations referred to our projects or sought second-tier advice. We made contact with 293 Roma rough sleepers and/or precarious workers through street outreach sessions with the Roma Support Group.

In total we assisted clients from 48 countries. (Although destitute EU citizens and qualifying non-EU family members were the focus of our project, we also assisted a number of other non-UK nationals with insecure immigration status or subject to an NRPF condition, particularly during Covid-19.)

For the purposes of this research, case reviews were undertaken and advice databases surveyed to identify key advice, casework and litigation themes. PILC's EEA Homeless Rights Adviser wrote an internal report on the most common casework themes. Standard client-confidentiality protocols have been observed at all times and care has been taken to ensure no data that might identify individuals has been included in this report.

Key advice and casework themes were: the EU Settlement Scheme; access to welfare benefits; access to housing; support for survivors of domestic abuse; unlawful detention, 'administrative removal' and deportation; 'criminality'; access to healthcare; access to community care; support for victims of trafficking and modern slavery; family law; mental capacity; and access to education.

In the period 2018-21 we also undertook strategic litigation (including pre-litigation correspondence) in the following areas:

- Delays in EU Settlement Scheme decision making for destitute individuals
- Delays in EU Settlement Scheme decision making for individuals with criminal convictions or pending criminal cases
- Data-sharing arrangements for the Home Office's Rough Sleeping Support Service (RSSS) and Home Office immigration surgeries hosted by charities working with homeless people
- Lambeth Council's Temp2Settled scheme (see section 3.1)
- Changes to the Immigration Rules to make rough sleeping a ground for refusal or cancellation of permission to stay in the UK (see section 4.1)
- NHS charging for EU citizens
- The wrongful deportation of EU citizens
- DWP benefits decision making as applied to EU citizens, particularly around 'right to reside'
- Zambrano carers' right to apply to the EU Settlement Scheme
- The limitations of the Covid-19 'Everyone In' policy (see section 5)

- Lambeth council’s Temp2Settled scheme (see section 3.1)
- Southwark council’s housing allocations policy

Focus groups

First phase: March to Sept 2019

Between March and September 2019 PILC ran ‘problem-identifying’ sessions with staff and volunteers from 15 frontline and specialist organisations supporting homeless EU citizens.

These focus group-style sessions took the form of semi-structured interviews. Participants were asked about the issues homeless EU clients experience and the challenges organisations face in providing appropriate support. In order that participants should feel able to speak as freely as possible, it was agreed that the names of specific organisations participating in focus groups would not be disclosed in this report.

Participants were given questions in advance and asked to prepare responses/case studies, capacity permitting. Where it was not possible to arrange in-person visits, research was conducted by email and over the telephone. The ‘problem-identifying’ sessions were also used as an opportunity to publicise PILC’s second-tier advice service and to promote a rights-based approach to supporting homeless EU citizens.

The profiles of participant organisations are reflected in the table below.

Profile of organisation	Nature of engagement with homeless EU citizens
Grassroots education charity	Significant proportion of student body are EU citizens of Latin American origin
Large homelessness day centre	EU rough sleepers make up a significant proportion of service-user base
National charity for homeless people	EU homeless people make up a significant proportion of their membership
Charity providing information, advice and support to people from Central and Eastern Europe	Specialise in advice and support for Central and Eastern Europeans in London, including support for victims of trafficking or modern slavery
Volunteer-run community centre	Attended by large contingent of mainly Polish rough sleepers
Migrant advice centre offering specialist advice on immigration, welfare and housing	Advises homeless EU citizens and the non-EEA family members of EEA nationals
Grassroots housing-rights group	Many members are EU citizens of Latin American origin
Roma welfare and cultural organisation	Provide support and advice to Roma EU citizens
Borough-based winter night shelter and year-round day centre providing employment support	Homeless EU citizens make up a significant proportion of their service users
Faith-based charity supporting Polish and East European people living in North London	Specialise in supporting Polish and East European people
Community-led organisation for Latin Americans	Represents many EU citizens of Latin American origin
Specialist advice organisation	Advise on EU welfare-eligibility issues
Homelessness day centre in West London	Runs an employment service for homeless EU citizens
Homelessness day centre in Central London	Provide services to rough sleepers, including many EU citizens
National VAWG charity	A significant proportion on the domestic survivors they support are EU citizens

Participant organisations reflected the diverse profile of organisations working with homeless EU citizens in London. They included: large national charities with developed policy arms; specialist advice organisations; volunteer-run grassroots groups; established Migrant and Refugee Community Organisations (MRCOs); and homelessness day centres.

About half of the organisations visited received local-authority funding in one form or another. None of the participant organisations were established immigration-advice providers. Some had recently applied for and received limited OISC (Office of the Immigration Services Commissioner) accreditation to advise and assist with applications for (Pre-) Settled Status.

None of the organisations spoken to worked directly with the Home Office or held contracts to assist homeless EEA nationals with ‘voluntary reconnection’.

Second phase: Oct to Dec 2020

Between October and December 2020 PILC ran ten online ‘information and discussion’ sessions with nine frontline groups or organisations supporting homeless EU migrants.

The purpose of these sessions was to:

- (a) disseminate information to frontline groups and organisations about the implications of the end of the Brexit transition period for the rights and entitlements of homeless EU citizens and promote a rights-based approach to work with this demographic group;
- (b) better understand the challenges faced by homeless EU citizens and the groups and organisations supporting them in the context of Britain’s departure from the EU and the Covid-19 pandemic.

Three participant organisations (indicated by *) were among the organisations interviewed in the first phase. The structure of second-phase sessions was different to the structure of first-phase sessions. Sessions were led by a PILC facilitator who gave information about upcoming changes to the law and the implications of those changes for homeless EU citizens. This was followed by questions and an open discussion session, during which participants were invited to share their concerns about the effect of Brexit and the pandemic on homeless EU citizens.

The profiles of the groups and organisations who participated in the second phase are reflected in the table below.

Profile of organisation	Engagement with homeless EU clients
Homelessness day centre in West London*	Runs an employment service for homeless EU citizens
Migrant advice centre offering specialist advice on immigration, welfare and housing*	Advise homeless EU citizens and the non-EEA family members of EEA nationals
Homelessness day centre in South London	Provides advice and support services to homeless EU citizens
Charity running services for migrants in East Anglia	Offers immigration and welfare advice and other services to homeless EU citizens
National homelessness charity coordinating winter night-shelter provision	Homeless EU citizens nationals make up significant proportion of night-shelter users
National charity for homeless people*	Homeless EU citizens make up a large proportion of membership
NHS homeless mental health team, borough based	Supporting a significant number of EU citizens
National organisation supporting Roma people	Offer services and support, and conduct advocacy on behalf of, Roma EU citizens
Grassroots soup kitchen in North London	Support a large number of homeless EU citizens.

Notes from sector roundtable discussions

Notes and learning from two sector roundtable events have also informed this report.

In September 2019 PILC and Migrants' Rights Network (MRN) convened a roundtable discussion on enforcement-based approaches to non UK-national homelessness. The event was held in response to concerns that the Home Office's Rough Sleeping Support Service (RSSS) might involve local authorities and commissioned homelessness services sharing personal information about homeless non-UK nationals for the purposes of immigration enforcement.

Apart from MRN and PILC, the roundtable was attended by 10 organisations: Crisis; Haringey Anti-Raids; Housing Action Southwark and Lambeth (HASL); Labour Homelessness Campaign; Lesbians and Gays Support the Migrants; Liberty; Outside Project; Refugee Council; Roma Support Group; and Streets Kitchen. In December 2019 PILC, along with the national homelessness charity Crisis and the European Federation of National Organisations Working with the Homeless (FEANTSA), convened a roundtable discussion on Solutions to Homelessness for EEA Migrants. The event, held as part of a wider FEANTSA project called Protecting the Rights of Destitute Mobile EU Citizens (PRODEC), provided an opportunity for PILC to learn from sector colleagues and present our thinking on rights-based approaches to migrant homelessness to a wider audience.

The event was attended by representatives of 40 organisations, including: local authorities; national and regional homelessness charities; the Ministry for Housing Communities and Local Government (MHCLG); the National Housing Federation (NHF); the EU Commission; the Council of Europe; and international delegates from Denmark, Italy, Spain and the Netherlands.

In a plenary session, presentations were given on local-authority responses to EU-citizen destitution and the support needs of homeless Roma people. Minuted 'breakout' discussions were then held on employment support, accommodation and 'partnership working' between local authorities and the voluntary sector. (More information about this event and PRODEC can be found on FEANTSA's website.)

Freedom of information requests

Our report draws on Freedom of Information Act responses from local authorities, central government departments and other public bodies.

Between 2018 and 2021 FOI requests were made in respect of:

- Local-authority bids for MHCLG funding to support projects around EU-citizen homelessness
- Data sharing arrangements for the Home Office's Rough Sleeping Support Service (RSSS)
- Department for Work and Pensions (DWP) training and decision-making around benefits applications by EU citizens in the context of Brexit
- Local-authority support, including accommodation and immigration-needs assessments, for homeless non-UK nationals (including EU citizens) during the Covid-19 pandemic, and 'move-on' statistics for this group
- The Next Steps Accommodation Programme (NSAP)
- The October 2020 changes to the Immigration Rules around rough sleeping
- The DWP's easement of the habitual residence test during Covid-19

Where we draw on FOI data this is indicated in an endnote. Researchers wishing to access any of the data mentioned may contact the author of this report.

Desk-based research

Desk-based research was conducted between September 2020 and June 2021.

A literature review of legal, policy, advocacy and academic research on EU-citizen homelessness was conducted via Google Scholar using a variety of relevant search terms. Media searches using relevant search terms were conducted via Lexis Nexus and internet search engines.

A variety of relevant legal and policy documents were reviewed, including: the texts of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 and the European Union (Withdrawal Agreement)

Act 2020; the October 2020 statement of changes to the Immigration Rules; gov.uk publications relating to Brexit, the transition period, the Grace Period, and the Rough Sleeping Support Service; MHCLG communications regarding the 'suspension of the derogation'; MHCLG guidance for local-authorities around EU citizens' eligibility for statutory housing assistance after the end of the transition period; and DWP guidance around EEA citizens' access to benefits after the end of the transition period.

Finally, this report also draws upon research conducted for a report for the Strategic Legal Fund on the rough sleeping rule, co-written by the author of this report.

3 Thematic analysis of rights and entitlements issues

3.1 Access to housing

Legal and policy context

After Brexit as before, some EU citizens living in the UK are eligible for statutory homelessness assistance and local-authority housing allocations while others are not. Eligibility rules have been in flux as a result of Brexit, but as of June 2021 EU citizens and qualifying non-EU family members resident in the UK are eligible to apply for statutory homelessness assistance and housing allocations if they:

- Have Settled Status; or
- Have Pre-Settled Status and are either working or self-employed (or have stopped work or self-employment due to e.g. temporary illness or accident, pregnancy, ‘involuntary unemployment’ or vocational training); or
- Were “living lawfully” in the UK before or on 31 December 2020 and [...] were eligible (by being a worker, self-employed, family member of a worker or self-employed) when they made their application.¹

Like all applicants for statutory homelessness assistance, EU citizens must meet four further tests. Applicants must be: legally homeless; have a local connection to the local authority to which they are applying; not be ‘intentionally homeless’; and demonstrate priority need. Even if they meet all of these tests, an EU citizen is unlikely to get long-term social housing. In most cases, local authorities will seek to discharge their duty by placing people in the private rented sector (PRS).

A number of interrelated factors contribute to homelessness and housing insecurity among EU citizens in the UK (see Introduction). For many, the high cost of PRS accommodation is a key issue. Many low-paid EU migrant workers have little alternative but to squat or ‘hot bed’. Others are forced to accept unstable, overcrowded and otherwise unsuitable accommodation (including through unscrupulous landlords and letting agents),² to live in multiple occupancy properties or properties that were not designed as dwellings, to enter into informal tenancies (e.g. without a written tenancy agreement), to ‘sofa surf’—or to sleep rough (including by pitching tents outdoors). It is common for migrant workers to move between these different kinds of arrangement depending on circumstances. Government and local-authority clampdowns on ‘rogue landlords’ and ‘beds in sheds’ have resulted in EU citizens being criminalised or forced into rough sleeping.³

Issues around access to support

EU citizens who are entitled to apply for statutory homelessness assistance and local-authority housing allocations are often prevented from doing so. Poor decision making by local authorities around EU citizens’ entitlement to housing assistance appears to be a systemic issue, as does the unlawful ‘gatekeeping’ of statutory homelessness assistance by housing officers. Some local authorities persistently disregard or misapply housing law in the cases of homeless EU citizens, with homeless people not infrequently being informed by councils that they are ineligible for housing assistance despite having a right to reside or Settled Status. ‘Gatekeeping’ around ‘priority need’ is also common: this issue particularly affects homeless EU citizens with physical disabilities or who experience psychological distress or substance-abuse issues.

Challenging refusals

The refusal of housing assistance on the basis of eligibility can be challenged—in the first instance by internal or statutory review (also known as a Section 202 review), and later by appeal to a county court or by judicial review.

Limited language proficiency and knowledge of rights can make it difficult for homeless EU citizens to challenge wrongful refusals. Homelessness workers often lack the training and/or capacity to identify and challenge unlawful decisions. With notable exceptions, homelessness charities do not view supporting service-users with homelessness applications, challenging unlawful or incorrect decision-making or referring to legal advice and representation as part of their role.

Accommodation for rough sleepers

Issues around the requirement for rough sleepers to be 'verified'

In many parts of the country, rough sleepers who wish to access emergency accommodation must first be 'verified' as street homeless. In practice, this usually means being visited by a local authority-commissioned homelessness outreach team and observed 'bedding down' outdoors at night.

In London, information about verified rough sleepers is entered into the Combined Homelessness and Information Network (CHAIN) database, commissioned by the Greater London Authority and run by the charity St. Mungo's. This information can be viewed by those with access to the CHAIN database, including outreach workers, assessment-and-reconnection services, hostels, supported housing project workers and others, including local-authority homelessness teams.

The standard way for a rough sleeper to become verified is for a member of the public, a homelessness worker or the rough sleeper themselves to contact Streetlink, 'a non-profit organisation managed and delivered by Homeless Link in partnership with St Mungo's [and] principally funded by the UK Government (Ministry of Housing, Communities and Local Government), with additional funding from the Greater London Authority (GLA) and the Welsh Government.' Streetlink is described on its website as a service '[that] enable[es] members of the public to connect people sleeping rough with the local services that can support them'.⁴

During our problem-identifying sessions, homelessness workers and volunteers raised concerns about both the rough-sleeping 'verification' process and Streetlink. Issues raised included the following:

- Some rough sleepers (and homelessness workers) are wary of Streetlink and CHAIN due to their links with statutory agencies and commissioned services that have cooperated with immigration enforcement. (In 2017 it was reported that 'the Home Office was given full access to [CHAIN] for six months from September 2016'.)⁵
- Some rough sleepers bed down in concealed spots for safety or privacy reasons and may be reluctant to share the location of their sleeping sites
- Streetlink does not encourage those reporting rough sleepers to first seek their consent
- Streetlink referrals are sometimes not followed up promptly or at all, with some rough sleepers waiting days for a visit from an outreach worker and others never receiving a visit
- The requirement for homeless people to be observed 'bedding down' for the night is too stringent and may lead to those without accommodation who do not 'bed down' in this way not being 'verified' as rough sleepers. This may include: those who sleep on night buses for safety or other reasons (including many women and non-UK nationals); those who sleep rough only intermittently (e.g. because they sometimes have access to indoor accommodation); and rough sleepers who move around frequently
- There have been instances of rough sleepers being told they 'don't look homeless enough' to be referred to shelter accommodation
- During Covid-19 (and despite MHCLG's direction for councils to 'bring in' all those 'at risk' of rough sleeping), some homeless people were told they could not be given emergency accommodation unless they were first observed 'bedded down' outside. This led to a situation in which EU citizens who were e.g. squatting or sofa surfing were forced to 'bed down' outside so that they could then be 'found' by an outreach team and 'verified' as homeless

Confusion around MHCLG's 'suspension of the derogation'

In September 2019 the Ministry for Housing, Communities and Local Government (MHCLG) announced 'a suspension of the exemption (or derogation) from Article 24(2) of the Free Movement Directive [Directive 2004/38/EC] to the need for equal treatment between UK and EEA citizens who are exercising free movement rights during their initial three months in the UK and when they are here as 'jobseekers'.

MHCLG indicated that the ‘suspension of the derogation would ‘allow a specific group of [EU] nationals who are rough sleeping to access certain non-statutory homelessness services’. It was announced that £5m was to be made available to local authorities to ‘bolster accommodation and services cover the costs of supporting this group’.

The relevant section of the Free Movement Directive is as follows:

[...] Equal treatment

1 [...A]ll Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence

2 By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or [in the case of job seekers considered to have a genuine chance of being engaged]’⁶

MHCLG stated that the ‘suspension of the derogation’ would apply only to specific parts of the UK where there were high rates of EU rough sleeping—namely Greater London, Luton, Bedford and Milton Keynes.

Explaining the decision to ‘suspend the derogation’ from Article 24(2), MHCLG cited the ‘urgent and rapidly growing issue’ of EU citizens sleeping rough and stated that the government ‘wanted to support [EU] nationals to find employment and regularise their status in the UK or return to their country of origin and connect with services there, should that be the best option available’.

