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Rt Hon Sajid Javid MP
Home Secretary
2 Marsham Street
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27 February 2019

Dear Secretary of State,

EU Settlement Scheme

We would like to thank you for appearing before the EU Justice Sub-Committee on 22 January, and also your officials for facilitating a visit by representatives of the Committee to the Home Office's EU Settlement Resolution Centre (SRC) in Liverpool on 14 February.

As you know, the EU Justice Sub-Committee has a long-standing interest in the subject of EU/EEA citizens' rights, post-Brexit. We first highlighted our concerns in this area in our report *Brexit: acquired rights*, published in December 2016, and we have returned to the subject on several subsequent occasions. We recently met with representatives of embassies from EU/EEA countries and the European Commission, who are in regular contact with community groups and citizens. We have encouraged them to keep us up-to-date with issues, about which we may write to you again in future.

Those of us who visited the SRC were impressed with the way that it was organised and resourced, and that the ethos at the Centre was positive. We are writing because we still have several concerns about the EU Settlement Scheme ('the Scheme') which the Government is now in the process of rolling out. We see several major risks in the Scheme as currently constituted, that could lead to EU/EEA nationals missing out on their settlement rights and could plunge the UK's immigration policy into another entirely avoidable scandal.

We would like to highlight four principal areas where we believe that more needs to be done: awareness of the Scheme; assistance with applications; physical proof of status; and transfers from pre-settled to settled status. Notably, a theme throughout these issues is whether the Government is doing enough to engage with vulnerable EU/EEA nationals resident in the UK (including the elderly, disabled, trafficked individuals and others), as well as those who are hard to reach and those who believe that their residency is secured simply by its long duration. We also have some more technical questions, listed at the end of this letter.

Our principal concerns

A. Awareness of the Scheme: Good communication, beyond electronic engagement

When we met you on 22 January, we raised our concerns about the tone of the social media-based advertising adopted by the Home Office over the Christmas period. To be frank, we agree with those who found the message conveyed by those Twitter advertisements to be ill-judged and objectionable. Moreover, it did not accord with your promises, made to us in June last year, that EU/EEA nationals in the UK would be made to feel welcome and wanted. We do not agree with your implication that the adverts could not offer both a welcoming message and factual clarity.

I am sure that you would agree that the initial imposition of a fee was not a welcoming signal, so the announcement of its abolition was widely appreciated. However, it does not appear to have been well co-ordinated across your Department; it is unfortunate that it was announced on the first day of the Public Beta trial, so that those currently applying are still having to pay an upfront fee and to then wait for their money to be refunded. For some people the refund is a burden, and administering it is adding to the Home Office's costs; but, more importantly, we have heard that for some applicants the cost of the application is a deterrent. It is imperative that the abolition of the fee is implemented immediately through the necessary legislation and that refunds are accelerated.

Looking forward to the time when the Home Office rolls out the Scheme for mass participation, it is essential that it uses not only the correct tone and message, but also the correct medium of communication. It is clear from our engagement with officials from EU/EEA countries that it is felt that online advertising is not going to be a suitable way of engaging with vulnerable and harder-to-reach citizens. This includes some elderly citizens who are long-standing UK residents, who resist the notion that they have to apply and who may not see online advertisements. It is therefore paramount that the Home Office commits to a wide-ranging campaign to reach out to all EU/EEA citizens living in the UK, including advertising in jobcentres, NHS facilities, universities and public transport networks, and via billboards, radio and television. Organisations with national profile such as the Citizens' Advice Bureau must be properly engaged and resourced and promoted as sources of advice. Engagement with local authorities will be vital, and we have already seen some examples where local authorities have produced much more sympathetic adverts, such as Tower Hamlets which uses the message "This is your home too" and spells out what EU/EEA nationals must do to secure their rights.

Without widespread and welcoming advertising, there is a risk that some EU/EEA nationals will not know that they need to apply, or will think that it is unreasonable to ask them to apply and will not know the consequences of failing to do so. The Government should be concerned about the danger of taking immigration enforcement action against EU/EEA citizens, in particular long-standing residents, and public perception of such enforcement.

B. Assistance with applications

We remain concerned by the Home Office's persistent emphasis on making applications online and providing evidence electronically (including using the Android app for passport verification and for providing additional evidence when automated checks do not suffice). Whilst these approaches are a welcome addition to the other routes that are available (by post, and in

person at Home Office buildings), the emphasis has worried potential applicants who lack access to the appropriate technology or who lack the necessary IT skills. Moreover, potential applicants are worried about the traditional routes: visiting a Home Office building entails time and costs; and posting important documents leaves them vulnerable for a period of weeks if asked to prove their identity, and for longer should the documents be lost in the post or in the Home Office.

