

Imagining the Impossible? Fears of Deportation and the Barriers to Obtaining EU Settled Status in the UK

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In early 2021, over 5 million European Union (EU) citizens had applied for settled status to secure their right to continue to live, work and study in the United Kingdom (UK) after the country's withdrawal from the EU (Brexit). In 2018, the Home Office launched a Statement of Intent to implement an application process for EU citizens through its EU Settlement Scheme. In the period leading up to Brexit, the UK government assured EU migrants that their existing rights under EU law would remain essentially unchanged and that applying for settled status would be smooth, transparent and simple. However, the application process has resulted in some long-term residents failing to obtain settled status, despite providing the required information. Based on qualitative in-depth interviews with 20 EU migrants living in two major metropolitan areas in Northern England, this article discusses the significant barriers which EU citizens face in the application process. This situation particularly affects the most vulnerable EU migrants with limited English-language skills and/or low literacy levels as well as those who are digitally excluded. The study contributes to the growing body of research on the consequences of Brexit for vulnerable EU migrants in the UK, focusing specifically on Central and Eastern European migrants.

Keywords: EU Settlement Scheme, settled status, deservingness, EU migrants, homelessness

Introduction

In the first few months of 2021, 5 million people have already applied for settled status (Carey, Tanner and Gamester 2021), whereas in 2019, 3.6 million people with the nationality of a member state of the European Union (EU) were estimated to be living in the United Kingdom (UK) (ONS 2019b). Unlike other European states, the UK does not have a system of compulsory registration for residents. Therefore, no reliable statistics on the total numbers of EU migrants in the UK exist, although it is possible to estimate the annual flows of economically active EU migrants based on the National Insurance Number registrations (D'Angelo and Kofman 2018). One of the contentious issues during the negotiations preceding the

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UK's withdrawal from the EU (Brexit) was the rights of EU citizens after EU law ceased to apply to the UK in accordance with Article 50(3) of the Treaty on European Union. Concerns were raised over the post-Brexit legal status of EU citizens and the procedural mechanisms needed to secure the judicial protection of their rights after the Court of Justice of the European Union (CJEU) is no longer able to deliver preliminary rulings on EU law questions arising in proceedings before the UK courts (Smismans 2018). In order to implement such a regime in accordance with the EU–UK Withdrawal Agreement, in June 2018 the government launched a policy paper on the new registration system for EU citizens (known as the EU Settlement Scheme or EUSS) (Home Office 2018). Essentially, this system replaced the documents issued to certify permanent residence in a host member state under Article 19 of the Citizenship Directive (2004/38/EC), which gives effect to the free movement of persons under EU law. The policy paper covers a range of technical topics, outlining the eligibility criteria and advice on how to apply.

Our research evaluates the experiences of EU migrants settled in two metropolitan areas in Northern England with the EUSS. We argue that the analysis of their experiences is a way to explore the exclusionary nature of the settled status application process. Barnard, Costello and Fraser Butlin (2019) note that, for applicants who are aware of this scheme, hold one of the accepted ID documents, have a documented history, access to a smartphone meeting the specifications and the necessary IT and language skills, the application process has been relatively simple, taking as little as 15 minutes to complete. Statistics indicate that a vast majority of the UK's 1.5 million CEE migrants live in England (ONS 2019b), most of whom had applied for settled status by the end of 2019 (Home Office 2020). Additionally, smaller numbers of CEE migrants have applied for settled status in Wales, Scotland and Northern Ireland (*ibidem*). However, while the academic literature in this area is still emerging (e.g., Botteril, Bogacki, Burrell and Hörschelmann 2020; Tomlinson 2020; Tomlinson and Welsh 2020; O'Brien 2021), there is some evidence that many EU migrants are experiencing difficulties with their applications (Barnard and Costello 2021) and that, rather than having settled status, many EU migrants hold pre-settled status, which may create the risk of a significant number of individuals being left without a legal basis for remaining in the UK after the expiry of five years (Tomlinson 2020).

Our interview data reveal that not all applicants fall into the category of highly mobile, tech-savvy, professional and aware EU citizens. Although many applicants may find the process relatively easy and trouble-free, others have experienced difficulties in using the Home Office app and have been requested to provide additional evidence to support their applications. Additionally, there are still some EU citizens who are taking their time to make an application. For instance, the authors have frequently engaged in conversations with fellow EU citizens who thought that they and their family members were ineligible to apply because they had been resident in the UK for a relatively short period of time or because they did not yet have all the required paperwork such as council-tax bills. However, many of these EU migrants will risk becoming undocumented if they lose their right of residence in the UK as a result of their non-application for the EUSS.