However, it is unclear whether the action taken by MHCLG actually amounted to a suspension of the UK’s derogation from the requirement that all EU citizens exercising free movement rights should enjoy ‘equal treatment’. Homeless EU citizens have never been legally barred from access to night-shelter accommodation or other local authority-based non-statutory homelessness support, regardless of whether they were exercising treaty rights. Under the free movement system, EU jobseekers and those in their first three months of residence were rather excluded from *statutory* provision (such as welfare benefits and statutory homelessness assistance). MHCLG’s announcement that the ‘suspension of the derogation’ would allow EU jobseekers to access ‘certain non-statutory homelessness services’ was therefore puzzling since EU jobseekers had never in fact been barred from access to such provision.

In practice, the ‘suspension of derogation’ appears to have been used as a mechanism to marginally increase the funding available to local authorities to support homeless EU citizen unable to establish eligibility for statutory assistance, including by placing people in hostel and B&B accommodation which could not be funded through housing benefit and providing employment support.

A ‘true’ suspension of the UK’s derogation from the requirement for equal treatment would have conferred upon EU jobseekers the right to access statutory homelessness assistance and welfare benefits on an equal basis with UK nationals.

Access to accommodation during the Covid-19

During the pandemic, many homeless EU citizens who would not ordinarily have been eligible for housing assistance accessed emergency hotel accommodation through the Covid-19 homelessness response (sometimes referred to as ‘Everyone In’). MHCLG’s ‘suspension of the derogation’, initially put in place for six months from 30 September 2019, was extended during the pandemic. However, some homeless EU citizens have struggled to access suitable accommodation during Covid-19. This issue is discussed in detail in section 5.

Unsuitable or substandard housing

Like many others in the UK in 2021, large numbers of EU citizens live in housing that is overcrowded, unsanitary and otherwise inadequate. In 2004, the Labour government called the statutory overcrowding standard, introduced in 1935, ‘no longer defensible in a modern society’; the same overcrowding standard remains in place in 2021, while the problem of substandard housing has grown considerably worse even as rents have increased in both the private-rented and social-housing sectors.⁷ There is significant evidence demonstrating the effect of this issue on mental and physical health; during the coronavirus pandemic, overcrowded and inadequate housing has been linked with increased risk from Covid-19.⁸

Case study: Temp2Settled challenge

One of PILC's partner organisations is Housing Action Southwark and Lambeth (HASL), a grassroots mutual-aid group that has campaigned for years for decent homes in inner South London. A significant proportion of HASL's members are EU citizens of Latin American origin, many of whom live in overcrowded or otherwise inadequate council-temporary or PRS accommodation in the London boroughs of Southwark and Lambeth.

Such accommodation is often situated far from children's schools, parents' workplaces and community amenities. Many HASL members have waited for years on council waiting lists for accommodation that is of an appropriate size for their household. Southwark in particular has a history of unlawfully interpreting the overcrowding standard in order to avoid its responsibilities to overcrowded families—and of accusing overcrowded families of 'deliberately' causing their overcrowding in order to be moved up the list.

In 2019-20, PILC and HASL worked together on a legal challenge to Lambeth council's misleading Temp2Settled scheme.⁹

Under Temp2Settled, if a homeless household agreed go into private rented-sector accommodation rather than council-provided temporary accommodation, Lambeth would put that household into a higher 'band' on the housing register, meaning (in theory) that they would be likely to get council accommodation sooner.

However, homeless households (including survivors of domestic violence and families with children) were not told that if they were placed in private rented accommodation outside of the borough of Lambeth, they would be removed from the housing-allocation waiting list after two years if they had not been successful in securing a property by that point. Temp2Settled led to a number of Lambeth families losing their place on housing waiting lists.

In June 2020, as a result of legal action by PILC, Lambeth agreed to revise its housing allocation policy and restore affected families to the waiting list.¹⁰

3.2 Support for survivors of domestic abuse¹¹

Legal and policy context

Domestic and intimate-partner abuse and other forms of gender-based violence (GBV) are systemic issues that intersect with other forms of oppression to expose women and girls to increased risk of harm. Women of colour and those from migrant and working-class backgrounds face additional structural barriers in fleeing violence and leaving abusive relationships, with insecure immigration status and non-eligibility for social assistance key factors.¹² GBV advocates have cited an urgent need for 'cultural mediation' services to help non UK-national survivors navigate statutory bureaucracies.¹³ Domestic-abuse and trafficking legislation and policy frequently fail take into account the specific experiences of migrant women, while multi-agency approaches (involving e.g. police) are not designed with sensitivity to the needs of survivors with insecure immigration status.¹⁴

Female EU citizens have faced specific challenges due to the 'gendered nature of free movement rights'.¹⁵ The privileging of 'economically active' EU citizens can put women at a disadvantage since unpaid caring responsibilities often result in interruption to paid employment. Under the 'old', pre-Brexit system of EU free movement, this arguably made it more difficult for female EU citizens to acquire permanent residence through five years' consecutive exercise of treaty rights.

Female EU citizens living in the UK are not only more likely than male counterparts to do unpaid work—they are also more likely to do the kind of casualized, low-paid or informal work that may lead to their exclusion from the status of 'worker'. Paid work undertaken by female EU citizens may be more likely than work undertaken by male EU citizens to be assessed as 'ancillary and marginal' rather than 'genuine and

effective'.¹⁶ Such issues are compounded by broader trends, including the 're-privatisation' of caring and other 'socially reproductive' work in the context of a shrinking welfare state—a trend which has had a disproportionate impact on racialised migrant women.¹⁷

The above can have serious consequences in cases where female EU citizens need to flee abuse. In law, EU-citizen survivors of domestic abuse with Settled Status or permanent residence are entitled to assistance, including statutory homelessness assistance and refuge places, on the same terms as UK citizens. Those with Pre-Settled Status or who were 'lawfully resident' before 31 December 2020 are also entitled to such assistance. EU citizens who do not meet any of the above conditions may be able to access statutory assistance and refuge places by relying on the right to reside of their (non-UK) EU-citizen (ex-) partner. However, this is typically only the case where they are married to their partner. Unmarried partners do not continue to derive rights from former partners' work on separation. Non UK-national women in relationships with UK citizens, meanwhile, cannot rely on the rights of their (ex-) partner.

Issues accessing support

In practice, EU citizens and the non-EU family members of EU citizens who experience domestic abuse often do not receive the support they need and in many cases are legally entitled to.

Reasons for this include:

- Limited (or deliberate mis-) understanding on the part of local authorities of the implications of a person's status under EU law for their entitlement to support in cases of domestic abuse
- Statutory agencies being inflexible about the requirement that applicants for assistance provide documentation proving their eligibility, even where this is impossible or may put domestic-abuse survivors in danger
- The reluctance of statutory agencies, including DWP and HMRC, to cooperate with efforts to obtain evidence, such as the work history of perpetrators, that may help establish a right to reside.
- Ineligibility (or the presumption of ineligibility) for refuge places due to women not having, or being unable to prove, a qualifying right to reside/Settled Status/permanent residence
- Ineligibility (or the presumption of ineligibility) for homelessness assistance for the same reason
- The severe lack of language-appropriate (e.g. Polish, Romanian) and culturally-sensitive advice and support in the statutory and voluntary sectors.

In one case known to PILC, a Polish woman and her two children made a homelessness application to her local authority. The woman concerned had escaped her partner, who was also the children's father, after domestic abuse. However, the local authority refused to assist the woman and her children unless she could prove her ex-partner has the right to reside as a worker.

In another case, a Spanish woman with a baby was kicked out of her accommodation by her husband, also an EU citizen. She was placed in emergency accommodation by the local authority but was subsequently told her accommodation would be stopped because she was not exercising treaty rights in her own right. In this case, the local authority had got the law wrong and the decision was overturned after the organisation supporting the woman was advised by PILC to ask for a review.

This section has offered a far from comprehensive summary of the key issues in this area. Further research and rights-monitoring is needed in respect of the impact of Brexit on the ability of EU-citizen survivors of domestic abuse and other forms of GBV to access appropriate support.

3.3 Access to welfare benefits

Legal and policy context

The right to social security and a basic standard of living is recognised in international human rights covenants,¹⁸ yet in practice a large proportion of non-UK nationals living in the UK— including many EU citizens—have limited or no eligibility for social assistance. Those who are eligible must contend with a system that has been described as 'cruel and degrading',¹⁹ in which '[c]laimants are punished and controlled through poverty, conditionality, and surveillance.'²⁰

The preferential treatment of 'ethnic nationals' or citizens in access to social assistance has been termed 'welfare chauvinism'. It has been argued that 'welfare chauvinism' is a 'bordering practice' that produces a 'hierarchy of citizenship' which may be in conflict with human-rights law.²¹ In the UK, the no recourse to public funds (NRPF) regime forces many non-UK nationals into destitution, hyper-exploitation and abuse, as well as shunting welfare costs from central government to underfunded local authorities, who are in some cases legally obliged to support destitute non-UK nationals subject to an NRPF condition.

Before Brexit, EU citizens' access to welfare benefits was governed by the EEA regulations and EU citizens were not technically subject to the NRPF condition. In recent years there have been a succession of welfare reforms aimed at restricting EU citizens' access to social assistance. These reforms have been a significant driver of homelessness and economic insecurity among EU citizens living in the UK.²²

Who is entitled to what?

Before Brexit

Under the 'old' EEA regulations, EU citizens' eligibility for many mainstream benefits, including Housing Benefit (HB) and Universal Credit (UC), depended on their enjoying a qualifying 'right to reside'. In practice, to enjoy a qualifying right to reside, an EU citizen generally needed either to be working or self-employed, or to have retained worker or self-employed status after ceasing work or self-employment. For an EU citizen to enjoy a qualifying right to reside as a worker or self-employed person, the work they undertook needed to be 'genuine and effective' rather than 'marginal and ancillary'. Broadly speaking, worker or self-employed status could be retained, for limited time periods, for two reasons: where an EU citizen was involuntarily unemployed and had registered with the Job Centre immediately upon becoming so; or in cases of temporary incapacity due to illness or injury.

EU citizens with permanent residence (PR) did not have to show a qualifying right to reside. Other benefits, including some pension and disability benefits, had, and continue to have, different qualifying criteria.

After Brexit

Under the new, post-Brexit system, EU citizens with Settled Status do not have to show a qualifying right to reside and can access welfare benefits on the same terms as UK nationals.

The position around access to welfare benefits for EU citizens with Pre-Settled Status (PSS) is more complex. Initially, Pre-Settled Status did not confer a qualifying right of residence for the purposes of means-tested benefits. This meant that EU citizens with PSS could only access such benefits if they had another qualifying right to reside. This would usually be as a worker, a self-employed person or a person who had 'retained' their worker or self-employed status due to 'involuntary unemployment' or 'temporary incapacity' for work (see above).

In 2019-20 the rules around access to benefits for people with PSS were the subject of a legal challenge by the Child Poverty Action Group (CPAG). CPAG brought a case on behalf of two EU citizens refused benefits on the basis that their PSS was not considered a qualifying right of residence. CPAG argued that if an EU citizen has a right of residence under domestic law, it is unlawful and amounts to discrimination for that person to be treated differently to a UK national around access to benefits.²³

In December 2020 the Court of Appeal ruled in a case called *R (Fratila and Tanase) vs Secretary of State for Work and Pensions*²⁴ that EU nationals with PSS could not be treated differently to UK nationals in relation to access to social security. The implication of this ruling was that people with Pre-Settled Status who are present in the UK could now rely on that status in order to meet the habitual residence requirement for means-tested benefits.²⁵

However, the government appealed the Court of Appeal's ruling in *Fratila* to the UK Supreme Court, where the case was due to be heard on 18-19 May 2021. In the meantime, the Court of Appeal's judgment was stayed.²⁶ On 4 May 2021 the Supreme Court hearing due for 18-19 May 2021 was postponed in the light of a similar case coming before the Court of Justice of the European Union.²⁷

As of June 2021, therefore, the final position on the eligibility of EU citizens with PSS to social security remains unclear. EU citizens without Settled or Pre-Settled Status are only eligible for welfare benefits if they

are able to demonstrate that they had a qualifying right to reside before 31 December 2020 and still hold this right to reside. New arrivals from the EU after 1 January 2021 are subject to an NRPF condition preventing them from claiming benefits.

Issues around access to welfare benefits

Poor DWP decision making

EU citizens who are entitled to apply for welfare benefits are often prevented from doing so. Wrongful Department of Work and Pensions (DWP) decision making around EU citizens' entitlement to benefits appears to be a systemic issue.²⁸ In 2019, PILC represented 16 individuals who had been refused welfare benefits or had their benefits stopped because they had been wrongly assessed as not having a qualifying right to reside.

In other cases, homeless and vulnerable EU citizens who have acquired permanent residence (PR) in the UK have been asked to fulfil conditions that should not be applied to people with PR. For instance, one homeless individual supported by PILC was wrongly asked to attend a Genuine Prospects of Work (GPOW) interview as a condition of continuing to receive welfare benefits. Other homeless EU citizens with permanent residence have been refused Housing Benefit on the basis that they were jobseekers, despite having PR and therefore being eligible to apply for Housing Benefit regardless of their employment situation. Freedom of Information responses obtained from the DWP suggest that training does exist for benefits decision makers on the benefits entitlements of EU citizens. Yet in our experience and that of partner organisations, this training often fails to translate into accurate decision making. The consequences of poor and delayed decision making can be extremely serious: PILC has represented a number of EU citizens who have been left street homeless or without food to eat as a result of wrongful benefits refusals or unreasonable delays.

Decisions around welfare benefits can be challenged, in the first instance by a Mandatory Reconsideration (MR) request and subsequently by appeal to the Social Security and Child Support Tribunal. However, while some incorrect and unlawful decisions are overturned at the MR stage, many are not. As a result of significant delays in the processing of benefits appeals, claimants who fail to have incorrect decisions overturned at the MR stage sometimes wait months for their appeal to be listed. As a result of the hollowing out of welfare legal aid, appellants are often forced to represent themselves (or rely on non-specialist representation) at the benefits tribunal.

DWP and JobCentre Plus practice issues

Issues with DWP and JobCentre Plus bureaucracy exacerbate the problem of poor benefits decision making and can make it difficult or impossible for vulnerable EU citizens to access the benefits they are entitled to. Some of these issues appear to be the result of poor staff training or systems that are overloaded or not fit for purpose; others may amount to deliberate 'gatekeeping'. Common problems include:

- Difficulty contacting DWP and JobCentre Plus: this issue is multifaceted and includes long waiting times to speak to DWP telephone advisers, the lack of an option to correspond with benefits agencies by email, and incorrect or unclear addresses being given for correspondence or complaints
- Inadequate provision for support or advice workers to correspond with JobCentre Plus and DWP on behalf of EU citizens with vulnerabilities or a low level of English
- Incorrect or contradictory advice being given by DWP or JobCentre Plus advisers
- Homeless EU citizens having their benefits applications cancelled or their benefits sanctioned or stopped after missing a single text message or telephone call
- Inflexibility on the part of DWP caseworkers around evidence and paperwork (e.g. requiring evidence that homeless people, non-UK nationals or those in informal employment may be unable to provide—such as an English-language CV or proof of address)
- Digital exclusion issues: homeless and vulnerable individuals being told they must log into their online journal despite having no access to a computer or the internet
- Poor practice in the use of interpreters: some homeless EU citizens report repeatedly being called by the DWP or JobCentre Plus without interpreters, despite the relevant agency having been informed of the need for an interpreter. Homeless people and support workers have expressed concern about the professionalism of some DWP interpreters: issues raised including rudeness on the part of interpreters towards homeless people and interpreters failing to translate conversations fully or accurately.

Lack of challenge from the homelessness sector

The rules around EU citizens' entitlement to welfare benefits are complex and in flux. Wrongful decision making and 'gatekeeping' by statutory agencies have contributed to homelessness and destitution. Yet most homelessness services are not set up to help homeless Europeans navigate the benefits system or challenge unlawful decisions.

Staff and volunteers in commissioned and non-commissioned services often lack the necessary training to effectively support and advise non-UK nationals around welfare benefits. Where such knowledge exists, staff often lack the capacity to support with e.g. MRs or appeals. In some services there is a culture of 'presumed non-entitlement': homeless EU citizens are presumed to 'have NRPF' regardless of their work history, immigration status or the length of time they have lived in the UK. Lack of knowledge about the relationship between immigration status and benefits entitlement is common across the sector.

Staff in many specialist organisations (e.g. charities supporting older people or people with physical disabilities) and some Citizens Advice Bureaux also lack the necessary training to advise on EU citizens' entitlement to benefits.

Many homelessness organisations do not see challenging benefits decisions or 'signposting' and referring to specialist advice agencies as part of their role. Since the EU Settlement Scheme was introduced, EU citizens refused benefits have routinely been advised to apply for Pre-Settled or Settled Status rather than challenge the refusal. Wrongful decisions which could be successfully challenged through a Mandatory Reconsideration request have therefore been left unchallenged.