These concerns about the application process apply to many citizens, not just those who are vulnerable or lack access to IT systems. We believe that the unprecedented nature of this Scheme, in which citizens are being required to register in order simply to continue living as they currently do (which is very different, for example, to deciding to apply for a passport) warrants an even more proactive approach by the Home Office. We welcome the deployment of centres where passports can be scanned, although there will not be enough of these centres, and awareness seems to be low amongst both EU/EEA nationals and their embassies and consulates in the UK. We also welcome the funding made available for community groups to assist vulnerable people making applications, albeit we have heard concerns about eligibility for that funding. However, these initiatives will not help the majority of applicants to navigate each part of application process.

We recommend that the Home Office provides accessible application centres for anyone who would like assistance with their application, including administrative advice about answering the questions and what type of evidence to select, and technical assistance with scanning passports or uploading other documentation. These centres could be mobile, visiting key locations including large employers' sites and rural areas that are not well served by public transport; or they could be located in key buildings (much like polling stations) in each constituency that is home to large numbers of EU/EEA nationals. The infrastructure and staffing would need be similar to that provided for elections: the aim is of a similar importance for citizens' rights.

Without a widespread and accessible network to provide assistance with applications, EU/EEA nationals will face unnecessary barriers to registering their right to remain in the UK; the SRC will use more resources than necessary in resolving cases; completion of the Scheme will take longer than anticipated; and some applicants will fail to acquire the status that they warrant, through no fault of their own.

C. Physical proof of status

We understand that, under the current Scheme, individuals granted pre-settled status or settled status will not be provided with any official documentation to prove their status, but rather will receive an electronic code. Whilst they will receive an email or letter informing them of the decision, this will not amount to proof of status. As we discussed with you on 22 January, we believe that it essential that individuals who are granted pre-settled or settled status have the opportunity to acquire a document or other hard copy form of evidence of their right to be in the United Kingdom. Physical proof of status is provided in a number of analogous situations for third country nationals (which EU/EEA citizens will be in future) such as permits for Indefinite Leave to Remain.

Hard copy documentation will be necessary for some people, particularly in circumstances where they are required to provide evidence of their immigration status to access services, employment and healthcare. We have heard concerns that people who wish to access services

and employment may be subject to discrimination when employers or service providers find it too complicated or troublesome to engage with electronic systems (or simply decide not to). Equally, some people may not be familiar with digital technology and should not be disadvantaged when they require services. We have also heard concerns about how EU/EEA nationals would provide evidence in unplanned interactions such as contact with the police or immigration authorities, or emergency admissions to hospital. Furthermore, we have heard concerns that a digital-only proof could still be used by people traffickers and illegal gangmasters to exert control over their victims.

We are concerned as to what will happen if there is ever a failure of these electronic systems (whether accidental or due to a cyber-attack), which could leave EU/EEA nationals in limbo, unable to assert their rights. We are also conscious of the historical experience of some EU/EEA nationals that makes them understandably nervous about trusting a government to hold the sole record of their status and hence to hold control over their rights. We firmly believe that physical documentation should be provided to the successful applicants.

Finally, there should be a separate advertising campaign to raise awareness amongst UK citizens and businesses about EU/EEA citizens' rights and the operation of the system.

Without physical proof of status, EU/EEA nationals living in the UK could find it hard in some circumstances to access services; and in the worst case they could find it difficult to prove their status in a future dispute with the Home Office. Given the clear parallels with lack of documents contributing to the Windrush scandal, and the fear that this causes for EU/EEA citizens, the Home Office must provide physical documentation.

D. Transfers from pre-settled status to settled status

There does not appear to be a systematic scheme to move people from pre-settled status to settled status. Instead, the onus appears to be on the individual to provide an update whenever their details or circumstances change and to then re-apply for settled status when they can prove residence for a five-year period.

Our concern is that having obtained pre-settled status, individuals may not realise that they would then have to re-apply, potentially many years later. To ensure that the Scheme operates fairly and humanely, we would suggest that: (a) the Home Office undertake to notify individuals at the time when they would likely be eligible to re-apply for settled status; and (b) the Home Office show some flexibility in circumstances where vulnerable individuals, who have been granted pre-settled status, then fail to re-apply for settled status. We would be very troubled to see the attempted removal of individuals who would otherwise be entitled to settled status, simply because they failed to make an application in the requisite timescale.