Our research is therefore timely, topical and important because it gives voice to EU migrants through detailing their experiences; our objective is to generate knowledge that informs and influences national and local governments' policy and practice. The authors have contributed to the shaping of the settled-status application process via a migration advisory group established at the local government level and the views of this group have been communicated to the Home Office. Based on qualitative research, namely individual in-depth interviews, this article discusses the significant barriers which some EU migrants face with the EUSS, including the challenge of providing evidence of continuous residence. We use the experiences of two groups of EU migrants, (i) low-skilled migrants from Central and Eastern Europe (CEE) (referred to in this article as 'G1') and (ii) students and skilled migrants from several EU

member states (referred to as 'G2'). Out of whom G1 faced considerable barriers with the application due to their precarious immigration status. The term 'precarious' in the context of our study means the insecurity arising from having precarious immigration status and concerns regarding access to adequate support services – e.g., health-care (Rogers 2017).

Under the 'hostile environment' policy the UK has required various public and private actors, ranging from hospitals and landlords to banks and schools, to actively check that individuals have the required visas or work and residency permits (Smismans 2018: 450). Undocumented EU migrants will therefore lose all residence-based entitlements – including access to free secondary healthcare (e.g., hospital treatment) and benefits – and may be asked to reimburse payments received. Although undocumented migrants currently retain access to free primary healthcare services – e.g., consultation with a general practitioner (GP) or a nurse (Walsh 2020b) – they often also lose their jobs because their employers may be fined, their bank account may be frozen and they may be asked to leave the UK voluntarily or face deportation without the right to appeal. While the hostile environment concerns have disproportionately affected non-EU migrants and non-white British citizens, in the context of Brexit debates, much of the stigmatisation of CEE migrants has centred on seeing them essentially as 'benefit tourists' (Burrell and Schweyher 2019). Additionally, some Brexit debates have had distinctly racial and colonial overtones, exemplified by an increasing intolerance of equality and diversity (Buelتمان 2020; Burrell and Schweyher 2019; El-Enany 2020; Prabhat 2018). We refer to the notion of 'deservingness' (Monforte, Bassel and Khan 2018) as a discursively constructed concept that the government uses to justify its policy on settled status. Burrell and Schweyher (2019) note that the EUSS is accompanied by moral overtones of 'deservingness' and warnings against criminal activity. Our research therefore aims to contribute to the wider academic discussion on the inclusive/exclusive logic of citizenship (Tyler and Marciniak 2013).

EU Settlement Scheme

In order for migrants with the nationality of one of the EU member states (excluding Irish citizens), Iceland, Liechtenstein, Norway or Switzerland and their family members to continue to live, work and study in the UK after Brexit, it is essential for them to apply for settled status. The EUSS is designed to be consistent with Article 18 of the EU–UK Withdrawal Agreement, which entered into force on 1 February 2020, and which contains extensive details on the practicalities of attaining settled status, including the requirement for the relevant administrative procedures to be 'smooth, transparent and simple' and that unnecessary administrative burdens be avoided (Barnard and Leinarte 2019). Article 18 further stipulates that the application forms should be short, simple and user-friendly, applications by families should be considered together and should be free of charge or not exceed the fees imposed on British citizens. Additionally, EU citizens who have an existing permanent-residence document can simply swap this to the new status, subject to criminality and ID checks. However, what is different compared to the right of residence under the Citizenship Directive is that, while EU citizens were generally not required to prove their right to reside in the UK before the introduction of the EUSS, they must now apply for settled status (Smismans 2018). Additionally, criminality and security checks are carried out systematically under the EUSS (Barnard and Leinarte 2019). Moreover, the Withdrawal Agreement necessitates that judicial and administrative redress be available for any applicants affected by the authorities' decisions. Under Article 39 of the Withdrawal Agreement, the right of residency under settled status is permanent unless the EU citizen leaves the UK for five years.

In line with the Withdrawal Agreement the supervision and governance of EU citizens' rights remained unchanged during the transitional period up to 31 December 2020. During this period, the UK was bound by EU law and the CJEU had the competence to oversee the respect of EU law in the UK (Porchia 2019). Although, during the transitional period, EU citizens' rights and immigration rights were no longer subject to EU law, in practice the provision for these rights under EU law continued until the end of this period (*ibidem*). Under the European Union (Withdrawal Agreement) Act 2020, EU citizens who qualify for settled or pre-settled status can enjoy these rights beyond the transitional period. The difference between settled and pre-settled status is that individuals who have not yet fulfilled the requirements of five years' continuous residence in the UK by 31 December 2020 will obtain pre-settled status, a time-limited form of leave to remain, enabling them to reside for a further five years (McHale and Speakman 2020). Once qualified, they must apply for settled status. As such, settled status can be argued to mirror the protection guaranteed in Article 16 of the Citizenship Directive, according to which the right of permanent residence is acquired by EU citizens and their family members who have resided legally in the host member state for a continuous period of five years. According to Article 17 of the Withdrawal Agreement, individuals can change their status (e.g., from being a worker to being a student) in the period prior to acquiring settled status. Therefore, an applicant does not need to have been in full-time employment in the UK in order to qualify (Barnard and Leinarte 2019). This is important for our research since not all our interviewees were employed during the 5-year period of their residence. Although the only requirement for EU citizens applying for residence documentation is to be living in the UK by a certain date, subject to criminality checks (Spaventa 2020), acquiring settled status is not as simple as it may seem.