Claiming benefits while homeless

DWP decision making and practice issues aside, homeless EU citizens face significant barriers in accessing the social assistance many are entitled to. The prevalence of informal employment and the difficulty of retaining key documents while rough sleeping, squatting or 'sofa surfing' make it difficult for some to prove their eligibility for benefits. Those who are self-employed or do cash-in-hand work may struggle to evidence past or current employment through e.g. payslips, invoices, bank statements, or self-employment records. Some homeless EU citizens and homelessness workers wrongly assume that informal employment does not 'count' for benefits purposes. Homeless EU citizens often do not have UK bank accounts (many banks will not accept hostel, shelter or charity addresses for the purposes of opening an account); this, too, can complicate benefits claims. Those without a valid passport or national ID face delays or bureaucratic obstacles when applying for these documents via national embassies (see also section 4.2).

The Covid-19 Universal Credit 'easement'

During the coronavirus pandemic a temporary 'easement' was put in place by DWP allowing EU citizens with a pending application for Settled Status to receive Universal Credit (UC) pending the outcome of their application. This easement, which is apparently still in place, has never been publicly announced, and has been inconsistently applied. Despite the 'easement', some homeless EU citizens with pending applications for Settled Status have been refused UC.

3.4 Employment rights

Legal and policy context

EU citizens are represented throughout the UK labour market. Since EU enlargement in 2004 and 2007 there has been large-scale labour migration to the UK from Central and Eastern Europe in particular.²⁹

The freedom of EU citizens from the A8 and A2 countries to live and work in the UK was initially restricted, including through the Worker Registration Scheme (2004-11), but for the past decade workers from these EU states have propped up large parts of the undervalued 'lower end' of the UK economy, including the agriculture, food processing, construction, hospitality, health and social care sectors.³⁰ In 2019, '[a]round half of highly-educated workers born in new EU member states [and working in the UK] were in low and medium-low skilled jobs.'³¹

Deregulation in the UK labour market and the proliferation of self-employment and so-called ‘flexible’ employment (including ‘zero hours’ contracts) have arguably made it easier for EU citizens to find work—while making it harder for them to find the kind of secure job that would allow them and their families to sustain a decent standard of living.³² Subcontracting and the outsourcing of labour through recruitment agencies are increasingly dominant features of both formal and informal areas of the UK economy; agency recruitment is a major pathway through which EU citizens from the A8 and A2 countries have migrated to the UK.³³

Many working-class EU citizens living in the UK are in precarious or informal employment. Such workers typically work long hours, sometimes in dangerous and unsanitary conditions and often for less than the statutory minimum wage. A significant proportion suffer injuries or accidents at work. Despite theoretically having the same rights as other EU workers, these workers have not enjoyed equitable treatment, in part because ‘free movement’ rules tend to discriminate against women and those in low paid and precarious employment (see section 3.2). The hyper-exploitation and precarity experienced by many EU workers are compounded by low trade-union representation and media and political discourses depicting ‘unskilled’ EU labour migration as a threat to UK society.

Likely effects of Brexit

Brexit is likely to make the above issues worse, with EU free-movement protections ceasing to apply in the UK in 2021 and the work of some EU citizens effectively becoming illegalised. From 30 June 2021, EU citizens need to provide proof of Settled Status, Pre-Settled Status or visa permission to work legally in the UK—or demonstrate that they have a pending application to the EUSS and enjoyed a qualifying right to reside before 31 December 2020.

Although the government has stated that employers should not require proof of Settled or Pre-Settled Status before 30 June 2021, in late 2020 some employers and recruitment agencies were already (incorrectly) telling EU citizens that they needed proof of Settled Status or Pre-Settled Status in order to work legally in the UK.³⁴

Many homeless EU citizens had not acquired Settled or Pre-Settled Status before the end of the Brexit transition period on 31 December 2020. Between this date and 30 June 2021, EU citizens resident in the UK who had not acquired Pre-Settled or Settled Status (and who did not have a pending application) were only able to work legally in the UK if they were able to establish that they were doing so (or otherwise enjoyed a qualifying right to reside) before 31 December 2020. Those in this category who miss the 30 June EUSS deadline will lose their right to work.

The long-term future for EU citizens at the lower end of the UK labour market remains unclear. However, it has been suggested that existing proposals for post-Brexit labour migration (including through Temporary Migration Programmes such as the Temporary Agriculture Scheme) may lead to an increase in labour-rights abuses.³⁵

Working while homeless

Hyper-exploitative and precarious employment are strongly correlated with in-work homelessness.³⁶ Of the destitute EU citizens PILC has advised, most were either in work or seeking employment. Only a minority, however, had stable work (e.g. with a permanent contract). Many reported being underpaid, or not being paid at all, for work undertaken, or having worked for employers who were reluctant to guarantee basic employment rights (e.g. statutory sick pay). Others reported being required by employers to sign employment contracts they did not understand.

Many homeless EU citizens find work through recruitment agencies. In some cases, agencies deceive workers into migrating to the UK through the promise of full-time work that never materialises (see below). Some employment agencies encourage EU workers to register as self-employed, telling them that they will pay less tax as a result—despite many homeless EU citizens not earning enough to reach minimum income-tax and national-insurance thresholds.

Some homeless EU citizens struggle to navigate the bureaucratic requirements of legal self-employment due to language issues or unfamiliarity with the system. Unable to afford independent financial advice, they may end up in arrears with tax or National Insurance contributions—or, conversely, paying too much tax. Homeless EU citizens working in low-wage roles in the construction and service sectors frequently sign up

with a number of employment agencies at once. This can make it more difficult for them to stay on top of their tax affairs.

Some self-employed EU workers are unaware that they need to make a minimum number of national-insurance contributions in order to be entitled to a UK state pension.

Working in the black economy

Many homeless EU citizens earn much of their income through informal or ‘cash-in-hand’ work. Some such workers are the victims of deception. One man supported by PILC came to the UK after being promised a full-time job. Upon arrival, he was informed by his ‘employer’ that only casual work was on offer. After refusing this arrangement, the man was unable to find permanent work elsewhere. He ended up doing cash-in-hand work—and sleeping rough.

There is evidence that some EU migrant workers are forced into the black economy as a result of a combination of discrimination by employers, statutory agencies and financial institutions and a lack of language skills and knowledge of rights and entitlements. As one researcher reports:

[A Bulgarian research participant] was told he was not eligible for a bank account as he was unable to provide a visa proving his legal right to stay in the country [despite being an EU citizen and therefore not needing a visa]. Although they were by law European citizens with the right to reside and work in the UK, the lack of necessary documents gave my respondents the status of illegal workers which foreclosed their chances for socio-economic mobility in British society [They] had limited resources for questioning the structural exclusion and discrimination they experienced

The same researcher noted the difficulties EU migrant workers often experience when trying to obtain a national insurance number (NINO):

[T]he NINO interview, imagined as a ‘tick-box’ exercise, turned into a traumatic first encounter with British institutions. The right to use an interpreter during the interview or the help of an English-speaking friend was denied to many of those I spoke to. They were often scolded for not speaking English. The weeks – in some cases months – after the interview were marked by apprehension and insecurity as they waited for the decision which would determine their future socio-economic mobility. In some cases, the [NINO] was granted only after months of unjustified rejections and painstaking re-applications³⁷

EU citizens working in the ‘black economy’ in sectors such as construction, food processing and agriculture often earn less than the minimum wage. There is likely to be no regulatory oversight of their working conditions. Such workers are often unclear about their employment status and rights at work: some believe themselves to be employees when they are not; others believe that their informal or agency work is ‘illegal’ and therefore confers no rights. Many such workers keep no or few records of their employment, which can create difficulties when applying for welfare benefits or to the EU Settlement Scheme. Migrant workers in the black economy are at heightened risk of trafficking and modern slavery (see below).

Case study: the criminalization of day labourers

EU migrant workers in the informal economy face criminalisation by police and local authorities. In 2019 PILC conducted street outreach with colleagues from the Roma Support Group to inform precarious EU workers about their rights under the EU Settlement Scheme. We visited EU day labourers waiting outside building supply stores in outer London, where they hoped to be picked up for a day’s work. Many of the workers had slept rough the night before.

During one visit, we witnessed a raid by police and council enforcement officers. The waiting day labourers were subject to ‘consent-based’ immigration-document checks—without being told they did not have to submit to such checks. The police officer leading the operation liaised by radio with Home Office Immigration Compliance and Enforcement (ICE) officers. Some of the workers were issued penalty notices for offences such as littering and public urination.

Trafficking and modern slavery

Human trafficking for the purposes of labour exploitation 'is at the sharp end of a continuum of labour conditions that range from decent work through lower level labour abuses to forced labour and 'modern slavery'.³⁸ A 2018 report by Anti Slavery International found that the UK 'continues to lack an overall strategy to prevent trafficking in adults and children' and concluded that Brexit was likely to hinder the development of such a strategy.³⁹ Between 2009 and 2014, up to 80% of labour trafficking victims identified in the UK came from the EU, with nationals of Slovakia, Poland, Lithuania, Romania, Czech Republic and Hungary particularly affected.⁴⁰

UK public authorities not only frequently fail to safeguard victims of trafficking; they sometimes criminalise them, including by putting them in immigration detention.⁴¹ Even where statutory and other agencies do seek to take appropriate action, many victims of labour exploitation fail to meet the threshold for the National Referral Mechanism for trafficking. Those who do meet the threshold often report negative experiences of the NRM support system. Some EU victims of trafficking and modern slavery wait months or years for a 'conclusive-grounds decision' in their case.⁴²

In one case, PILC supported a victim of modern slavery from one of the A8 countries. The man had been forced to work in exchange for tobacco and a sleeping spot on the floor of a house. When the work was complete, the man's exploiters reported him to the police as a trespasser. The authorities took the side of the exploiters; the victim was issued with a Home Office removal notice for 'non-exercise of treaty rights' and told to leave the property. He became street homeless as a result. The victim was later taken to a police station by a charity volunteer, who asked for a referral to the NRM. Instead of being referred to the NRM, the victim was arrested on suspicion of entering the UK illegally. He spent the night in a cell before being released onto the streets with nowhere to go.

The role of the homelessness sector and others

Given the links between work and homelessness, the homelessness sector has a role to play not only in supporting homeless people to find decent jobs, but also in campaigning against the ongoing rollback of workers' rights. At present there is a disconnect between what the sector, unions and specialist advice organisations offer in terms of employment support and the needs and lived realities of homeless workers.

With notable exceptions, there remains a severe shortage of culturally (e.g. for Roma EU citizens) and linguistically appropriate employment services. Some local authority-funded employment projects for homeless EU citizens run the risk of simply shifting the problem of EU-worker destitution from one locale to another.⁴³ The imperative of 'getting people into jobs' needs to be balanced with the need to ensure such jobs are decent, and that migrant workers are equipped to assert their legal, human and social rights when at work.

Finally, and crucially, there is an urgent need for UK trade unions beyond the grassroots to take up the cause of EU-migrant and other non UK-national workers.

3.5 Healthcare

Legal and policy context

Being homeless or insecurely housed is associated with a range of health conditions including malnutrition, chronic pain and psychological distress. Rough sleepers are more likely than others to become victims of violence,⁴⁴ while those in temporary, substandard or overcrowded accommodation are disproportionately likely to experience poor health.⁴⁵ Homeless people may find it more difficult to engage with medical treatment for a variety of reasons.⁴⁶ Cuts to substance-misuse, addictions and mental health services and the 'fragmentation' of health and social care have disproportionately affected people without stable accommodation, as well as contributing to homelessness.⁴⁷

There has been relatively little research into homeless EU citizens' experiences of the NHS. Official statistics for homeless deaths, while useful in establishing the clear link between homelessness and mortality, do not typically record the ethnicity or nationality of the deceased.⁴⁸ Lack of familiarity with the UK's healthcare system (including the role of the GP) and 'poor or insecure housing, low pay, isolation and prejudice' have

been cited as factors contributing to Eastern European migrants' apparently higher risk of developing some medical conditions.⁴⁹ In one study, a third of EU migrant workers expressed the view that they were treated worse than UK citizens in terms of access to healthcare, with many preferring to return to their countries of origin for medical treatment.⁵⁰

In recent years steps have been taken by the UK government to limit non-UK nationals' access to NHS care. A new charging regime has made charging for secondary healthcare obligatory for all non-EU nationals who are not settled and have not paid the NHS surcharge,⁵¹ while the sharing of confidential patient data between NHS Digital and the Home Office has further entrenched inequality of access to healthcare as a part of the 'hostile environment'.⁵²

Doctors have condemned such 'everyday bordering' in healthcare as 'at odds with the founding ethos of the NHS',⁵³ citing negative impacts in terms of individual and public-health outcomes.⁵⁴ After 30 June 2021, EU citizens will become subject to this regime.⁵⁵

EU citizens' access to healthcare before and after Brexit

There were and remain no restrictions on non-UK nationals accessing primary healthcare (e.g. GP and nurse consultations). EU citizens' access to primary healthcare has not changed as a result of Brexit.

In order to access free NHS secondary care, including most inpatient and outpatient hospital treatment, non-UK nationals must be 'ordinarily resident'. 'Ordinary residence' confers a right to all NHS treatment and some community drug and alcohol treatment in the community without charge.

To be 'ordinarily resident' a person must be:

1. lawfully in the UK; *and*
2. here 'voluntarily'; *and*
3. 'properly settled for the time being'

Secondary services are required to check if patients are 'ordinarily resident' before providing a service. However, services considered 'urgent' or 'immediately necessary' should not be withheld pending payment.⁵⁶

The UK government has indicated that EU citizens with Settled or Pre-Settled Status will continue to be able to access free secondary NHS care in England in 2021 and beyond 'as long as they continue to be ordinarily resident in the UK'. Providers may ask EU citizens to prove their 'ordinary residence' when seeking NHS care.⁵⁷

Those without Settled or Pre-Settled Status or a pending application were able to access free secondary NHS care between 31 December 2020 and 30 June 2021 provided they enjoyed a qualifying right to reside on or before 31 December 2020. To maintain this entitlement after 30 June 2021 they were required to apply to the EU Settlement Scheme before the deadline.

Some homeless EU citizens resident in the UK before 31 December 2020 may not be able to prove that they were 'lawfully present' on or before this date. Many among this group are likely to have failed to apply to the EU Settlement Scheme before the deadline—or to have their applications refused. Such EU citizens will end up barred from entitlement to free secondary NHS care. Advocacy organisations have identified the additional 'risk of NHS trusts *incorrectly* [italics added] identifying EU nationals as ineligible for NHS care and withholding treatment'.⁵⁸

Common issues accessing healthcare

Until the end of 2020 the vast majority of EU citizens living in the UK (including homeless people) met the criteria for 'ordinary residence'. Being 'properly settled' in the UK does not require being a 'worker' or having a fixed address: a person can be 'ordinarily resident' if they are not working and/or do not have a fixed abode.

Yet many homeless EU citizens faced serious difficulties accessing an adequate standard of NHS care before Brexit. Key issues arising from our casework and focus groups include:

- **EU citizens being asked to pay up front for secondary NHS care (or being billed after treatment):** this unlawful practice appears to stem from decision makers wrongly believing EU citizens must have a

qualifying right to reside (rather than be ‘ordinarily resident’) in order to access free secondary NHS care. Requests for payment were frequently withdrawn after formal objections were raised by legal or support organisations. However, the incorrect application of charging is likely to have gone unchallenged and unreported in some cases.

- **Services wrongly advising homeless EU citizens about their entitlement to NHS care:** support organisations and NHS staff are sometimes unaware that homeless EU citizens can access free primary and secondary healthcare. In one PILC case, a clinician from a specialist homeless mental health team in London told colleagues that a seriously-ill EU citizen needed to ‘regularise his status’ before he could be referred for treatment.
- **GP surgeries refusing to register homeless EU citizens:** Some GP practices refuse to register homeless EU citizens either because they are of no fixed abode or because they cannot produce a passport or national ID. Both practices are against NHS England guidance,⁵⁹ but patients and their advocates often take the refusal of registration at face value or do not know how to complain. This has contributed to the problem of homeless EU citizens relying on accident-and-emergency wards and walk-in clinics for non-urgent medical treatment.⁶⁰
- **Failure to provide interpreters:** NHS England guidance for commissioners acknowledges equality of access to healthcare services as a human-rights issue, stating that ‘[all] patients should be able to access primary care services in a way that ensures their language and communication requirements do not prevent them receiving the same quality of healthcare as others.’⁶¹ The provision of interpreters where necessary has been cited by health experts as a key component of ‘person centred’ healthcare.⁶² Yet NHS hospitals and GP surgeries routinely fail to use professional interpreters when treating homeless EU citizens who do not speak English. Some health services expect homeless patients to ask family members (including minors), friends or support workers to interpret for them. In one PILC case, a homeless and socially isolated EU citizen with complex health needs was informed in writing by his GP surgery that his appointment could not be fulfilled because he had failed to bring his own interpreter with him. During Covid-19, another homeless EU citizen with mobility issues walked to his GP appointment only to be turned away at the door because he was unable to answer (in English) questions about coronavirus symptoms. Where interpretation is offered, telephone interpretation is by far the most common type of provision, despite its unsuitability for some patients (e.g. those with hearing impairments, some elderly people and people with complex needs).
- **Lack of awareness of the right to free prescriptions:** People on a low income can access help with health costs by applying for an HC2 certificate, which confers, among other benefits, access to free prescriptions. HC2 certificates are usually awarded regardless of immigration status. There is a lack of awareness of this option among homeless EU citizens and support organisations. Some homeless people end up paying for prescriptions despite being exempt or failing to take necessary medication because they believe they cannot afford the cost.
- **Lack of appropriate provision for those in psychological or emotional distress:** there is a severe shortage of psychological support for homeless people across the board. Linguistically and culturally appropriate provision for homeless people who do not speak English is even more difficult to access. A positive development has been the establishment of specialist mental-health outreach teams in some areas. These teams should be trained to incorporate rights-based approaches into their work with homeless non-UK nationals with complex mental health needs.