We understand that all citizens who are granted pre-settled status will be treated the same, regardless of how many years of residency to that point they can prove: that is, they will all be given a five year "grace period" in which to reach five years' worth of proof of residency, and they will be able to re-apply at any time once they think that they have accumulated the remaining evidence. We can foresee there being cases with gaps in the evidence or difficulties in retrospectively proving continuous residence. We would like you to confirm that the SRC will apply the same principles as for the initial applications: namely, to look for reasons to approve the move from pre-settled status to settled status, as opposed to looking for reasons to reject that move.

Without a scheme to move people from pre-settled status to settled status there is a serious risk of simply postponing rejections of people’s applications for settlement rights, undermining the Government’s aim in creating pre-settled status in the first place.

We would like a response to the four key areas of concerns within the usual ten days, along with answers to the following more technical queries.

1. Only 1% of those people who went through the PB2 trial were categorised as vulnerable, and yet there are estimates that 10-20% of the EU/EEA population in the UK may be classified in this way (depending upon the definition). We understand that many of the individuals who went through the PB2 trials received help in person. How will such help be applied to such a large number of people who may have difficulties with some (or all) parts of the application process?
2. As noted above, we understand that there is some funding available for community groups to assist vulnerable applicants. We have heard complaints about how this works in practice, such that various community groups are not eligible to apply. What are the requirements, how many applications have you received, and which organisations have actually been funded?
3. We have been told about issues with inputting data, for example the system does not accept telephone numbers that are longer than those registered in the UK. How prevalent is this issue, and will it be resolved before the final Scheme is rolled out? Are applicants expected to have a UK-based telephone number, and if so why?
4. We are aware of reports about issues with recording names, including the application form lacking space for multiple surnames and the system storing some names using a non-Latin alphabet. Such issues could cause problems when comparing the records to other forms of identification. How many such issues are you aware of, and will they all be resolved before the final Scheme is rolled out?
5. We have been told that self-employed people who may need to provide several documents to cover the time period face limits on the number of documents they can upload. If they seek to combine these (which requires a certain level of IT skills) they then face a limit on the size of uploaded files. How prevalent is this issue, and will it be resolved before the final Scheme is rolled out?
6. We have been told that the facial recognition system does not work reliably for children or those whose appearance has changed (for example by growing or shaving a beard). How prevalent is this issue, and will it be resolved before the final Scheme is rolled out?
7. We understand that applicants can only update their details electronically, for example if they need to change the phone number on which they can be contacted to discuss their application. What is done to facilitate such updates for people who are not computer literate or who lack access to the relevant equipment?
8. As noted above, we can foresee people having difficulties with evidence for upgrading from pre-settled status to settled status, and that some of these issues could be avoided by providing reminders at key stages. For example, if someone accumulated five years’ of evidence but did not re-apply immediately and instead re-applied when prompted by advertisements at the end of the five year “grace period”, they might discover that

some evidence had been lost in the interim. Or they might only re-apply after having been absent from the UK for long enough to breach the definition of continuous residence, such that the previous five years' of evidence would be negated. What prompts will the Home Office provide to citizens to apply for settled status, including personalised prompts based on their particular circumstances?

9. We remain concerned that two immigration schemes are operating in parallel. We believe that there is the potential for some people to be removed on the grounds of non-exercise of Treaty Rights even after they have applied for settled status under the Scheme. For what purposes does the Home Office currently plan to use data received under the EU Settlement Scheme, and what safeguards will be put in place to prevent additional uses in future?
10. The magnitude of the issues that we have identified will depend upon the number of people affected, but there is no accurate data about the numbers of EU/EEA citizens in the UK. What plans do the Home Office and the Office for National Statistics have for obtaining new and accurate estimates of the total number of EU/EEA citizens in the UK? Given the large numbers of people who are likely to obtain settled status and hence be eligible to apply for UK citizenship, will the Home Office have sufficient resources to cope with a potential future upsurge in citizenship applications?
11. We have heard of cases where data held by DWP is not interpreted in a manner that supports an application, in contrast to other examples where data held by HMRC is interpreted "generously" in support of an application. What is being done to maximise the value of data held by HMRC and DWP for approving applications as opposed to rejecting them?

I am copying this letter to Sir William Cash, Chair of the European Scrutiny Committee; Jessica Mulley, Clerk to the European Scrutiny Committee; Rt Hon Yvette Cooper MP, Chair of the Home Affairs Committee; Rt Hon Harriet Harman QC MP, Chair of the Joint Committee on Human Rights; Arnold Ridout, Legal Adviser to the European Scrutiny Committee; Les Saunders, Department for Exiting the European Union; and Alexandra Bernal, Departmental Scrutiny Coordinator.

Yours sincerely
A. Bernal

Baroness Kennedy of The Shaws
Chairman of EU Justice Sub-Committee