According to the UK government (2020), individuals who have secured settled or pre-settled status will be able to continue to work in the UK, access healthcare under the National Health Service (NHS) in the same way as under EU law, enrol in education or continue studying and access public funds – e.g., benefits and pensions, subject to eligibility. Since resident migrants' access in these domains is not explicitly governed by immigration legislation but by residence conditions about settlement and the place of ordinary or habitual residence, fulfilment of these conditions impacts on EU citizens' access to, for example, the NHS and post-compulsory education (Oliver 2020). Legal scholars have concluded that, depending on their immigration status, many EU citizens risk the immediate loss of all entitlements to work, healthcare and benefits – and ultimately face deportation – if they fail to secure either settled or pre-settled status (Smismans 2018). Before 1 January 2021, the residence requirement for anyone who arrived in the UK to work was three months under Article 6(1) of the Citizenship Directive, according to which 'a valid identity card or passport' is sufficient to guarantee entry. However, this is no longer sufficient, since the right to continue to work and live in the UK is no longer simply a matter of showing a passport (Portes 2016) but is dependent on the acquisition of settled or pre-settled status.

There is evidence that employers and banks have requested proof that EU citizens have applied and secured settled status even before the expiry of the deadline for applications on 30 June 2021 (Barnard *et al.* 2019; Bueltman 2020). Private and public entities' checks on the right of residence are hardly unsurprising, considering the UK government's attempts to restrict access to social advantages by amending the secondary legislation governing this area. For instance, in 2013, the government replaced various income-related benefits, including Jobseeker's Allowance, Housing Benefit, Child Tax Credit, Income Support and Working Tax Credit, with a single means-tested benefit called Universal Credit for applicants both in and out of work (Explanatory Memorandum to Universal Credit Regulations, SI 2013/376). Further, due to legislative changes introduced in 2019, the government made access to certain types of social security benefits, housing assistance and tax credits for those individuals who have

pre-settled status conditional upon their ability to demonstrate that, during their stay in the UK, they have exercised EU free-movement rights – for example, as a worker under the Treaty on the Functioning of the European Union. The new rules were introduced by the Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019 (SI 2019/867); the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) (EU Exit) Regulations 2019 (SI 2019/861), and the Social Security (Income-Related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (SI 2019/872). Since benefit reforms have been directly linked to increases in food-bank usage, destitution and homelessness (Carvalho, Chamberlen and Lewis 2020; O'Brien 2015), there are fears that applicants who have obtained pre-settled status are likely to be vulnerable to future changes in the immigration rules (Tomlinson (2020).

Although not all individuals applying for settled status arrive in the UK with the main intention of working (Martinsen, Pons Rotger and Sampson Thierry 2019), nearly half of EU citizens migrating to the UK in 2019 were seeking or commencing permanent employment (Vargas-Silva and Walsh 2020). Under the Withdrawal Agreement, many of the rights of workers and job-seekers remained the same in the transitional period. Article 12 of the Agreement enshrines the principle of non-discrimination, prohibiting any discrimination against EU citizens and their family members on the grounds of nationality in the host state and the state of work (Barnard and Leinarte 2019). Under Article 22 of the Agreement, the family members of EU citizens, regardless of their nationality, will continue to have access to employment as recognised in Article 23 of the Citizenship Directive. Similarly, under Articles 27–29 of the Withdrawal Agreement, recognition of professional qualifications, e.g., under the Professional Qualifications Directive (2005/36/EC) will continue in the future.

Although there are no language proficiency requirements for applying for settled status, some of the reasons for the failure to apply are linked to the applicants' inability to understand the English language. The Home Office has identified individuals 'with limited English and/or low levels of literacy in their own language' as particularly vulnerable (ICIBI 2020: 25). However, language skills or low levels of literacy are not the only barriers preventing EU migrants from applying for settled status although the reasons are multifaceted. The Home Office recognises that various groups are considered vulnerable, including some elderly applicants, disabled people, individuals with physical or mental impairment, people who may be digitally or socially excluded, victims of domestic violence, modern slavery or human trafficking, those without a fixed abode (e.g., homeless people and the Roma and Traveller communities) and children under the age of 18 in foster or local authority care (2020: 50).

Therefore, there is no one easily identified, homogenous group of EU migrants who are likely to be at risk of losing their immigration status in the UK. In order to provide vulnerable EU migrants with practical support with their applications, the Home Office has funded almost 60 organisations with qualified immigration advisors across the UK (2020: 54). While it is unknown how many EU migrants require support with their applications, approximately 10 per cent of adults in the UK are non-internet users (ONS 2019a). The fact that the EUSS application process and the evidence of settled status is entirely online could be a barrier for digitally excluded applicants (Tomlinson and Welsh 2020) since applicants do not receive a physical document of their status but 'an official electronic document accessible through credentials sent via email' (Tomlinson 2020: 218).