Some homeless EU citizens face overt discrimination in access to NHS care, including brusque and stereotyping treatment by NHS staff. One PILC client, a rough sleeper, attended hospital after an urgent referral from his GP. He was turned away from his appointment, with a member of hospital staff telling the PILC adviser who accompanied him: ‘There’s nothing wrong with him. He just doesn’t fancy sleeping on the streets.’ The same client died a few weeks later.

Another EU citizen was accompanied by a PILC adviser to a specialist GP practice for homeless people after experiencing pain in the wake of a serious assault. The PILC adviser noted that the GP did not make eye contact with his patient and focused throughout the appointment on the patient’s alcohol consumption rather than the pain he was reporting. When the PILC adviser informed the GP that the client had found it difficult to concentrate since sustaining a head injury in the assault, the GP responded that he should ‘wash his ears out’.

Access to substance-misuse and addictions services

There is an established link between homelessness and substance-misuse and addictions. Substance misuse may be ‘a reason for people becoming homeless, a response to trauma, poverty and difficult life

circumstances, and also a way of coping with being homeless.⁶³ One study stresses the ‘cultural meanings’ of substance use among street-homeless Central and Eastern European migrants, positing alcohol consumption as a way of ‘reproducing and reaffirming [...] egalitarian bonds’ in the context of dislocation, economic deprivation and structural exclusion.⁶⁴

Homeless EU citizens who want to reduce or stop using alcohol or drugs frequently struggle to access appropriate support, in part due to ‘austerity’ cuts to services⁶⁵ and the tendency of police, local authorities and some support organisations to view issues such as street drinking through the lens of ‘anti-social behaviour’.

While hospital-based ‘detox’ is theoretically available to all EU citizens who are eligible for free NHS secondary care, eligibility for many substance-misuse services (including residential detox and rehabilitation provision) is linked to entitlement to welfare benefits and statutory housing assistance. Residential rehabilitation services generally fall under social care and have therefore not been available to many homeless EU citizens. This may change as a result of Brexit (see next section).

Some commissioned substance-abuse providers operate according to the (erroneous) blanket assumption that EU citizens who are not in work have no recourse to public funds and therefore are not eligible for their services.

Other factors making it more difficult for homeless EU citizens to access substance-misuse support include ‘confusion over entitlement to NHS services, lack of understanding [of] NHS structures, problems registering with primary care services, language and interpretation problems and limited access to reliable transport due to poverty and poor services in areas of deprivation.’⁶⁶ The absence or closure of specialist, language-appropriate substance-misuse and addiction services was cited by focus-group participants as a further barrier.

During the first UK coronavirus ‘lockdown’, homeless EU citizens with support needs relating to substance misuse were in some cases placed in unsuitable accommodation or left without appropriate support. One PILC client who was trying to stop drinking complained of being placed in unsupported hostel accommodation where other residents were drinking and using drugs.

3.6 Community care/adult social care

Legal and policy context

Under the Care Act 2014 adults who may have care and support needs are entitled to an assessment from their local authority ‘within an appropriate timescale’. Local authorities may also have a duty to assess whether a carer has support needs. Eligible care and support needs include: managing and maintaining nutrition; maintaining personal hygiene; managing toilet needs; being appropriately clothed; being able to make use of the home safely; maintaining a habitable home environment; developing and maintaining family or other personal relationships. Post-assessment support for adults assessed as having eligible needs can include accommodation, psychological and physical therapies and necessary equipment. The statutory guidance on adult social care states that ‘[p]eople [with care needs] should only be required to pay [towards the costs of care] what they can afford.’⁶⁷

Homeless EU citizens with care and support needs

Before Brexit EU citizens without permanent residence were ineligible for social services provision—including support under the Care Act 2014—under Schedule 3 of the Nationality Immigration and Asylum Act 2002. There was an exception to this exclusion in cases where not providing support would breach an EU citizen’s human rights or rights under EU law (for example, where the EU citizen could not reasonably be expected to return to their country of origin for care and support). EU citizens were not, however, excluded from an *assessment* of their support needs.

The social care needs of some extremely vulnerable people have gone unmet as a result of Schedule 3. Even where EU citizens have been legally entitled to post-assessment support under the Care Act, unlawful ‘gatekeeping’ by local authorities has often prevented them from accessing it.

In practice, it is usually extremely difficult for a homeless non-UK national to get a full adult social care assessment from their local authority. It can be more difficult still to persuade a local authority to provide appropriate post-assessment support, even where they may be legally obliged to do so. Homeless non-UK nationals in particular are routinely denied their right to an assessment of their care and support needs.

Those who have been refused an assessment or support may be able to challenge this refusal by judicial review. (Indeed, local authorities often fail to comply with their duties under the Care Act 2014 unless legal action is threatened.) Legal aid is available for such ‘community care’ cases, which have sometimes resulted in local authorities being compelled to house adults who would not ordinarily be eligible for homelessness assistance on the basis that they have care and support needs that can only be met through the provision of accommodation. (Local authorities are not required to provide accommodation to people whose care and support needs have arisen solely as a result of their destitution.).

However, there is limited awareness among homeless EU citizens and support organisations that local-authority adult social care decision making can be contested, with unlawful refusals of support often going unchallenged as a result.

In one case known to PILC, an elderly EU citizen with complex physical and mental-health needs spent several years living in local-authority temporary accommodation that was totally unsuitable for his needs. The local authority failed to provide the man with a social worker and his health conditions worsened as a result. Repeated complaints by a charity supporting the man fell on deaf ears. Only after judicial review was threatened did the local authority allocate a social worker and move the man to supported accommodation.

In another case, a local authority refused to provide appropriate support to a homeless EU citizen who had suffered a serious brain injury. The man—who needed help with essential tasks such as applying for benefits—became destitute as a result. Again, it took the threat of legal action to persuade the local authority to provide appropriate support.

Changes as a result of Brexit

Changes to EU citizens’ entitlement to adult social care after Brexit may work to the advantage of homeless and marginalised EU citizens. In December 2020, the NRPF Network reported on

an important change that will affect entitlement to accommodation and financial support provided by social services when an [EU] national is ineligible for benefits, is destitute [and has] care needs. [As a result of Brexit] Schedule 3 of the Nationality, Immigration and Asylum Act 2002 will no longer apply to an [EU] citizen on the basis of their nationality. Instead, the exclusion will only apply to an [EU] national who is ‘in breach of immigration laws’. This means that the exclusion will not apply when an [EU] national has settled status, pre-settled status, or leave to enter as a visitor.⁶⁸

As a result of this change, local authorities may be required to provide social safety-net support including accommodation to EU citizens who are ‘lawfully present’ but who cannot work to support themselves and are ineligible for benefits. Local authorities ‘will not be able to withdraw support on the basis that [the destitute individual] could return to their country of origin.’⁶⁹

The significance of this change may be lessened as result of the Fratila judgment (see section 3.3). If the Supreme Court decides that EU citizens with care and support needs who have Pre-Settled Status are eligible for welfare benefits, such individuals will be less likely to become destitute and turn to social services for support.

Homeless EU citizens’ eligibility for and access to adult social care under the Care Act 2014 is a complex and developing area, especially post-Brexit. Support organisations are likely to need specialist advice to secure the best possible outcomes for vulnerable individuals.

Endnotes to Chapter 3

- 1 'Policy guidance from MHCLG changes after input from Housing Rights', Chartered Institute of Housing newsletter, April 2021. Accessible via: <https://t.co/LQVnsuKyf?amp=1>
- 2 Drozdowicz, Why some Eastern Europeans are driven to sleep rough, *LSE Blog*, 25 January, 2018. Accessible via: <https://blogs.lse.ac.uk/brexit/2018/01/25/why-some-eastern-europeans-are-driven-to-sleep-rough/>
- 3 See e.g. Sheldrick, British councils to blitz squalid beds-in-sheds that house illegal immigrants, *Express*, 4 January 2014. Accessible via: <https://www.express.co.uk/news/uk/451919/Councils-to-blitz-squalid-beds-in-sheds-that-house-migrants>; Lombard (2019) Informality as Structure or Agency? Exploring Shed Housing in the UK as Informal Practice, *International Journal of Urban and Regional Research* 43(3): 569-575.
- 4 'FAQ', Streetlink. Accessible via: <https://www.streetlink.org.uk/>
- 5 Townsend, Home Office used charity data map to deport rough sleepers, *Guardian*, 19 August 2017. Accessible via: <https://www.theguardian.com/uk-news/2017/aug/19/home-office-secret-emails-data-homeless-eu-nationals>
- 6 Directive 2004/38/EC. Accessible via: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038>
- 7 Negatively racialised people and those from a migrant background are also more likely than other groups to live in substandard housing. Wilson and Barton (2020), Overcrowded Housing (England), House of Commons briefing paper. Accessible via: <https://researchbriefings.files.parliament.uk/documents/SN01013/SN01013.pdf>
- 8 See e.g. Tinson, Clair. Better housing is crucial for our health and the COVID-19 recovery. *Health Foundation*, 28 December 2020. Accessible via: <https://www.health.org.uk/publications/long-reads/better-housing-is-crucial-for-our-health-and-the-covid-19-recovery>
- 9 'Challenging Lambeth's unfair treatment of homeless families!', *PILC blog*, 22 January 2020. Accessible via: <https://www.pilc.org.uk/blog/challenging-lambeths-unfair-treatment-of-homeless-families/>
- 10 Heath, London borough revises allocation policy following threat of court action, *Inside Housing*, 8 July 2020. Accessible via: https://www.insidehousing.co.uk/home/home/london-borough-revises-allocation-policy-following-threat-of-court-action-67060?utm_source=dlvr.it&utm_medium=twitter
- 11 This section is based partly on work undertaken through PILC's Domestic Abuse, Housing and Strategic Litigation Project. Through this project PILC has worked with Solace Women's Aid to strengthen the capacity of the voluntary sector to support survivors of sexual and domestic abuse and develop strategic legal action around the issue of violence against women and girls. See: <https://www.pilc.org.uk/eea-advice-project/domestic-abuse-strategic-litigation/>
- 12 See e.g. Rights of Women (2013), 'Immigration Bill: Violence against women and girls amendment - Rights of Women proposed amendment for committee stage'. Accessible via: <https://rightsofwomen.org.uk/wp-content/uploads/2014/10/Briefing-on-the-Immigration-Bill-2013.pdf>
- 13 Rakovica and Ianovitz (2021) Cultural mediation: an inclusive solution to help reduce the cultural and language barriers experienced by survivors of trafficking, Hibiscus Initiatives. Accessible via: <https://hibiscusinitiatives.org.uk/cultural-mediation-a-new-report-by-hibiscus/>
- 14 Graca (2017) Domestic violence policy and legislation in the UK: a discussion of immigrant women's vulnerabilities. *European Journal of Current Legal Issues*, 22(1). Accessible via: <https://repository.canterbury.ac.uk/download/d6ab0596f826df11984cc63a86ad2a90e082c0743cab827b62dba9353a1c6f5/524554/15746.pdf>
- 15 Shutes and Walker (2017), Gender and free movement: EU migrant women's access to residence and social rights in the UK, *Journal of Ethnic and Migration Studies*, 44 (1).
- 16 Ibid.
- 17 Bassel and Emejulu (2018), Caring subjects: migrant women and the third sector in England and Scotland, *Ethnic and Racial Studies*, 41(1): 36-54.
- 18 See e.g. Universal Declaration of Human Rights, Articles 22 and 25.
- 19 Adler (2016), A new leviathan: Benefit sanctions in the twenty-first century. *Journal of Law and Society*, 43 (2):195-227.
- 20 Wright, Fletcher and Stewart (2020) Punitive benefit sanctions, welfare conditionality, and the social abuse of unemployed people in Britain: Transforming claimants into offenders?, *Social Policy and Administration*, 54(2): 278-94.
- 21 Guentner, Lukes, Stanton, Vollmer and Wilding (2016), Bordering practices in the UK welfare system, *Critical Social Policy*, 36 (3).
- 22 See e.g. Barnard and Costello, No recourse to public funds: EU nationals and Covid-19, UK in a Changing Europe, 22 June 2020. Accessible via: <https://ukandeu.ac.uk/no-recourse-to-public-funds-eu-nationals-and-covid-19/>
- 23 Blower, EU nationals refused universal credit bring test case, *The Justice Gap*, 27 October 2020. Accessible via: <https://www.thejusticegap.com/eu-nationals-refused-universal-credit-bring-test-case/>
- 24 For the full judgment in *Fratila* see: <https://www.baillii.org/ew/cases/EWCA/Civ/2020/1741.html>
- 25 'Access to means-tested benefits for EU citizens with pre-settled status', Child Poverty Action Group, no date. Accessible via: <https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status>. See also O'Brien, 'Fratila v SSWP - Shock and law! Court of Appeal pulls rug from under the government's rules on EU pre-settled status', EU Rights and Brexit Hub, February 23 2021. Accessible via: <https://www.eurighthub.york.ac.uk/blog/shock-and-law-court-of-appeal-pulls-rug-from-under-the-governments-rules-on-eu-pre-settled-status>
- 26 'Pre-settled status for European nationals doesn't necessarily give access to benefits – but it should!', Chartered Institute of Housing newsletter, April 2021. Accessible via: <https://t.co/LQVnsuKyf?amp=1>

- 27 O' Brien, Fratila - Race to judgment! Supreme Court AND the Court of Justice of the EU expedite parallel cases, EU Rights and Brexit Hub, 9 March 2021. Accessible via: <https://www.eurightshub.york.ac.uk/blog/1jspkx6yi70lnnyckej80741peipe7>
- 28 Butler and Rankin, Surge in EU citizens unfairly refused access to universal credit, *Guardian*, 5 August 2019. Accessible via: <https://www.theguardian.com/society/2019/aug/05/surge-in-eu-citizens-unfairly-refused-access-to-universal-credit>
- 29 D'Angelo and Kofman (2018) From Mobile Workers to Fellow Citizens and Back Again? The Future Status of EU Citizens in the UK, *Social Policy and Society*, 17(2).
- 30 In 2019, for instance, 19% of 'low-skilled factory and construction workers' and 11% of 'skilled' construction workers in the UK were EU-born. Fernández-Reino and Rienzo (2021), Migrants in the UK Labour Market: An Overview, *Migration Observatory*, 11 January 2021. Accessible via: <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview/>
- 31 Ibid.
- 32 D'Angelo and Kofman (2017), UK: Large-Scale European Migration and the Challenge to EU Free Movement, in Laffleur and Stanek (eds), *South-North Migration of EU Citizens in Times of Crisis*, Springer/IMISCOE. 175-192. Accessible via: <https://library.oapen.org/bitstream/handle/20.500.12657/27958/1002041.pdf?sequence=1#page=187>
- 33 Sporton (2012) 'They control my life': the role of local recruitment agencies in East European migration to the UK, *Population, Space and Place*, 19(5): 443-58.
- 34 Chaplain, Home Office says EU nationals do not have to prove settled status amid warning they are being barred from jobs, *Inews*, 18 January 2021. Accessible via: <https://inews.co.uk/news/politics/settled-status-home-office-eu-nationals-brex-it-barred-jobs-834367>
- 35 The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper, *Focus on Labour Exploitation* (2019). Accessible via: <https://www.labourexploitation.org/publications/risks-exploitation-temporary-migration-programmes-flex-response-2018-immigration-white;>
- 36 Jones, Ahmed, Madoc-Jones, Gibbons, Rogers and Wilding M (2019) Working and homeless: exploring the interaction of housing and labour market insecurity. *Social Policy and Society*, 19(1):121-132.
- 37 Manolova (2017) From European 'Free-movers' to Circular Labourers: Bulgarian Migration Experiences to the UK and Back, in Manolova (ed) Looking Beyond the Public Discourses on Migration: Experiences of Bulgarians and Romanians in the UK, *Euxeinos* special issue, no. 22.
- 38 The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper, *Focus on Labour Exploitation* (2019).
- 39 Sereni and Baker (2018) Before the harm is done: examining the UK's response to the prevention of trafficking, *Anti-Slavery International*. Accessible via: <http://www.antislavery.org/wp-content/uploads/2018/09/Before-the-Harm-is-Done-report.pdf>
- 40 Volodko, Cockbain and Kleinberg (2010) 'Spotting the signs' of trafficking recruitment online: exploring the characteristics of advertisements targeted at migrant job-seekers, *Trends in Organized Crime*, 23, 7-35; Cockbain and Bowers (2019) Human Trafficking for Sex, Labour and Domestic Servitude: How Do Key Trafficking Types Compare and What Are Their Predictors? *Crime, Law and Social Change*, pp 1-26
- 41 Labour Exploitation Advisory Group (2019) Detaining victims: human trafficking and the UK immigration detention system.
- 42 For more on the links between homelessness and trafficking and modern slavery see Parker (2021) No way out and no way home: modern slavery and homelessness in England, Wales and Northern Ireland, *Crisis*. Accessible via: <https://www.crisis.org.uk/media/245122/no-way-out-and-no-way-home-final-designed.pdf>
- 43 Morgan, "I didn't know I could be illegal": the policies that target rough sleepers, 17 February 2020. Accessible via: <https://www.opendemocracy.net/en/openjustice/unlawful-state/i-didnt-know-i-could-be-illegal-the-policies-that-target-rough-sleepers/>
- 44 'Crisis reveals scale of violence and abuse against rough sleepers as charity opens its doors for Christmas, *Crisis* website, 23 December 2016. Accessible via: <https://www.crisis.org.uk/about-us/media-centre/crisis-reveals-scale-of-violence-and-abuse-against-rough-sleepers-as-charity-opens-its-doors-for-christmas/>
- 45 See e.g. Fransham and Dorling (2018) Homelessness and public health, *BMJ* 360: k214.
- 46 Paudyal, MacLure, Buchanan, Wilson, Macleod and Stewart (2017) 'When you are homeless, you are not thinking about your medication, but your food, shelter or heat for the night': behavioural determinants of homeless patients' adherence to prescribed medicines. *Public Health*. 148: 1-8.
- 47 'Streets of shame: Homelessness and the NHS – a tome of tragedies', *BMA* (2019). Accessible via: <https://questionnaires.bma.org.uk/news/streetsofshame/index.html>
- 48 Deaths of homeless people in England and Wales: 2019 registrations, Office of National Statistics. Accessible via: <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/deathsofhomelesspeopleinenglandandwales/2019registrations>
- 49 Madden, Harris, Blickem, Harrison and Timpson (2017) 'Always paracetamol, they give them paracetamol for everything': a qualitative study examining Eastern European migrants' experiences of the UK health service, *BMC Health Services Research*, 17, Article no. 604. Accessible via: <https://link.springer.com/article/10.1186/s12913-017-2526-3>
- 50 Humphries (2015) Migrant workers accessing health services in Norfolk, *GYROS*. Accessible via: <https://healthwatchnorfolk.co.uk/wp-content/uploads/2015/11/15-07-Migrant-Workers-Accessing-Healthcare-in-Norfolk.pdf>
- 51 Doctors of the World/JCWI (2018) A Toolkit for the NHS Charging Regulations. Accessible via: https://www.doctorsoftheworld.org.uk/wp-content/uploads/2018/11/Toolkit_for_NHS_Charging_Regulations_JCWI_DOTW.pdf