Critical analysis of the EU Settlement Scheme

Legal scholars and practitioners have been critical of the EUSS, arguing, for instance, that the new status is inferior to the rights enjoyed under EU law (Smismans 2018). It has been further noted that the full-scale

implications of the scheme are unlikely to be evident for several years at least (Yeo 2020) and, therefore, the government may be creating problems for EU citizens down the line as a result of its hostile environment (Burrell and Schweyher 2019). Judgments of the English High Court provide illustrative examples of this hostile environment. In 2017, the court found that the government's policy of seeking to deport homeless EU citizens discriminated unlawfully against these latter because the application of the policy involved systematic verification of the right to reside in the UK, thereby violating Article 14(2) of the Citizenship Directive (Gureckis 2017). In 2019, the court held that the government's 'right to rent' scheme, which required landlords to check the immigration status of their tenants under Sections 20–37 of the Immigration Act 2014, was incompatible with Articles 8 and 14 of the European Convention on Human Rights and discriminated against EU and non-white British citizens (Joint Council for the Welfare of Immigrants 2019). In February 2020, the court held that the Home Office's attempt to apply its 'deport first, appeal later' policy to EU citizens was incompatible with Article 27 of the Citizenship Directive (Hazeef 2020). Despite Gureckis (2017), a new legislative amendment that entered into force in December 2020 has meant that, under Part 9, Section 4 of the Immigration Rules, permission to stay may be refused or cancelled for homeless individuals (Lock 2020).

The 'Windrush scandal' serves as further evidence of the intentionally illiberal interpretation of immigration laws and Home Office guidelines (Burrell and Schweyher 2019; Smismans 2018). As described in the parliamentary report on the Windrush generation (Committee of Public Accounts 2019), since 2002, some 164 Commonwealth citizens with Caribbean heritage, who had an automatic right to settle in the UK between 1948 and 1973, were wrongly detained in the UK or at the border or removed from or refused re-entry to the UK, while others were wrongly advised that they had no access to housing, welfare benefits, driving licences or bank accounts after having lived in the UK for decades. An independent report recommended that the government conduct a full review of its hostile environment (Williams 2020). However, the denial of the rights of the Windrush generation and their children relates to the government's reluctance to enact a suitable system of registration and identity cards, the excessive burden of proof requirements and significant administrative errors (Smismans 2018), despite the fact that these people were 'British subjects, from British colonies, carrying British passports' when they arrived in the UK (Hewitt and Isaac 2018: 294).

Both legal practitioners and scholars worry that EU citizens who do not meet the conditions of settled status may become unlawful residents and be at risk of detention and removal from the UK in accordance with the Immigration Acts of 2014 and 2016 (Berry 2020a; Burrell and Schweyher 2019; Ruhs and Wadsworth 2018; Yeo 2020). Smismans (2018: 446) argues that the UK government had 'considerable leeway' to implement the legal framework for EU citizens' residence rights, implying that it could have chosen to grant permanent residence status to all EU citizens, who were legally resident under EU law, without imposing additional application criteria and putting the residence status of many EU citizens at risk.

Concerns have been raised about the eligibility for settled status for EU citizens who have lived in the UK for more than five years; however, the databases of the HM Revenue and Customs and Department for Work and Pensions may not hold evidence of their residence (Tomlinson 2020). Although settled status is granted based on the length of residence, rather than on, for example, a person's earnings, the Home Office app will not be able to recognise the continuous residence of individuals who have gaps in their income (*ibidem*). These concerns are linked to the ability of applicants to work outside home due to their gender and/or age (Burrell and Schweyher 2019). In such cases it will be difficult for applicants to prove their residence in the UK either because the electronic records on the government's databases may be incomplete or cover only recent years or, due to their personal circumstances, the government

may not have any electronic records of the applicants (The 3 Million 2019). The lack of electronic records has, indeed, been one of the major problems with the EUSS because many EU citizens, who are eligible for settled status, have been granted pre-settled status (Spaventa 2020). One such person is a government employee with over 20 years' work history in the UK (Coughlan 2019). This is largely because the EUSS relies on automated checks of government agencies' databases which may not necessarily contain the information that the applicants have yet accumulated five years of continuous residence. Concerns have also been raised over the perceived discrimination in the use of the algorithm-based automatic check mechanism and the inability of some of the applicants to use the Home Office app – which was initially available only for Android smartphones – because this excluded EU citizens who used other devices or who did not have a smartphone (Tomlinson 2020). Further, Yeo (2020) notes that there have been some considerable design flaws in the EUSS – for instance, initially applicants were not requested to provide information concerning the length of their residence in the UK. There is anecdotal evidence that the design flaws have made it difficult for immigration advisers to assist EU citizens in making their applications. This is because the Home Office has constantly changed the application system, making it challenging for immigration advisers to complete the applications for vulnerable EU citizens seeking their advice. Additionally, Tomlinson (2020) notes that outright refusals are not clearly recorded and that both settled and pre-settled status decisions are considered successful applications. There is also some evidence that during the pilot phase of the EUSS, EU migrants who had applied for social benefits in the UK found it more difficult to fulfil the requirements of the EUSS than those with continuous tax records (Godin 2020).