- 52 Bulman, Home Office still using NHS patient data for immigration enforcement despite suggesting it would end practice, *Independent*, 3 February 2019. Accessible via: <https://www.independent.co.uk/news/uk/home-news/home-office-nhs-data-sharing-immigration-enforcement-a8761396.html>
- 53 Hiam and Mckee (2018) Making a fair contribution: is charging migrants for healthcare in line with NHS principles?, *Journal of the Royal Society of Medicine*, 109(6).
- 54 Weller, Crosby, Turnbull, Burns, Miller, Jones, Aldridge (2019) The negative health effects of hostile environment policies on migrants: A cross-sectional service evaluation of humanitarian healthcare provision in the UK, *Wellcome Open Research*, 4(109). Accessible via: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6733377.1/>
- 55 Doctors of the World (2019) Briefing: Brexit and access to healthcare for EU/EEA nationals living in England. Accessible via: https://www.doctorsoftheworld.org.uk/wp-content/uploads/2019/11/DOTW_Brexit-briefing-20.10.19_v2.pdf
- 56 Ibid.
- 57 Healthcare for EU citizens living in or moving to the UK, Gov.uk website. Accessible via: <https://www.gov.uk/guidance/healthcare-for-eu-and-efta-nationals-living-in-the-uk>
- 58 DOTW Brexit briefing.
- 59 People who are homeless: how to register with a doctor (GP), NHS England. Accessible via: <https://assets.nhs.uk/prod/documents/how-to-register-with-a-gp-homeless.pdf>
- 60 Madden et al.
- 61 Guidance for commissioners: Interpreting and Translation Services in Primary Care, NHS England, September 2018. Accessible via: <https://www.england.nhs.uk/wp-content/uploads/2018/09/guidance-for-commissioners-interpreting-and-translation-services-in-primary-care.pdf>
- 62 Lehane and Campion (2018) Interpreters: why should the NHS provide them?, *British Journal of General Practice* 68(677): 564-565. Accessible via: <https://bjgp.org/content/68/677/564>
- 63 Carver, Parkes, Browne, Matheson and Pauly (2021) Investigating the need for alcohol harm reduction and managed alcohol programs for people experiencing homelessness and alcohol use disorders in Scotland, *Drug and Alcohol Review*, 40(2):220-230.
- 64 Garapich (2014) Homo Sovieticus Revisited – Anti-Institutionalism, Alcohol and Resistance Among Polish Homeless Men in London, *International Migration*, 53(1):100-117.
- 65 Rhodes, Drug and alcohol services cut by £162m as deaths increase. *BBC news website*, 11 May 2018.
- 66 Herring, Gleeson, and Bayley (2019), Exploring pathways through and beyond alcohol treatment among Polish women and men in a London Borough, Drug and Alcohol Research Centre, Middlesex University. Accessible via: https://s3.eu-west-2.amazonaws.com/files.alcoholchange.org.uk/documents/Exploring-alcohol-treatment-among-Polish-adults_Final-Report.pdf?mtime=20190612115954&focal=none
- 67 Accessing support under the Care Act 2014 for people with no recourse to public funds, *Matthew Gold Solicitors*. Accessible via: <http://www.matthewgold.co.uk/wp-content/uploads/2020/07/FINAL-Care-Act-Training.pdf>
- 68 NRPf Network (2020) Councils likely to incur costs providing safety-net support to EEA nationals after free movement ends, Accessible via: <https://www.nrpfnetwork.org.uk/news/eea-nationals-dec-2020>
- 69 Ibid.

4 Defending homeless EU citizens' right to remain

Between 2010 and 2017 high rates of rough sleeping among migrant workers from Central and Eastern Europe combined with inflammatory media, political and bureaucratic discourses to stoke a widespread view of homeless EU citizens as wayward 'economic migrants' who often elected to sleep rough to avoid paying housing costs and whose best interests would be served by them returning 'home'.

This period was characterised by a culture of close 'partnership working' between local authorities and the Home Office. Under pressure from central government and commercial interests, councils strove to reduce rough sleeping with little regard to the human and social costs of the methods they employed. Some local-level bureaucrats bought heavily into the nativist agenda of MHCLG's Controlling Migration Fund, publicity material for which emphasised the 'harmful' effect of migration on resident populations.¹

A third sector increasingly reliant on local-government contracts and commissions failed to offer effective challenge to these trends, and in some cases readily adopted its expanded role as an agent of social and immigration control. Some homeless charities, including St. Mungo's and Thames Reach, worked with Immigration Compliance and Enforcement (ICE) teams to 'administratively remove' (effectively, deport) rough sleeping EU citizens from the UK.²

The end of the Brexit transition period and changes to the Immigration Rules to make rough sleeping a ground for refusal or cancellation of leave to remain have raised the prospect of homeless migrants being targeted for deportation once again. This section looks back at a decade of policies that aimed to address rough sleeping by deporting rough sleepers. It highlights the likely exclusion of many homeless Europeans from the EU Settlement Scheme and anticipates the efforts that are likely to be needed to defend marginalised EU citizens' right to remain over the coming years.

4.1 Deportation, 'administrative removal' and 'voluntary reconnection'

In May 2016 the Home Office introduced a policy interpreting rough sleeping as an 'abuse' (later amended to 'misuse') of EU free-movement rights. The policy empowered Immigration Compliance and Enforcement (ICE) teams to 'administratively remove' street-homeless EU citizens from the UK.

The 'abuse of right' policy targeted EU citizens from Central and Eastern Europe, leading to the removal of hundreds of people. The policy had been piloted in various forms since around 2010: during Operation Ark (2010-11) more than 70 EU citizens held not to be exercising treaty rights were forcibly removed from the UK; Operation Chefnak (2013), conducted with the cooperation of the Romanian embassy in London, targeted Roma EU migrants; while Operation Adoze (2015) resulted in the removal of 127 people encountered sleeping rough in central London.³

Such policies were instigated not by the Home Office, but by local authorities (including the GLA and Westminster) and the Department of Communities and Local Government (DCLG; now MHCLG). They relied heavily on the cooperation of commissioned homelessness outreach services. In 2019, the homelessness charity St. Mungo's apologised for working with the Home Office, but stated that collaboration with ICE had been 'established good practice' in the homelessness sector at the time.⁴

In December 2017 the 'abuse of right' policy was ruled unlawful in the High Court after a legal challenge brought by PILC. The judge in the case found that rough sleeping could not be considered an 'abuse' or 'misuse' of European Union (EU) citizens' right to free movement under Article 35 of the EU's Citizens' Rights Directive (2004/38/EC). The ruling held that the UK government had unlawfully discriminated against EU

rough sleepers and engaged in the unlawful ‘systematic verification’ of their right to reside. The Home Office was instructed by the High Court to end immigration-enforcement operations against EU rough sleepers. The government has paid out significant sums in damages to individuals affected by the policy.⁵

Rough Sleeping Support Service

In 2019 the Home Office, working with partners including the GLA and St Mungo’s, launched a new scheme called the Rough Sleeping Support Service (RSSS). The Home Office stated that the RSSS had been introduced ‘to help non-UK nationals sleeping rough resolve their immigration cases and access the support that they need’. However, emails obtained through FOI requests suggested that the RSSS would involve local authorities and charities participating in the ‘delivery of immigration controls’.⁶

In autumn 2019 PILC and Migrants’ Rights Network (MRN), along with fifteen other organisations, wrote an open letter to London local authorities asking them not to participate in the RSSS or any scheme which might involve personal information about rough sleepers being passed to the Home Office without fully informed consent at every stage. We also asked local authorities to cancel service-provision contracts with voluntary-sector organisations which had a track record of sharing personal information about rough sleepers for immigration-enforcement purposes. Finally, we asked local authorities to make a detailed commitment to funding independent, specialized accommodation, advice and support services for non UK-national rough sleepers in their area.⁷

In response to our letter, a number of local authorities stated that they would not participate in the RSSS until concerns about data sharing had been addressed. No local authority made a commitment either to cancelling service-provision contracts or funding specialized services for migrant rough sleepers.

In summer 2020, PILC wrote to the Home Office raising concerns about the lawfulness of data-sharing arrangements for the RSSS. The RSSS was relaunched in September 2020 as a referral scheme based on the informed consent of rough sleeping participants.⁸ However, concerns remain with respect to the scheme. These include the continuing absence of a clear data-protection protocol and the RSSS’s failure, despite its name, to address the key support needs of homeless non-UK nationals (e.g. independent immigration advice, specialist NRPf accommodation, expedited Home Office decision making and subject access requests).

Rough sleeping as a ground for refusal

In October 2020 the government announced changes to the Immigration Rules to make rough sleeping a discretionary ground for refusal or cancellation of permission to stay in the UK. The changes came into force on 1 December 2020. Under the new rough sleeping rule, some non-UK nationals could have their visas cancelled if they sleep rough. If they are applying for a visa, their application could be refused on this basis.⁹

EU citizens and family members eligible to apply to the EU Settlement Scheme are exempt from the Rough Sleeping Rule. However, the Rule could be applied to new arrivals from the EU after 31 December 2020 and EU citizens resident before this date who fail to apply to the EUSS by the EUSS deadline of 30 June 2021. Home Office press statements on the rough sleeping rule indicate that its primary targets are EU citizens sleeping rough in the UK after Brexit.¹⁰

The Home Office stated that it would not rely on the Rough Sleeping Rule until guidance for decision makers on its implementation has been published. In April 2021, this guidance was published.¹¹ As of June 2021, PILC was reviewing the guidance with a view to proceeding with an application for judicial review of the lawfulness of the rough sleeping rule.¹²

Several local authorities and charities have stated that they will not cooperate with the rough sleeping rule.¹³

Voluntary reconnections

‘Voluntary reconnection’ describes one of several types of scheme through which foreign nationals are offered financial or practical assistance to leave the UK. Most voluntary return schemes—including the Home Office’s Voluntary Return, Assisted Return and Family Returns schemes—are government run and aimed at refused asylum seekers or undocumented migrants. ‘Voluntary return’ through such schemes is often offered as an alternative to forced removal in cases where a non-UK national has been unable to establish a right to remain in the UK. ‘Voluntary return’ has sometimes been characterised as ‘soft deportation’.¹⁴

‘Voluntary reconnection’ (sometimes known as ‘international reconnection’, ‘supported reconnection’ or ‘assisted voluntary reconnection’) is distinct in referring specifically to schemes through which a homeless EU citizen is offered help to either return to their country of origin or travel to another non-UK EU destination. ‘Reconnection’ schemes for EU rough sleepers are often run by homelessness charities that have been commissioned by local authorities to provide such services. In some cases, local authorities offer reconnection directly to homeless EU citizens. In 2020, a study based on a partial dataset found that there had been well over a thousand ‘reconnections’ of EU citizens since 2016.¹⁵

‘Reconnection’ schemes for EU citizens are an offshoot of domestic homelessness ‘reconnections’ policies, through which UK nationals who apply to a local authority as homeless may be ‘reconnected’ to another UK local authority to which they are deemed to have a ‘local connection’.¹⁶ Broadly speaking, the rationale behind such schemes is that it is in the best interests of homeless people to return to their place of origin—where, it is believed, they are likely to be eligible for housing and other social assistance and can be supported by family and friends.

We have four principal concerns about ‘reconnection’ schemes targeting homeless EU citizens:

- 1 There has been little or no independent or commissioned research into ‘voluntary reconnection’ schemes despite their widespread use over more than a decade. International ‘reconnections’ arranged by charities or local authorities are not counted in official voluntary return statistics and are often ignored in studies of the phenomenon. In the absence of published evaluations of ‘reconnection’ schemes or research into post-reconnection outcomes, it is unclear whether ‘reconnected’ individuals are returning to scenarios where they are eligible for services and will be able to access support. Local authorities and commissioned services generally measure the success of ‘reconnection’ on the basis of ‘non-return’ (i.e. a ‘reconnection’ is considered successful if the ‘reconnected’ individual is not encountered rough sleeping in the UK again within a given period), which may not be a reliable indicator of the true ‘success’ of a ‘reconnection’
- 2 Historically, including between 2010 and 2017, the threat of forced removal has been used coercively to incentivize the uptake of ‘voluntary reconnection’ by homeless EU citizens.
- 3 In our experience, some services offering ‘voluntary reconnection’ are failing to ensure that homeless EU citizens offered ‘reconnection’ have first received reliable, independent advice about possible entitlements in the UK. Homeless EU citizens may therefore not be making informed choices when agreeing to go ‘home’. Service providers may make problematic assumptions about identity and national belonging (e.g. that a person’s country of origin is their ‘home’)
- 4 It is standard for service providers to offer ‘voluntary reconnection’ to homeless people as a ‘single service offer’ (SSO); those who refuse are at risk of having services (including accommodation) withdrawn. SSOs are communicated to other homelessness services, with the result that a homeless non-UK national who has refused ‘reconnection’ may effectively be barred from access to essential support.

In view of the above, ‘voluntary reconnection’ as currently practised by some charities and local authorities may be failing to uphold the rights of homeless non-UK nationals and could in some cases amount to forced migration. PILC has supported several EU citizens who believe that they were either coerced into accepting ‘voluntary reconnection’ or misinformed about what ‘reconnection’ would involve. In each case, the EU citizen concerned returned to the UK shortly after being ‘reconnected’.

Data obtained through FOI indicates that a significant number of EU nationals were reconnected between March and October 2020 during what was largely an essential-travel-only period due to the Covid-19 pandemic.¹⁷ In April 2021 the Greater London Authority (GLA) indicated that it would begin to evict from emergency hotel accommodation homeless EU citizens with Pre-Settled Status who had been unable to establish entitlement for welfare benefits and had refused offers of ‘reconnection’.

In our view, local authorities and commissioned charities have a responsibility to ensure that their ‘reconnections’ practice is:

- **Rights-focused:** homeless EU citizens must be offered expert, independent immigration and welfare-rights advice with respect to their possible options if they choose to remain in the UK and their likely entitlements in their country of origin. Relevant rights issues (e.g. laws or attitudes towards LGBTIQ+ people in country of origin) must be considered and discussed with the person being offered ‘reconnection’.
- **Based on fully informed consent:** see above. Professional in-person interpreters should also be used at all stages of the ‘reconnection’ process.

- **‘End-to-end’**: services must only offer reconnection after a robust and detailed written needs assessment, the outcome of which must be shared with the person being ‘reconnected’. Charities offering reconnection must do more to verify whether services in countries of origin are fit for purpose and establish whether local laws and policies (e.g. local connection rules) may prevent people who are ‘reconnected’ from accessing services in that country.

In one PILC case, an EU citizen with substance-misuse issues reported being told by a service provider that he would be able to access ‘high-quality’ rehab and detox support if he agreed to return to his country of origin. However, the support he believed he had been promised did not materialise and he relapsed. PILC supported the person concerned to make a formal complaint to the provider, who eventually acknowledged failures in communication. The provider maintained, however, that the post-reconnection outcomes of ‘reconnected’ EU citizens were not their responsibility.

Criminal deportations

Under the EEA regulations, EU citizens enjoyed enhanced protection from deportation on the basis of criminality. With the end of the Brexit transition period on 31 December 2020, this enhanced protection was removed. EU citizens with criminal convictions in the UK or in their country of origin are therefore at increased risk of deportation. In some circumstances EUSS decision makers have been directed to refer applicants with criminal convictions to immigration enforcement so that deportation action can be considered (see also section 4.2 below).¹⁸

Legal aid is not automatically available for deportation cases. As a result, EU citizens are sometimes deported from the UK without having been able to access legal advice in respect of their appeal rights or the lawfulness of the deportation order that has been made against them. This is a particular issue in immigration detention. In cases known to PILC, deportation orders have been made against EU citizens who have lived in the UK since childhood or who have few or no links to their country of origin.

Fears for the future

The commissioned sector’s historic commitment to removals and ‘reconnections’ as a solution to rough sleeping among EU citizens has had a number of long-term consequences, including diminished trust in support services and the failure of local authorities and the voluntary sector to fund specialised accommodation for this group.

Since 2017 much of the homelessness sector has adopted a pro-migrants’-rights stance in public-facing communications. Yet some agencies have continued to participate in the design of policies (such as the RSSS) that have been criticised by rights advocates. Key stakeholders have failed to address their historic role in facilitating policies that led to homeless EU citizens being unlawfully removed from the UK.

EU citizens who sleep rough continue to be subject to harassment by police, council anti-social behaviour teams and other agencies; some local-authority rough sleeping taskforces are perceived by homelessness advocates as more inclined to criminalize non UK-national rough sleepers than to support them. There is anecdotal evidence that some street communities (e.g. homeless Roma people) may be disproportionately subject to measures such as community protection notices (CPNs), dispersal notices and the confiscation of property.

Fears for the future of destitute Europeans in the UK have been piqued by the end of the Brexit transition period and the introduction of the rough sleeping rule, which appears to be intended to target EU citizens who sleep rough. The government has indicated that homeless EU citizens will not be targeted for forced removal during the ‘grace period’—but beyond 30 June 2021 the picture is far from clear.

4.2 Issues with the EU Settlement Scheme

Legal and policy context

The EU Settlement Scheme (EUSS) is a Home Office scheme through which EU citizens can apply for residency rights in order to remain in the UK after Brexit. The scheme is also open to the qualifying non-EU family members of EU citizens. With the exception of Irish citizens, all EU citizens and qualifying family members wishing to remain in the UK (including those with permanent residence) must apply to the EUSS.

The final deadline for applications to the EUSS was 30 June 2021. The government has indicated that late applications will be accepted where there are ‘reasonable grounds for a person’s failure to meet the deadline.’¹⁹ However it has repeatedly refused calls by legal experts to make the EUSS a ‘declaratory’ rather than a ‘constitutive’ scheme; as a result, EU citizens who fail to apply will become unlawfully present in the UK.²⁰

There are two kinds of successful outcome for EUSS applications. Applicants who can show that they have been continuously resident in the UK for five years or more will be awarded Settled Status (SS). Applicants who can show continuous residence for less than 5 years will be awarded Pre-Settled Status (PSS). Eligibility for the EUSS is based on UK residence rather than exercise of treaty rights.

In most cases, applications to the EUSS must be made online. Separate paper application forms exist for certain categories of EU citizen who cannot apply online, including EU citizens applying without valid passport or national ID card and non-EU citizens with derivative rights (these are individuals—such as the non-EU carers of EU children—whose right to reside in the UK is derived from their relationship to an EU national).

It is not known how many EU citizens living in the UK are yet to apply to the EUSS.²¹ The government has called the scheme ‘hugely successful’,²² yet it is clear that many at-risk or excluded EU citizens have faced barriers to applying. Commonly reported issues include: lack of awareness of the scheme or deadline; issues with digital literacy; language issues; mental and physical health difficulties; and difficulties providing evidence of identity and residence.²³ In early 2021, a report by JCWI revealed that a significant number of EU-citizen care workers were yet to apply to the EUSS, while concerns have also been raised about children in care and care leavers’ access to the scheme.²⁴

In 2021 JCWI initiated legal action against the Home Office over the EUSS deadline, which the charity says ‘will leave minorities and vulnerable groups undocumented and violates the Equality Act.’²⁵ The charities Migrant Organise and Public Law Project have also sought to bring a legal challenge in relation to a lack of adequate guidance on how EU citizens who may lack mental capacity can regularise their status before the deadline.²⁶

Those who fail to apply to the EUSS or whose applications are refused will effectively become undocumented migrants in 2021. They will lose the right to work and rent accommodation as well as access to social assistance and basic services such as NHS hospital care. They will also become vulnerable to enforced removal from the UK.

Homeless EU citizens and the EUSS

For many homeless EU citizens, applying to the EUSS is both a means of securing residency rights after Brexit and a crucial step towards resolving their destitution. EU citizens granted SS are eligible to apply for homelessness assistance, housing allocations and welfare benefits on the same terms as UK citizens. Those granted PSS may also be automatically eligible for welfare benefits in light of the Fratila judgment (see section 3.3).

SS is also a more secure form of immigration status, giving holders enhanced protection from deportation. It is therefore in the interests of at-risk EU citizens to apply for SS as soon as they have five years’ continuous residency in the UK, even if they have previously acquired PSS. Given that PSS expires after 5 years, PSS holders could become undocumented if they do not secure alternative status during their leave period.

Homeless EU citizens have faced specific challenges in applying to the EUSS. Key issues identified through PILC casework and focus groups include:

- **Not being able to provide proof of residence:** proving residence in the UK is difficult for some homeless EU citizens, including rough sleepers who have had limited contact with administrative bureaucracy. Many homeless EU citizens working in the informal economy do not have (or do not use) a National Insurance Number (NINO). While a NINO is not required for EUSS applications, applicants who cannot provide one must provide valid alternative evidence to demonstrate their residence in the UK. Homeless people may not be in a position to provide the most common alternative forms of valid evidence (e.g. council tax records, tenancy agreements, payslips, bank statements).

- **Passport and ID issues:** some homeless EU citizens do not hold a valid passport or national ID. Rough sleepers often lose such documents or have them stolen. It is more difficult to apply to the EUSS in these circumstances: a paper application form exists for those applying without a valid passport or ID, but users of this form are required to demonstrate that it is not possible for them to re-document themselves. Requests made to the EUSS Resolution Centre for a paper application form are sometimes refused without good reason.

In practice, homeless EU citizens without a valid passport or national ID card must apply to their national embassy to re-document themselves. Support organisations report a variety of issues in this respect, including: EU embassies requiring all applicants to attend in-person interviews, even in cases of serious illness or disability; applicants being required to produce either their or their parents' birth certificates, which many people are unable to do; embassies refusing to waive high application fees for destitute applicants or issue free or low-cost temporary passports; some EU embassies requiring applicants to return to their country of origin before being issued with a new passport or ID; and long delays for appointments at national embassies or difficulties making appointments in the first place.

- **Not being able to access legal advice or representation:** whether because of criminal convictions, lack of ID or difficulty proving residency, many homeless EU citizens fall into the category of 'complex' EUSS applications. Such applicants may need advice and representation from a registered immigration adviser working at OISC level 2 or equivalent. Other applicants will benefit from assistance from an adviser working at OISC level 1.

In 2019 the Home Office announced £9m funding for organisations to support vulnerable or at-risk people with applications to the EUSS,²⁷ but in February 2020 it was reported that support organisations were being forced to cut back on support because the Home Office had failed to guarantee that this funding would be renewed beyond March 2020.²⁸ Later in 2020, at the height of the Covid-19 pandemic, the Home Office changed its funding model for support organisations assisting at-risk individuals to apply to the EUSS. As a result, many organisations were forced to stop offering this support. As the EUSS deadline approached, support organisations were reporting difficulties in referring at-risk EU citizens for advice and representation due to a shortage of providers. There is an ongoing chronic shortage of advisers registered at OISC level 2 or equivalent and therefore able to assist with complex cases.

- **Being reluctant to apply:** some marginalised EU citizens have been reluctant to apply to the EUSS despite wishing to remain in the UK. Applicants are required to declare criminal convictions and pending criminal proceedings in the UK or any other country (they are not required to declare 'spent' offences, cautions or alternatives to prosecution, e.g. fixed penalty notices for speeding). Some homeless people are wary of declaring such convictions, in part due to a lack of clarity from the Home Office about how convictions will be treated when EUSS applications are considered. In January 2020 the charity Unlock complained that the requirement to self-disclose 'criminality' was 'unnecessary' and likely to result in mistakes or omissions that could lead to applicants being unfairly penalised. Unlock has called EUSS guidance around criminal convictions 'inconsistent and contradictory' and exhorted the Home Office to issue 'public facing, easy-to-understand information that is factual but reassuring in terms of the impact of criminal records on EUSS applications and how they will be considered'.²⁹

Delays in decision making

According to the Home Office, most EUSS applications should take around 5 working days to process. In practice many applications are taking much longer to be processed. This has occasioned stress and anxiety to applicants and in some cases prevented destitute individuals from accessing vital support.

Homeless EU citizens appear to be waiting longer for decisions on their EUSS applications than other EU citizens. This may be related to higher rates of criminal convictions among this group and the fact that people of no fixed abode or who do irregular or informal work are likely to have to submit more evidence in support of their application than the average person. In some cases, however, EUSS applications made by homeless or marginalised people have been subject to long delays in processing for no apparent reason. EUSS applications by people with minor criminal convictions often get 'stuck' at the Suitability Assessment stage—sometimes for months on end. It is established practice for the Home Office to 'pause' EUSS applications made by people with a pending criminal case or investigation, including where the alleged offence is minor. Applications may be further delayed as a result of UKVI's reluctance to accept evidence of a

Case study

PILC supported an EU citizen in his fifties who had recently had a major operation and needed to make a Settled Status application in order to access disability benefits. The council care home the man was living in was threatening to evict him if he did not obtain SS.

However, the man had no valid passport or national ID and was too unwell to travel to London for an appointment with his national embassy. The embassy refused to issue a new ID without an in-person appointment.

PILC supported the man to obtain a paper application form from the EUSS resolution

centre. A member of PILC staff then travelled from London to the South Coast (where the man was living) to support him in completing the application, with another local resident acting as interpreter.

PILC also advocated to the man's local council to ensure that his care package was not discontinued pending a grant of SS. Without PILC's expertise and intensive practical support, the man would have found it extremely difficult to access the EUSS and may have become destitute.

criminal case having been resolved from any source other than the Police National Computer (PNC), which is frequently not updated promptly.

Non-EU family members applying without a biometric residence permit (BRP) have also experienced delays in the processing of their applications. This issue has been made worse by the unavailability of free biometric appointments, with many applicants being compelled to book paid appointments with Sopra Steria, UKVI's commercial partner.

It is difficult for people whose applications are subject to delay to find out the reason behind the delay or when they should expect a decision on their application. In some instances, it has taken a complaint to the Home Office or the threat of judicial review to resolve delays.

EU citizens with gaps in residency as a result of unlawful removal

Some homeless EU citizens who were unlawfully removed under the 'abuse of right' policy (see section 4.1) and had their residency in the UK interrupted as a result. PILC has prepared EUSS applications on behalf of several such individuals, successfully arguing that these periods of interrupted residence should be disregarded for the purposes of the EUSS.

Homelessness sector practice issues

In addition to the structural and bureaucratic barriers faced by homeless EU citizens in accessing the EUSS, we have also noted the following practice issues relating to support provided by charities and local authorities:

- **Support workers submitting applications without informing the applicant:** in some cases, support workers have submitted EUSS applications on behalf of homeless EU citizens without telling them or their legal representatives that they have done so. As a result, some homeless EU citizens have been granted (or refused) PSS or SS without knowing they have applied, making it more difficult for them to provide proof of status on demand.
- **EUSS advisors 'settling' on PSS:** in some cases where homeless EU citizens have lived in the UK for more than five years and are therefore eligible to apply for SS, support workers have advised them to submit applications for PSS. This usually occurs in cases where it may be more difficult for people to evidence their long-term residence. Such EU citizens may therefore be granted a form of leave that confers fewer rights to social assistance and inferior protection against deportation.

- **Duplication of advice or assistance:** some homelessness services are not checking whether the person they are assisting is already receiving immigration advice or already has PSS or SS. This has resulted in multiple applications being submitted on behalf of the same person.
- **High turnover of support workers:** this has been a particular issue in Covid-19 hotels and has led to poor communication or continuity of support around EUSS applications.

Issues post-application:

- **People being granted status but not knowing it:** this can be the result of a lack of continuity of support or poor communication, including the failure to use interpreters. Some destitute individuals in need of confirmation of SS to access benefits have not been promptly informed that they have been granted status. As a result, their destitution has been unnecessarily prolonged.
- **Support organisations assuming that homeless people have been granted PSS and not SS:** combined with the assumption that EU citizens without SS 'have NRPF', this has led to some homeless EU citizens being wrongly told that they are not eligible for welfare benefits or housing assistance.
- **People not knowing how to check or prove their status:** the government has rejected calls for EU citizens granted PSS or SS to be issued with physical proof of status. To check or prove their immigration status, they must instead log into an online portal using details of the ID document they used to apply and their date of birth. (They also require access to the mobile number or email address they gave when applying.) Many homeless people do not know how to check their status. Others do not have the requisite digital skills to access the online portal or have lost access after losing ID documents or changing their telephone number or email address. Some support organisations and statutory agencies, moreover, do not know how to check what status someone has acquired. As a result, some homeless EU citizens may find themselves unable to prove entitlement to welfare or housing assistance or even that they have a legal right to be in the UK.

Endnotes to Chapter 4

- 1 Information obtained by FOI.
- 2 See 'The round up: rough sleeper immigration raids and charity collaboration', *Corporate Watch* (2017). Accessible via: <https://corporatwatch.org/the-round-up-rough-sleeper-immigration-raids-and-charity-collaboration-2/>; and Dickson and Morgan (2020) Rough-sleeper raids: how homeless charity deportations carry on rebranded, *Corporate Watch*, 10 June 2020. Accessible via: <https://corporatwatch.org/rough-sleeper-raids-charity-deportations-rebranded-st-mungos-thames-reach/>
- 3 Homeless EU citizens have also been 'administratively removed' from the UK under Operation Nexus (2012-). See *Corporate Watch* (2017, 2020); Demars (2017) Rough Sleeping as abuse/misuse of the right of freedom of movement, report for the Strategic Legal Fund ; 'Press release - Operation Chefornak', website of the Romanian embassy, London, 19 July 2013. Accessible via: <https://londra.mae.ro/en/local-news/1365>
- 4 St. Mungo's (2019) A review into St Mungo's approach to working with Home Office enforcement teams 2010 to December 2017. Accessible via: <https://www.mungos.org/news/outreach-report/>
- 5 Ironmonger, EU rough sleepers win damages for illegal deportations. BBC News website, 13 May, 2018. Accessible via: <https://www.bbc.co.uk/news/uk-44093868>
- 6 See Morgan, *Open Democracy*.
- 7 'Joint open letter about Rough Sleeping Support Service (RSSS)', PILC website, 4 November 2019. Accessible via: <https://www.pilc.org.uk/news/story/joint-open-letter-about-rough-sleeping-support-service-rsss>
- 8 Home Office (2021) Rough Sleeping Support Service. Accessible via: <https://www.gov.uk/government/publications/rough-sleeping-support-service>
- 9 Home Office (2020) Statement of Changes in Immigration Rules: HC813. Accessible via: <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-813-22-october-2020>
- 10 Booth, New rules on removing foreign rough sleepers from UK face legal challenge. *Guardian*, 12 November 2020. Accessible via: <https://www.theguardian.com/society/2020/nov/12/new-home-office-rules-on-removing-foreign-rough-sleepers-from-uk-face-legal-challenge>
- 11 Home Office (2021), Guidance: Grounds for refusal: rough sleeping. Accessible via: <https://www.gov.uk/government/publications/grounds-for-refusal-rough-sleeping>
- 12 For a detailed account of the rough sleeping rule, see Morgan and Dickson (2021) Rough sleeping as a ground for refusal or cancellation of leave to enter or remain in the UK, Strategic Legal Fund and Public Interest Law Centre. Accessible via: <https://www.pilc.org.uk/wp-content/uploads/2021/06/SLF-report-v2-with-appendices.pdf>