Kostakopoulou (2018) notes that, since the EUSS is the largest UK registration programme of its kind to date, the nature of the scheme is likely to imply challenges for its implementation, particularly in terms of the effectiveness of the scheme or the inability of EU migrants to apply for settled status. According to Yeo (2020), the fundamental problem underlying the EUSS relates to the complexity of application decisions and the fact that not all eligible EU citizens will apply – some EU citizens, who currently have pre-settled status, will not necessarily apply for settled status after they become eligible. Secondly, EU citizens will be unable to apply for settled status if they leave the UK for more than six months. In practice, EU citizens whose applications are unsuccessful or who fail to submit their application on time will lose all entitlements and will be forced to leave the UK (Carey *et al.* 2021; Smismans 2018; Yeo 2020). Since the EUSS contains no 'fall-back protection' which would enable an EU citizen to stay on a temporary basis or return to the UK in cases where they fail to secure settled status, the consequences of the inability to secure the new status are more severe than the inability to obtain a permanent residence document under EU law (Smismans 2018: 450).

Additionally, scholars have voiced their concerns that many rights originating from EU membership are likely to be under threat after the end of the transitional period. Guerrina and Masselot (2018: 319) note that Brexit 'carries a substantial risk to the interests of traditionally marginal groups (including women) who have hitherto been covered by the EU legal framework'. D'Angelo and Kofman (2018) anticipate that, once the judgments of the CJEU are no longer binding on the UK, the government will restrict access to employment and welfare benefits. The consequences of Brexit are more evident in the context of EU citizens who wish to migrate to the UK from January 2021; Section 4(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 removed, for example, the right for EU migrant workers to move to the UK to commence employment under EU law. Additionally, the 2020 Act could be used to make regulations which extend the immigration health surcharge, currently applied to non-EU citizens when seeking leave to enter the UK (Berry 2020b; McHale and Speakman 2020). Although workers' rights have long been at the top of the free movement hierarchy under EU law, due to

increasing labour market flexibility and job insecurity EU migrant workers are more likely to be concentrated in lower paid, less secure jobs with variable hours and are more likely to bear the brunt of labour-market fluctuations (O'Brien 2016). Additionally, many EU migrant workers in low-paid employment feel anxious about their future in the UK due to the inadequate access to decent sick pay (Rogers 2017). Moreover, UK governments have strongly resisted guaranteeing certain EU law rights – for example, equal treatment rights for agency workers and working-time limits. Signs of increased job insecurity were visible even prior to Brexit, when the Conservative government proposed so-called 'barista visas' for EU migrant workers which would secure a steady source of immigrant labour but only on the basis that these workers would be granted considerably fewer rights (*ibidem*). Additionally, some employers may take advantage of the 'deportability' (De Genova 2007) of undocumented EU migrants by offering them lower wages and inferior employment conditions (Ruhs and Wadsworth 2018: 828).

Expulsion of an EU citizen from the UK

The EU (Withdrawal Agreement) Act 2020, which implements into English law the rights of EU citizens as codified in the Withdrawal Agreement, makes provision for the deportation and the restrictions of the rights of entry to and residence of EU citizens in the UK (Berry 2020a). Section 9(1)(a) of the 2020 Act stipulates that the Minister can make such provision as s/he 'consider[s] appropriate' in order to implement restrictions on entry and residence found in Article 20(1), (3) and (4) of the Withdrawal Agreement. Although equal treatment continues to apply for EU citizens and their family members in fields such as employment, in criminal matters EU citizens will be treated differently to British citizens. Even though EU law did not offer a blanket ban on the expulsion of EU citizens or their family members, Article 27(1) of the Citizenship Directive protected them against arbitrary expulsion measures and offered heightened protection for long-term residents in the UK (Peers 2016b). However, there seems to have been significant differences between the EU's and the UK's approach to the deportation and exclusion of EU citizens from residence rights due to public order even before the end of the transition period. There is some evidence that the UK frequently sought to deport EU citizens when they were covered by the safeguards provided by the Citizenship Directive (Ryan 2017) because, in 2019, 68 per cent of individuals deported for criminal offences had the nationality of one of the EU member states (Walsh 2020a).

Under EU law a criminal conviction cannot automatically lead to expulsion but expulsion decisions must be made on an individual basis under Article 27(2) of the Citizenship Directive (Peers 2016a). However, Part 9, Paragraph 132 of the UK Immigration Rules permits the denial of applications for residence status on the grounds of prior criminal convictions or because the presence of the person in the UK is otherwise 'not conducive to the public good'. Additionally, sections 32–33 of the UK Borders Act 2007 impose an automatic deportation order on non-British citizens who have been sentenced to a period of imprisonment of a year or more or if the offence is otherwise classed as serious. This applies to all individuals who are long-term residents in the UK with indefinite leave to remain (Ryan 2017). However, the UK practice differs considerably from the protection provided by the Citizenship Directive, which guarantees against expulsions that have been designed to increase in correlation with the degree of integration of EU citizens and their family members in the host state (C-316/16 and C-424/16 *Vo-mero*, paragraph 44). Additionally, the procedural safeguards under the Directive are considerably higher than those provided by English law (Berry 2020a; Ryan 2017). It is, for instance, clear from the case law of the CJEU that, when member states consider an expulsion measure against an EU citizen, they have to consider the nature and seriousness of the offence, the duration of residence in the host

member state, the conduct of the person in the time that has passed since the commission of the offence and 'the solidity of the social, cultural and family ties with the host Member State' (C-145/09 *Tsakouridis*, paragraph 53). Further, under Article 33(1) of the Citizenship Directive, the UK practice of issuing expulsion orders as a penalty or as a legal consequence of a custodial sentence, other than in circumstances which fulfil the conditions set out in Articles 27–29 (e.g., that the person's conduct constitutes a sufficiently serious threat) was a breach of the provisions of the Directive.