- 13 Taylor, Councils vow to defy UK rule on deporting migrant rough sleepers, *Guardian*, 10 December 2020. Accessible via: <https://www.theguardian.com/politics/2020/dec/10/councils-defy-uk-rule-deporting-migrant-rough-sleepers-home-office>
- 14 See e.g. Leerkes, Van Os and Boersema (2017), What drives ‘soft deportation’? Understanding the rise in Assisted Voluntary Return among rejected asylum seekers in the Netherlands, *Population, Space and Place*. 23(8).
- 15 Barnard and Costello (2020).
- 16 Johnsen and Jones (2015) The reconnection of rough sleepers within the UK: an evaluation. London: Crisis. Accessible via: <https://www.crisis.org.uk/ending-homelessness/homelessness-knowledge-hub/services-and-interventions/the-reconnection-of-rough-sleepers-within-the-uk-an-evaluation-2015/>
- 17 Bulman, Surge in rough sleepers sent back to EU countries at height of lockdown, *Independent*, 11 March 2021. Accessible via: <https://www.independent.co.uk/news/uk/home-news/surge-in-eu-nationals-reconnected-to-home-countries-at-height-of-lockdown-b1814590.html>
- 18 Unlock (2020), Settled status: what you need to know if you are an EU citizen and have a criminal record. Accessible via: <https://hub.unlock.org.uk/knowledgebase/settled-status/>
- 19 Home Office (2021) EU Settlement Scheme caseworker guidance. Accessible via: <https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>
- 20 Smismans, The EU Settlement Scheme needs to be a declaratory registration system, LSE Brexit Blog, 9 September 2019. Accessible via: <https://blogs.lse.ac.uk/brexit/2019/09/09/long-read-eu-settlement-scheme-needs-to-be-a-declaratory-registration-system/>
- 21 NRPf Network (2021) Supporting European Economic Area (EEA) nationals who are destitute or at risk of homelessness: guidance for local authorities. Accessible via: <https://www.nrpfnetwork.org.uk/-/media/microsites/nrpf/documents/guidance/factsheet-eu-settlement-scheme.pdf>
- 22 Home Office (2021) People urged to apply to the EU Settlement Scheme. Accessible via: <https://www.gov.uk/government/news/people-urged-to-apply-to-the-eu-settlement-scheme>
- 23 Sumption and Fernandez-Reino (2020) Unsettled Status-2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? Migration Observatory. Accessible via: <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>
- 24 Lagrue, Bourthoumieux and Layonu (2020) Children left out? Securing children’s rights to stay in the UK beyond Brexit, Coram Children’s Legal Centre, accessible via: https://www.childrenslegalcentre.com/wp-content/uploads/2020/06/CCLC-Children-left-out_July-2020_final.pdf
- 25 JCWI (2021) JCWI takes Home Office to Court over EU Settlement Scheme. Accessible via: <https://www.jcwi.org.uk/news/jcwi-takes-home-office-to-court-over-eu-settlement-scheme>
- 26 Migrants Organise (2021) Help People with Mental Health Issues Live in Dignity after Brexit. Crowdjustice fundraising page. Accessible via: <https://www.crowdjustice.com/case/help-people-with-mental-health-issues-after-brexit/>
- 27 Home Office (2019) Funding awarded to support vulnerable EU citizens apply for settled status. Accessible via: <https://www.gov.uk/government/news/funding-awarded-to-support-vulnerable-eu-citizens-apply-for-settled-status>
- 28 Bulman (2020) Vulnerable EU settlement applicants face losing ‘vital’ support with funding set to run out within weeks, *Independent*, 2 February 2020. Accessible via: <https://www.independent.co.uk/news/uk/home-news/eu-nationals-home-office-funding-settled-status-charities-a9304736.html>
- 29 Unlock (2019) EU nationals, settled status and criminal records: Policy briefing. Accessible via: <https://www.unlock.org.uk/wp-content/uploads/EU-nationals-settled-status-and-criminal-records-Sept-2019.pdf>

5 Destitute EU citizens and the Covid-19 pandemic

Legal and policy context

On 23 March 2020 the UK went into ‘lockdown’ for the first time in response to the spread of Covid-19.¹ On 26 March 2020 the homelessness minister, Luke Hall MP, wrote to local authorities directing them to ‘provide self-contained accommodation to [people] who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate’. Luke Hall also directed councils to provide ‘social care basics such as food, and clinician care to people who need it’. The letter stated that councils should ‘utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic’.²

A National Audit Office (NAO) report called the Covid-19 rough-sleeping response—sometimes referred to as ‘Everyone In’—‘[a] considerable achievement [...] demonstrating what can be done when central government, local authorities and voluntary organisations work together to respond to an extremely urgent priority’.³ However, accessing adequate support has proved far from straightforward for many homeless non-UK nationals, including EU citizens. In June 2020 a rapid-response research report co-authored by PILC concluded that

while some councils put in place effective emergency support for [homeless non-UK nationals] the England-wide response of local authorities was frequently characterised by confusion, a lack of information about support options, the ‘gatekeeping’ of access to accommodation, and gaps in essential provision [...]

During the pandemic many local authorities have provided accommodation to single homeless EU citizens who are not eligible for public funds and who have neither children nor qualifying care needs. They have effectively done so on a discretionary basis. Despite calls from (among others) the migration and homelessness sectors, the Local Government Association, the NRPF Network and parliamentarians for measures including the suspension of the habitual residence test (HRT), the government has introduced no new legislation or statutory guidance to amend the entitlement to local-authority support of non-UK who would not ordinarily be eligible. As the June 2020 report concluded:

[t]he effect of [this] has been twofold: firstly, the support provided to this group has been inconsistent and unpredictable both within and across local authorities; and secondly, it has been difficult for individuals or their advocates to effectively challenge local authorities in cases where [homeless EU citizens] have been refused support or accommodation or where the accommodation or support offered has been inadequate.⁴

A Crisis report noted that ‘uncertainty on funding for [non-UK nationals] and inconsistent national policies [...] made medium to long term planning extremely difficult [during the pandemic]’.⁵ The NAO report into ‘Everyone In’ takes up the theme of mixed government messaging and its effects:

At the outset of Everyone In [MHCLG] encouraged local authorities to take all those sleeping rough into emergency accommodation, irrespective of nationality or entitlement to benefits. [But i]n its ministerial letter of 28 May [the ministry] reminded local authorities that legal restrictions on offering support to people ineligible for benefits remained in force, and that exceptions should only be made after an individual assessment of there being a risk to life. Some local authorities stopped taking those who were ineligible for benefits into emergency accommodation and sought to move on those already in such accommodation.⁶

During the pandemic some local authorities have made concerted efforts to support homeless non-UK nationals beyond the provision of accommodation. Some councils have put in place specialist employment- and ‘move-on’ schemes for homeless EU citizens accommodated through the pandemic response; others have created clear pathways to support this group to access the EUSS scheme.

But the overall picture is less encouraging. Data obtained through a Freedom of Information request suggests that the number of EU rough sleepers in central London doubled month on month from May 2020.⁷ During the second and third UK ‘lockdowns’ it became progressively more difficult for EU citizens at risk of rough sleeping to obtain accommodation where they lacked a statutory entitlement, in part as a result of the application of immigration-status based restrictions to applications to government’s Next Steps Accommodation Programme (NSAP).

In autumn 2020, and despite the introduction of the Protect Programme,⁸ some local authorities were seeking to evict homeless non-UK nationals from hotel accommodation. In Tower Hamlets, PILC and the local MP intervened when vulnerable clients were given letters saying their accommodation would cease; the decision was reversed as a result.

In March 2021, as a result of a case brought by Shelter on behalf of a homeless Zimbabwean man, the High Court confirmed that local authorities ‘do have powers to accommodate people who are not eligible for homelessness assistance under s.138 of the Local Government Act 1972 and also s.2B of the NHS Act 2006 and that those powers are not restricted by s.185 of the Housing Act 1996 providing they are not being used to deliberately circumvent it. The court found that the current pandemic did constitute an emergency’.⁹

As of June 2021, a significant number of homeless EU citizens remained in emergency hotel accommodation. Evidence obtained via FOI indicates that, by January 2021, fewer than half of non-UK nationals accommodated by GLA had had an immigration-needs assessment and a large proportion had failed to move onto long-term accommodation.¹⁰ In April 2021 (see also section 4.2) the GLA indicated that it would begin to evict from emergency Covid-19 accommodation homeless EU citizens with Pre-Settled Status who were unable to establish entitlement for welfare benefits and had refused offers of ‘reconnection’.

Support for homeless EU citizens in Covid-19 hotels

Commissioned and non-commissioned homelessness charities and grassroots groups have played a major role in supporting homeless EU citizens accommodated through ‘Everyone In’. In many respects this has been an impressive mobilisation of resources in exceptionally challenging circumstances. St. Mungo’s accommodation services took on the management of many of the hotels put to emergency use in London from March 2020, while the grassroots group Streets Kitchen, along with local Covid-19 mutual-aid groups, coordinated much of the provision of food and other essentials to homeless people during London’s first ‘lockdown’.

However, our casework and focus groups have thrown up a number of concerns about the quality of support provided by the commissioned sector to homeless EU citizens in Covid-19 hotels. Below we briefly highlight some key themes identified between June 2020 and June 2021.

- **Communication issues:** these include the frequent failure to provide interpreters in Covid-19 hotels, with workers reliant on automated translation services such as Google Translate or ‘ad hoc’ interpretation by other professionals or homeless people. In many instances no attempt appears to have been made to translate important information. PILC has encountered cases of homeless EU citizens: being given written information (e.g. letters) that they do not understand; signing consent forms without understanding what they are consenting to; not knowing who their keyworker is or how to contact them; not understanding how long they are allowed to stay in hotels and when (or whether) they will be moved on; and (wrongly) believing they may be asked to pay for hotel accommodation
- **Quality of support provided:** issues have included: support workers not being properly trained on EU citizens’ rights and entitlements; limited access to support workers; long delays in resolving queries and complaints; and homeless people feeling that they have been treated dismissively or disrespectfully. In one case, a client told a PILC adviser that he felt homeless people in his hotel were being treated ‘like dogs’ by support staff.
- **Issues around ‘move-on’:** some homeless people report being moved from hotel accommodation at short notice and/or without being given detailed information about where they were going. One homeless EU citizen reported being told peremptorily to ‘pack his things and get in the taxi’; another reported being

shown a property and told ‘it’s this or nothing’. It is often unclear in such cases whether housing duties which would give homeless people a statutory right of review of accommodation provided are engaged.

- **Issues around employment:** employment support appears to have been patchy in Covid-19 hotels. Many homeless EU citizens accommodated in Covid-19 were compelled to carry on working (or looking for work) during the pandemic because they had no other source of income and were not entitled to benefits. However, one destitute PILC client felt unable to look for work because he had been told by hotel staff he needed to stay in his hotel. Another client reported being told he would lose his hotel accommodation as soon as he found work.

Endnotes to Chapter 5

- 1 This section draws on Dickson, Jolly, Morgan, Qureshi, Sojka and Stamp (2020) Local authority responses to people with NRPF during the pandemic: research report. Institute for Community Research & Development, University of Wolverhampton. Accessible via: <https://wlv.openrepository.com/handle/2436/623914>
- 2 Letter from Luke Hall MP, 26 March 2020. Accessible via: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928780/Letter_from_Minister_Hall_to_Local_Authorities.pdf
- 3 National Audit Office (2021) Investigation into the housing of rough sleepers during the COVID-19 pandemic. Accessible via: <https://www.nao.org.uk/report/the-housing-of-rough-sleepers-during-the-covid19-pandemic/>
- 4 Dickson et al.
- 5 Boobis and Albanese, The impact of COVID-19 on people facing homelessness, Crisis. Accessible via: https://www.crisis.org.uk/media/244285/the_impact_of_covid19_on_people_facing_homelessness_and_service_provision_across_gb_2020.pdf
- 6 Dickson et al.
- 7 Westminster (2020) Next Steps Accommodation Programme Proposal Template for interim accommodation and immediate support inside Greater London. Obtained by FOI.
- 8 MHCLG (2020) Jenrick launches ‘Protect Programme’: the next step in winter rough sleeping plan. Accessible via: <https://www.gov.uk/government/news/jenrick-launches-protect-programme-the-next-step-in-winter-rough-sleeping-plan>
- 9 Underwood, Local authorities must accommodate rough sleepers in danger during the pandemic, CIH, April 2021. See also NRPF Network (2021) High Court rules councils can accommodate rough sleepers with no recourse to public funds during the Covid-19 pandemic. Accessible via: <https://www.nrpfnetwork.org.uk/news/accommodating-rough-sleepers>
- 10 Statistics, GLA FOI response to PILC (2020).

6 Defining and advancing a rights-based approach to work with homeless EU citizens

6.1 Introduction

This report has examined key rights issues facing homeless and marginalised EU citizens in the UK. It has demonstrated that many faced extreme poverty, hyper-exploitation and rights abuses before Brexit. It has documented some of the everyday suffering, inequality and indignity created by the UK's immigration regime, by a punitive welfare system grounded in legal discrimination against non-UK nationals and by the frequent failure of statutory agencies to uphold the legal rights that non-UK nationals do enjoy. Finally, it has shown how Britain's new post-EU immigration regime is set, in the words of one researcher, to leave large numbers of marginalised EU citizens 'entirely disempowered [...] collateral damage thrown under the (infamous) Brexit bus.'¹

Legal action has proved effective in defending the human and social rights of marginalised Europeans. PILC's 2017 High Court challenge put an end to policies that had resulted in the detention and deportation of EU rough sleepers; it may also have marked the beginning of a shift in the way the homelessness sector thinks about non-UK nationals. More recently we have used litigation to oppose the Home Office's new rough sleeping rule and potentially unlawful data-sharing through the Rough Sleeping Support Service (RSSS). Working with grassroots partners, we have won strategic victories around housing rights at a local-authority level, while legal intervention has forced the reversal of unlawful policies and practices in many individual cases. PILC's legal education work has helped homeless EU citizens assert their rights to housing, social assistance and to remain in the UK after Brexit.

The law has its limits, however—especially in the present political climate. Legal challenge is often at best a rearguard action, standing in the way of some of the worst mistreatment experienced by marginalised people but largely powerless to bring about positive social change or uphold rights not guaranteed under UK law. Judicial review, an important tool in challenging unlawful policies and practices, is under severe threat in 2021.²

Strategic litigation will play a role in upholding the rights of homeless EU citizens after 30 June 2021. But if the worst effects of Brexit are to be mitigated, the UK's homelessness sector, from local authorities to commissioned and non-commissioned charities, will need to develop new ways of working with—and thinking about—homeless Europeans.

6.2 How the homelessness sector works with homeless EU citizens

Our work supporting homelessness organisations and the problem-identifying sessions we have run with 'frontline' workers (see Methodology section) have helped us put together a picture of the sector's work with homeless EU citizens and the challenges it faces in upholding the rights of this group.

There are significant areas of good practice. Some local authorities have embedded immigration advice and employment support for non-UK nationals within their rough-sleeping services and made migrant destitution part of their strategic homelessness planning. Others, in partnership with the voluntary sector, have set up specialist projects for e.g. EU victims of trafficking and modern slavery.

During Covid-19 some councils have provided levels of support to homeless EU citizens beyond what they were legally and financially empowered to do by central government. Newly-commissioned Crisis/IPPR research into the causes and impacts of EU homelessness and a joint project by Homeless Link and NACCOM around accommodation for people with NRPF suggest that parts of the sector are coming to grips

with the scale of the challenge posed by migrant destitution and seeking to address the issue in a rights-focused way.

Such a culture change, if it has indeed arrived, is long overdue. In our problem-identifying sessions, many staff and volunteers from homelessness organisations reported feeling ill equipped to support homeless EU citizens. Reasons included: lack of knowledge of EU rights and entitlements and how to 'signpost' to specialist services; language and other communication issues; lack of capacity or expertise to support those with complex needs; and a general perception that services were not 'set up' for this group.

Participants from rough-sleeping services reinforced a view of EU citizens as falling between two stools: they are not viewed as 'typical' street-homeless people because they often have different entitlements to UK-national rough sleepers and may not have the same support needs (e.g. substance misuse, psychological distress) but neither are their needs being met by the migrants'-rights sector, which remains largely geared towards immigration legal support for non-EU citizens.

Some participants reported pragmatic or organisational barriers to working effectively with homeless EU citizens. These included funding constraints, lack of capacity and high staff turnover. Some highlighted specific issues relating to the nature of service provision. For example, a typical 28-day stay in a winter night shelter is usually not long enough to resolve eligibility issues that may prevent a homeless EU citizen from accessing 'move-on' accommodation.

We asked homelessness workers about challenging negative decisions by e.g. local-authority housing departments or the DWP and whether they understood this to be part of their role. A common response was that staff and volunteers would be unlikely to have the expertise or capacity to challenge such decisions.

With notable exceptions, participants did not frame the issues faced by homeless EU citizens in terms of 'rights'; the work of the sector was more commonly seen in terms of 'helping' or 'supporting' homeless people, 'providing a service' or 'delivering a contract'. Homelessness-sector participants more commonly referred to the 'best interests' or 'needs' of homeless service users than to their rights and entitlements.

Most of the homelessness workers we spoke with for this report were unfamiliar with public law and strategic litigation, though the majority were interested in receiving training in these areas and in developing legal referral pathways. Some participants, however, were of the view that workers would be unlikely to have time to support legal challenges. In two instances, participants said that their organisation might be reluctant to challenge decisions made by local authorities that funded them or with whom they had a close working relationship.

Some participants reported a vexed relationship with their local authority when it came to homeless EU citizens. One winter night-shelter worker noted that their local authority did not always respect the terms of service-level agreement that existed between the worker's charity and the council. In this worker's view, the local authority was using the shelter as a 'dumping ground' for homeless Europeans.

Another participant reported that local-authority housing officers often gave 'shockingly bad advice' with respect to the housing entitlements of EU citizens. A third noted that local authorities were not complying with the Homelessness Reduction Act, with personalised housing plans either not being written or being done perfunctorily.