Methodology

The findings outlined below represent evidence from 20 semi-structured interviews (see Bradford and Cullen 2012) conducted with EU migrants living in two major metropolitan areas in Northern England on their experiences of applying for settled status. There were 10 participants in each of the two groups: (i) low-skilled migrants from CEE, principally from Slovakia and Poland (G1), and (ii) students and skilled migrants from several EU member states (G2). We focused specifically on these two groups, firstly, the UK has a significant proportion of low-skilled migrants from CEE countries who are facing challenges with their settled status applications. This is because the conditions for residence under Articles 7 and 16 of the Citizenship Directive 'have systematically disadvantaged vulnerable workers' who are reliant on short-term, low-paid or casual work or those who do not have a continuous work history due to disability or care responsibilities (O'Brien 2021: 433. See also O'Brien 2015). In terms of G2, the UK typically attracts a number of high-skilled EU migrants seeking to enhance their career development and/or seek opportunities to study in UK universities at graduate and post-graduate levels, as well as, access to study finance in light of the increasing tuition fees (Jacqueson 2018). Three of the interviewees in G2 were Swedish nationals, including one person who had recently applied for naturalisation as a British citizen; two were from the Czech Republic, and two others were from Cyprus. Additionally, there was one Austrian, one Slovenian and one Belgian citizen in this group. Ethics approval for this study was granted by the University of Bradford. For the purpose of this article, we present a thematic analysis of our findings, followed by an inductive analysis (see Braun and Clarke 2006; Evans 2017). The emerging themes were connected to the broader academic literature on EU migrants in the UK (*ibidem*). Whereas the research participants in G2 were all fluent English-speakers, the preferred languages for communication for G1 were Slovak and Polish, therefore their interviews were conducted in their original languages by skilled bilingual interviewers. All the interviews were fully transcribed in the original language and, for the purpose of data analysis, sections of the transcripts were translated into English in cases where the original language was different. We use only the gender and the age of the participants in order to maintain their anonymity. The participants represented an appropriate spread in terms of age (18–60), gender (10 women and 10 men) and residence in the UK (between 1 and 30 years). Two of the interviewees identified as Roma. Six persons in G1 and eight in G2 had secured settled status, whereas four persons in G1 and two in G2 were eligible for pre-settled status.

The participants were recruited through social media, various venues (e.g., public libraries and shops), community organisations and other gatekeepers and through snowball sampling (see Bradford and Cullen 2012). In recruiting, efforts were made to diversify the sample. While it is difficult to assess exactly how the participants' gender in the study affected our findings, the experiences of precarity, the lack of job security and the homelessness among migrant men were prominent in our research material.

In developing this article, we adopted Sotkasiira and Gawlewicz's (2021: 24) analytical framework of 'social, economic and cultural embedding' among EU migrants living in Scotland. First, in our study we conducted a narrative analysis of all interview transcripts (see Linde 1986; Somers and Gibson

1994), focusing on how participants narrate their experiences and perceptions of Brexit and the imagined or real barriers to obtaining settled status. The second phase of the analysis involved thematic coding (see Boyatzis 1998) across the full dataset to identify patterns of particularly problematic aspects of the EUSS and UK immigration rules that impact on EU migrants and the complexities pertaining to the lack of relevant documentation to prove settled status.

Research findings

Reasons to relocate to the UK

All our interviewees initially went to the UK to study or work with positive images of the country as a welcoming, advanced economy where there would be plenty of opportunities for them to progress. Whereas the EU migrants in G2 typically went to the UK to study at university, many of the migrants in G1 went there after being promised work as painters, decorators, builders or carers. The latter were often recruited in the country of origin and their job offers included wages, accommodation and transport to and from work. Many of the migrants in G1 came from broken homes and had experienced abuse or domestic violence; some had had difficulties in the country of origin and hoped that migrating to the UK would change their lives. At the time of the research, all the interviewees in G1 were homeless or lived in insecure accommodation and therefore did not enjoy the rights of residence as qualified persons under the Citizenship Directive.

Awareness of rights linked to settled status

The interviews with the CEE migrants in G1 revealed that some applicants' awareness of their rights and eligibility to stay in the UK after Brexit was limited: 'I don't know how what this settled status is all about. I was told that I must have it otherwise I will be deported' (Male, 55); 'I don't understand why I have to have settled status after 10 years of living here. What is going to happen to me if I don't get it?' (Male, 52). Although some of the interviewees in G2 were unclear about the purpose of the EUSS, their understanding was better: 'At first, I didn't know what to expect or whether I was eligible to apply. It wasn't very clear what the settled status would provide for me' (Female, 18); 'One of the things that wasn't communicated to the public is that you can't complete the application yourself unless you have an electronic passport, not just an identity card' (Female, 27).

The majority of the interviewees were lone migrants without any family members present in the UK. Most of the CEE migrants in G1 had completed only secondary education in their countries of origin, whereas only two of them held A-level or equivalent qualifications. In G2, many had at least an undergraduate degree from a UK university or were currently completing one and were also in paid employment. However, there were significant differences in the types of work which each group was performing. Although some of the EU migrants in G2 were full-time students in part-time employment, most were in professional, full-time employment. In contrast, the jobs that the migrants in G1 performed were low-skilled and generally characterised by low pay and insecurity. These migrants typically washed cars by hand, worked in household waste and recycling centres or in painting and decorating for well below the minimum wage. They also did not have a stable place of residence and some lived in emergency accommodation offered by community organisations such as the Salvation Army.

Although most of our interviewees had been in the UK for several years, very few had previously applied for permanent residence. Only one person in G2 had applied for indefinite leave to remain, which she was granted before her country of origin joined the EU in 2004. She was therefore unsure why she had to apply for settled status. Although all individuals in G2 were able to apply using the Home Office app, even they encountered issues with their applications – such as trouble scanning their passports or the unavailability of the app on iPhones, as evidenced by these two quotes: ‘I was frustrated that the app was not compatible with my phone and I had to borrow my friend’s phone. I also had issues using the app and had to start the application all over again because it crashed’ (Female, 25); ‘The facial recognition feature was unable to identify my face because I had grown a beard during lockdown. I had to restart the process several times before realising that I couldn’t do this because of my beard’ (Male, 60).

In contrast, none of the applicants in G1 could apply using the app because none of them had valid ID cards or passports because these had been lost or were broken. Many did not even have the basic requirements for using the app – such as mobile phones or email addresses: ‘I don’t have a phone, an email address, a national insurance number or a GP’ (Male, 51).

Due to the complexity of the application process, including the requirement of a smartphone to apply, the unavailability of physical proof of settled status and the government’s hostile environment towards homeless EU migrants, some of the interviewees in G1 were suspicious that the EUSS was enacted deliberately to trip them up. Considering that there has been frequent news coverage about EU migrants not meeting the criteria to obtain residence permits and even being deported from the UK, it is unsurprising that many EU migrants feel anxious about securing settled status (Sotkasiira and Gawlewicz 2021).

The application process for those who do not meet the basic requirements for an online application is complex for various reasons. First, the EUSS represents a significant departure from the other Home Office processes (Tomlinson 2020). In the EUSS, a caseworker only deals with the claim after the automated checks have been completed whereas, in all other cases, Home Office officials make a decision based on law and policy once a paper application and relevant evidence have been submitted (*ibidem*). Second, due to their inability to submit an online application, migrants in G1 had to rely on the help of immigration solicitors or qualified immigration advisers with their applications. Although the Home Office provides paper applications in exceptional cases, initially only solicitors and, later, also qualified immigration advisers, were able to request the application forms, which are unique to each individual and can be up to 40–50 pages long. Additionally, the request for a paper application must be justified on compelling grounds – e.g., because the applicant is unable to obtain a valid passport from their consulate. Moreover, the Home Office may or may not approve the request. For instance, a person who has lost a passport which is still valid is generally expected to acquire a new passport and subsequently complete the settled status application after obtaining it.

Status insecurity

Migrants in G1 were very worried that they would be deported and their lives were filled with constant fear. Some were trying to keep a low profile in order not to attract the attention of the authorities.

I am terrified. The police stopped me and said they would arrest me, so I said ‘I have my ID in my colleague’s car’, so they told me to report to the police station and bring my ID and proof of status (Female, 41).

Now, with this status thing I don't understand what's happening. I have lived on the streets for the last 10 years and [don't know] why the system wants me to be gone now. I haven't done anything wrong, I am just homeless (Male, 38).

One of the interviewees in G1 felt that his whole life would become meaningless if he were forced to leave the UK and return to his country of origin: 'If they deport me, then my life will be over' (Male, 41). In contrast, only few of migrants in G2 were anxious about needing to apply since most of them knew what to expect: 'The online system was good but problematic and it made me anxious. I attended an information session about applying, but that was too overwhelming. At the end, the process was far simpler' (Female, 34); 'I had seen a lot of conversations online about incorrect status being offered to applicants, so knew not to panic when the system incorrectly offered me a pre-settled status' (Female, 26); 'The process of making an online application was not easy or intuitive. Actually, it made me quite anxious and I am a relatively tech savvy person. I can't even imagine how a person who struggles either with the language or technology would cope' (Female, 29).