In many organisations there appears to be no culture of frontline workers challenging decisions by public authorities, nor any established baseline in respect of which legal issues affecting homeless people could be dealt with 'in-house' and which might require signposting to specialist agencies (e.g. immigration advisers, law centres, debt specialists). The self-perception of many support organisations might be characterised in terms of 'helping clients', 'service provision' and 'contract fulfilment' (rather than, for example, 'solidarity', 'social justice' or 'the defence of rights').

In summary, the approach of many support organisations with respect to the rights and entitlements of homeless EU citizens might be characterised as pragmatic and passive. Homelessness organisations tend to accept negative decisions rather than seeking advice on behalf of service users about whether those decisions might be challengeable. Some support organisations seem to function effectively as 'middlemen' between homeless EU citizens and statutory agencies.

Finally, in organisations with both service-delivery and policy arms, there often did not appear to be a 'feedback loop' in place to ensure that the experiences of homeless EU citizens and frontline workers were reflected in advocacy or policy development.

6.3 What would a rights-based approach look like?

The homelessness sector is made up of a large number of institutional actors operating at different scales, under differing constraints and with diverse agendas and interests. This report does not claim to offer a definitive critique or recipe for change with respect to how work with homeless EU citizens should be undertaken.

Nor can responsibility for the sector's shortcomings be assigned to homelessness workers and volunteers at the 'frontline'. Many in commissioned and non-commissioned services and support organisations are overworked, over capacity and lack the tools they need to do a job they care deeply about. Some homeless workers face issues of precarity and poor working conditions comparable to those experienced by their service users. Despair and a creeping loss of mission are not uncommon; they are also understandable given that legal barriers and capacity issues often prevent support workers from achieving positive outcomes for non UK-national clients. In this context, it has been heartening to see some homelessness workers take industrial action around their pay and conditions and signal their refusal to be complicit in unjust policies towards homeless migrants.³

It is clear, however, that aspects of the managerial, operational and ideological culture of the sector make it difficult for homelessness workers to effectively support homeless non-UK nationals and oppose unfair policies and practices. Councils and commissioned charities have historically failed to contest legislation and guidance that has rendered non-UK citizens ineligible for welfare assistance or housing provision; they have also, for the most part, neglected to resource alternative provision for those left out in the cold.

Between 2010 and 2017 parts of the sector embraced and facilitated a drive by central government and some councils to 'tackle' street homelessness by deporting EU rough sleepers. In public, charities such as St. Mungo's, Thames Reach and CGL claimed they had 'no alternative' but to cooperate with ICE teams because 'rough sleeping is harmful and dangerous' and 'people not from the UK may not have entitlements to any benefits [sic]'.⁴ In practice, working with the Home Office was often written into contracts drawn up between local authorities and charities for the provision of homelessness outreach services.⁵

Rough sleeping is undoubtedly dangerous and welfare restrictions have indeed made it more difficult for councils and commissioned services to support EU rough sleepers. However, the consequences of the sector's complicity in a homelessness policy that sought to remove homeless people from the streets at all costs have been catastrophic, both in terms of individual outcomes and the broader trust of non-UK nationals in support services.

The reasons behind homelessness organisations' failure to effectively support homeless EU citizens and the active participation of parts of the sector in rights violations are complex. A detailed analysis would need to look beyond policies and discourses around migration and Brexit to consider the implications for homelessness and rough-sleeping services of audit-, target- and competition-driven approaches to council and third-sector governance.⁶

It would also need to examine some fundamental assumptions underlying UK homelessness provision. Ways of working with marginalised people that are grounded in paternalistic ideas about their 'best interests' have been proved to be unjust and ineffective. Since notions of 'best interest' are culturally freighted, such approaches are arguably least useful when applied to foreign nationals. 'Deficit' models of homelessness (which assume that people become homeless primarily as a result of personal characteristics or bad decisions they have made) and approaches aimed at 'responsibilizing' poor people to change their behaviour have led homelessness organisations into oppressive ways of relating to rough sleepers.⁷

The complicity of local authorities and some homelessness charities in rights abuses can also be linked to a tendency to conceive of rough sleepers technocratically as a 'population' to be managed rather than as rights-bearing individuals and communities. The sector's stated concern for 'person centredness' has not always found reflection in a practical commitment to respect for homeless people's personal autonomy and collective interests.

A detailed analysis of these crucial issues is beyond the scope of this report. Instead, and looking forward, we want to highlight three basic principles derived from our research and casework that might underlie a more just and effective approach to work with homeless EU citizens after 30 June 2021. Given that the legal distinction between EU and non-EU citizens is of diminishing importance under the UK's post-Brexit immigration regime, the principles outlined could also be applied to the homeless sector's work with non-UK nationals more broadly.

1 Support for homeless non-UK nationals must be grounded in an expansive conception of rights

Homelessness organisations must put rights at the centre of their work with homeless EU citizens. At the same time, they need to be mindful that rights frameworks are of limited utility where human, civil and social rights are narrowly equated with legal ones.

The law is not always just: for instance, despite most of the civil and political rights enshrined in the European Convention on Human Rights being given effect in UK law through the Human Rights Act 1998, these rights are not always upheld in practice. Other rights which many consider self-evident and which may be protected by international covenants (e.g. the social right to shelter or the right to free movement) are not guaranteed in UK law.

The law, moreover, is not set in stone: many current rules around e.g. non UK-national eligibility for benefits are relatively new. Homelessness organisations must be prepared to support homeless people to access their legal rights *and* assert rights which are not recognised in law but ought to be.

The law is not just for lawyers: homelessness workers should have at least a basic understanding of statutory mechanisms for challenging negative decisions made by statutory agencies (e.g. mandatory reconsideration for benefits, suitability reviews in housing cases). They need to operate in an awareness that public bodies make unlawful decisions extremely frequently and see challenging unlawful 'gatekeeping' (e.g. agencies not answering the phone, people being passed from pillar to post, requests for unobtainable evidence) as part of their role. They need to understand what kind of legal work can be done by anyone (including them) and in which cases (e.g. immigration) they will need to seek specialist advice on behalf of service users.

A rights-based approach will require more cooperation between homelessness workers and solicitors, legal advisers, activists, rights practitioners and trade unions. Organisations working with homeless non-UK citizens will need to develop legal resource bases and ensure frontline staff are kept up to date about the implications of key policy developments. The homelessness sector will need support from the human-rights, legal and advice sectors if this is to be achieved.

2 Policy and commissioning must be grounded in a commitment to basic principles including universal provision and data protection

As well as resourcing and empowering frontline workers to assert the legal rights of homeless people, policy makers, commissioners and managers in commissioned services must ensure that specialist and overarching homelessness and other relevant provision (e.g. social care, substance misuse support) is designed, implemented and evaluated in a way that reflects a commitment to upholding the human, civil and social rights of non-UK nationals.

This would mean councils and commissioned charities committing in principle to providing adequate shelter and basic-needs support to all homeless people *regardless of immigration status*. In the current climate, some of this provision is likely to have to be resourced outside of statutory frameworks. Where local authorities and commissioned providers believe it is impossible for them to uphold the basic rights of non-UK nationals for legal or financial reasons, they must be prepared to challenge publicly the systems and decision making responsible (e.g. UK immigration law and policy, deficiencies in core funding).

Homelessness policy and commissioning must reflect a commitment to protecting people with insecure immigration status from the worst effects of the 'hostile environment'. This means '[never] cooperating with the Home Office to facilitate the removal, deportation or loss of rights of individuals experiencing homelessness [and] respecting the rights of whistleblowers and of workers to down tools to avoid [doing so]'.⁸ Local authorities and charities must robustly 'firewall' the data of homeless people against use for immigration-enforcement purposes.⁹ Upper-tier local authorities such as the GLA may also have the power

to influence whether data-sharing for immigration-enforcement purposes takes place between the police and the Home Office.¹⁰

Commissioners must fund specialised, rights-focused and community-led provision for Roma EU citizens. Roma people are disproportionately represented among EU rough sleepers. They have often migrated after experiencing racism and rights abuses in their countries of origin; many continue to encounter structural racism, and discrimination in the UK, including around access to public services.¹¹ Yet there is a lack of specialised or culturally appropriate service provision for homeless EU citizens of Roma origin. In 2016, a report by the Roma Support Group found that there was ‘no defined strategy for supporting Roma rough sleepers’ in London and that commissioned services did not employ enough speakers of community languages.¹² Homeless people of Roma origin report prejudice and criminalisation on the part of statutory agencies and some support services.

Councils and commissioned charities need to be prepared to push back against both racist border policies and the ongoing ‘race to the bottom’ in social provision. Where local authorities are unwilling to do this, homelessness charities should decline to enter into service-provision relationships with them. Local-authority and central-government funding should not be accepted or offered on either the explicit or tacit understanding that statutory decisions, policies and practices will not be challenged. By a similar token, where charities have a track record of sharing information for immigration-enforcement purposes, local authorities should secure alternative provision of outreach services.

Finally, councils must re-evaluate their relationships with private providers (including integrated security firms such as G4S and Serco) who profit from the UK’s border regime.

3 The sector must have a clear agenda for social change

The sector’s humanitarian and pragmatic concern to reduce the number of people sleeping rough needs to be allied to an explicit analysis of the systemic causes of migrant destitution and an agenda for social change.

Deficit-based and technocratic approaches to rough sleeping have mystified the causes of non UK-national homelessness. The key drivers of destitution among EU citizens are not ‘personal choice’, organised trafficking gangs or the purportedly ‘anti-social’ instincts of negatively racialised populations. The sector must attend to structural issues such as hyper-exploitation in the labour market, the legal exclusion of some people from benefits, ‘gatekeeping’ by statutory agencies and the UK’s broken housing and welfare systems.

Recognising that non UK-national homelessness stems from political choices and broader inequities in society and the economy is far from an academic exercise. On the contrary, it is vital if policy design is to flow from an understanding of the factors that keep people on the streets rather than from the ideological agenda of central government.

Such policies might range from the strategic commissioning of immigration advice and trauma-informed psychotherapy and counselling to the large-scale resourcing of NRPF accommodation and rights-based employment support for precarious workers. In the short term, sector advocacy around migrant destitution will need to focus on defending EU citizens’ right to remain after Brexit and dismantling the NRPF regime. But homelessness organisations must also stand up for workers’ rights, civil liberties and the decommodification of housing.

Parts of the homelessness sector are yet to confront their own history of cooperating with unjust policies, including the deportation of rough sleepers. There is also a need for a more general reflection on the hazards involved in the charity sector’s growing reliance on local-government funding and assumption of quasi-governmental functions. The sector must examine its complicity in political and media discourses (around, for example, migrant ‘illegality’ and ‘antisocial behaviour’) that have been used to justify rights abuses or as a veil for nativist or anti-poor social policies.

The sector must reflect critically on the way it works with and thinks about non UK-national ‘service users’—and the power relations at play. ‘Co-production’¹³ and ‘service-user involvement’ must be meaningful rather than tokenistic.

Some large charities would do well to reach back to the radical values that inspired their foundation; they might also learn from those doing social justice-oriented work around homelessness and migrants’ rights in

the present. Grassroots unions and housing activists offer many of the best models of this kind of praxis: groups such as Housing Action Southwark and Lambeth (HASL) foreground the structural factors contributing to migrant homelessness and the voices of affected individuals and communities, situating both within the context of struggles for the ‘right to the city’.

Such a radical reorientation in the way the sector thinks, acts and communicates about migrant homelessness may be necessary to address the sense of powerlessness felt by many workers who dedicate themselves to supporting non-UK nationals only to see the problems faced by their service users getting worse—with no end in sight.

Endnotes to Chapter 6

- 1 O’ Brien (2021) *Between the devil and the deep blue sea: vulnerable EU citizens cast adrift in the UK post-Brexit*, *Common Market Law Review*, 58: 431-470.
- 2 Your ability to challenge injustice is under threat, *Liberty*, 20 November 2020. Accessible via: <https://www.libertyhumanrights.org.uk/issue/your-ability-to-challenge-injustice-is-under-threat/>
- 3 See e.g. Morgan (2020) *Third-Sector Workers’ Grievances Point to the Shortcomings of the Charity Sector*, *Novara Media*, 10 February 2020. Accessible via: <https://novaramedia.com/2020/02/10/third-sector-workers-grievances-point-to-the-shortcomings-of-the-charity-sector/>; and ‘Stand against the rough sleeping Immigration Rules’, Homeless Link. Accessible via: <https://www.homeless.org.uk/stand-against-rough-sleeping-immigration-rules>
- 4 See e.g. Radojev, *Charities accused of ‘collaborating’ with government on deportations*, *Civil Society*. 8 March 2017. Accessible via: <https://www.civilsociety.co.uk/news/non-profit-accuses-charities-of-collaborating-with-government-on-forced-deportations.html>
- 5 See e.g. City of Westminster (2015) ‘Specification: Lot 1 - contract for the provision of rough sleeping street facing outreach & assessment team’. Obtained by FOI.
- 6 See Evans, Richmond & Shields (2005) *Structuring Neoliberal Governance: The Nonprofit Sector, Emerging New Modes of Control and the Marketisation of Service Delivery*, *Policy and Society*, 24:1, 73-97.
- 7 Bullen (2015) *Governing Homelessness: The Discursive and Institutional Construction of Homelessness in Australia*. 32(2): 218-239.
- 8 See the ‘Support not deport’ charter proposed by a coalition of campaign groups and trade unions. Accessible via: <https://cdn.iwgb.org.uk/bucket/Charity-Worker/support-not-deport-charter.pdf>
- 9 On data sharing in homelessness services more generally see Kapica, Shallcross, Kemp, Goffe and Taylor (2020) *Data rights and people experiencing homelessness: improving trust and empowerment*. Connection at St Martin’s-in-the-Field.
- 10 Morris (2020) *Sanctuary Cities: how regional mayors can protect victims of crime with insecure immigration status*. Institute for Public Policy Research. Accessible via: <https://www.ippr.org/research/publications/sanctuary-cities>
- 11 House of Commons Women and Equalities Committee (2019), *Tackling inequalities faced by Gypsy, Roma and Traveller communities*, Seventh Report of Session 2017–19. Accessible via: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/360.pdf>
- 12 Felja and Greason (2016) *Rough sleeping Roma in the City of Westminster*, Roma Support Group. Accessible via: <https://www.romasupportgroup.org.uk/our-research.html>
- 13 ‘[T]here should be real power sharing. Open the doors so that working together does not stop at a certain point – if decisions are made behind closed doors, this isn’t real co-production. If some doors are closed, be honest about that from the beginning so that everyone knows where they stand. Working together should mean being able to make decisions together and not just having discussions’. Homeless Link (2017). *Co-Production – working together to improve homelessness services: Overview of key ideas and principles*. Accessible via: https://www.homeless.org.uk/sites/default/files/site-attachments/Introducing%20Co-Production%20March%202018_0.pdf

Conclusion

Marginalised EU citizens have tended to be written out of accounts of both homelessness and the UK immigration system. This report has attempted to write them back in at a vital moment, with Brexit threatening the 'large-scale disentanglement' of Europeans living in the UK.¹

Covid-19 has highlighted how structural forces continue to make it impossible for some people to find a sustainable route out of poverty. Hostile immigration and welfare regimes combine with broader social and economic injustice to disproportionately expose certain classed and racialised groups to destitution, hyper-exploitation and abuse.

The rights violations faced by homeless EU citizens in a Brexit context cannot be understood in isolation. They are tightly linked to those experienced by (among others): non-EU migrants—particularly those with insecure immigration status or subject to an NRPF condition; people of colour; women, girls and others fleeing abuse; UK citizens who are working-class, insecurely housed, badly paid or precariously employed; people with health problems or care and support needs; and those experiencing psychological distress.

Anti EU-migrant social policies and the punitive border regime into which EU citizens are currently being integrated as a result of Brexit do not simply reflect the xenophobia of the present political moment. Welfare chauvinism and a classed and racialised hierarchy of rights also support 'the radical commodification of migrants as pure labour power'² by helping to keep large numbers of workers poor and precarious. The human costs of this system of 'differential inclusion' are off the scale.³

Legal action alone will not solve these problems. There is a need to robustly contest prevailing narratives around non UK-national destitution, to cascade practical knowledge of rights and entitlements to marginalised people, to amplify the voices and experiences of a group (non UK-national rough sleepers) whose presence on the streets continues to be met with stigma, and to campaign for root-and-branch changes to social and economic policy at a local and national level.

If it is serious about defending the rights of EU citizens after Brexit and Covid-19, the homelessness sector needs to develop a positive vision of what a more just society would look like. It might start by throwing its weight behind universalist appeals to the social right to shelter and a decent standard of living.

Endnotes to Conclusion

- 1 O' Brien (2021).
- 2 Oliveri (2012) Migrants as activist citizens in Italy: understanding the new cycle of struggles, *Citizenship Studies*, 16 (5-6): 793-806. See also Dickson & Rosen (2020) 'Punishing those who do the wrong thing': Enforcing destitution and debt through the UK's family migration rules. *Critical Social Policy* (Online First).
- 3 Mezzadra & Neilson (2013) *Border as Method, or, the Multiplication of Labor*, Durham, NC: Duke University Press.



**Public Interest
Law Centre**

17 Old Ford Road, London E2 9PJ

Phone: 0203 877 0867

Email: office@pilc.org.uk

Web: www.pilc.org.uk