Applicants whose records are incomplete need to provide evidence that the Home Office will accept. This may involve providing bank statements, pay slips, utility or council tax bills, letters from a GP, a university or a school, covering the previous six years. Where the data checks result in the conclusion that the applicant does not meet the requirement for continuous residence of five years, he or she will be required to submit additional evidence for the periods where the data is lacking (Tomlinson 2020). Research participants in G2 often mentioned additional evidence relating to gaps in employment contributions:

The system initially offered me a pre-settled status despite me having lived in the UK for over nine years I think this was because I was a student and didn't work for the first few years, so I had to provide evidence of this. Otherwise, all went well, although scanning the passport took a few attempts (Female, 28).

It was a bit tricky for me to produce a document showing that I had lived in the UK since 2006, because I moved a lot and I also spent a year abroad during my studies. Additionally, I hadn't been employed long enough and continuously by one employer or paid council tax for long enough to use as a record either. However, printing out five years' worth of bank statements seemed absurd, so I downloaded and saved the statements instead but the files exceeded what could be uploaded to the application system. In the end my university was able to produce a document to certify that I had been enrolled as a PhD student for over five years (Female, 33).

The system is set to check your employment contributions first. Since I had a gap in income, I received pre-settled status even though I had resided in the UK for a period of eight years prior to applying. My residence could easily have been confirmed by looking at my education records, as I have completed two degrees in the UK (Female, 31).

Due to the complexity of the application scheme, some applicants may seek reassurances from a qualified immigration advisor that they are submitting their application correctly, especially since the application scheme, including the possibility of viewing one's status, is exclusively available online (Tomlinson and Welsh 2020). One participant in G2 noted that she almost sent her passport to the Home Office:

The app did not recognise my passport after several scanning attempts. I very nearly had to send my ID documents via mail instead, which would have been impossible as I had to travel the following day. I can't believe that a tiny glitch in the app almost prevented me from applying (Female, 29).

Additionally, no possibility to appeal against a decision of the authorities was available before February 2020, although this is now possible after the entry into force of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (SI No 61).

Vulnerabilities and support for migrants

Our findings highlight considerable future challenges for the most vulnerable EU citizens. The interviewees in G1 seemed noticeably vulnerable and we suspect that some may have been victims of human trafficking since many had no passports or ID cards. However, due to their mistrust of the authorities, they were reluctant to report their experiences to the police. Many of the interviewees in this group were pleading with the research interviewers to issue them with a letter of support in case they were stopped by the police. It also emerged that one of the interviewees was taken to the immigration detention centre on the grounds that he was homeless and he was told that he would be deported. During the course of his detention, he was offered an immigration solicitor to represent him. The solicitor found that his deportation was unlawful since being homeless was not a sufficient reason for deporting an EU citizen, as established in Gureckis (2017). Upon his release, our interviewee secured his settled status in a matter of days, found accommodation and could subsequently apply for Universal Credit benefits.

Many of our interviewees in G1 also expressed their views that the support needs of the CEE migrants across the UK were similar. Therefore, it is important that policy-makers and community groups respond to these needs and help CEE migrants to feel less vulnerable, alone and isolated. Many of the interviewees were unaware that help with their EUSS applications was available in their first language locally through the organisations funded by the Home Office. Many were also overwhelmed by the lack of reliable information in languages other than English. Some of the interviewees stated that they felt vulnerable and helpless and did not know where to ask for help:

It is important for everyone to know their rights. It is important to have information on where to go for help if anything goes wrong. When I came to the UK my English was very, very poor; it was so bad that I couldn't ask for help. There was no one who could help me (Male, 38).

Once they found out that immigration advice was available in their first language in the area, they were relieved that someone would be able to provide guidance with their applications.

Other researchers have made similar findings, for example, in terms of EU migrants' access to various services, including social assistance in host member states. Martinsen *et al.* (2019) found that EU migrants applied less frequently for benefits in the host state due to insufficient information about their rights or the appeal system. They were also worried that claiming social benefit may have an impact on their right to reside. Similarly, Dagilyte and Greenfields (2015) found that Roma migrants' knowledge about their welfare benefit entitlements in the UK, both prior to and after migration, was generally limited because the Roma had no experience of claiming welfare benefits due to the linguistic barriers, complexities concerning the relevant documentation and lack of knowledge about appeals processes.

The migrants in G1 further noted that their lack of adequate English-language skills prevented them from accessing many other public services such as health care, since some felt that they had sensitive and private

health-care needs which they did not feel comfortable discussing in the presence of friends who could otherwise have helped them with translation. Some even said that they were too scared to see a doctor, believing that the surgery may inform the Home Office that they are homeless and that they would subsequently be deported.

Other concerns of the migrants in G1 related to their experiences of low pay, a lack of opportunities and poor working conditions, especially in terms of accessing employment which would pay a decent living wage. Although previous research has found that the Roma, in particular, from the CEE in the UK may often be exploited as a result of being paid below the minimum wage in low-skilled, insecure employment (Dagilyte and Greenfields 2015; Jamroz 2018; National Roma Network 2017), these experiences are not limited to the Roma or to undocumented non-EU migrants. Many of the migrants in G1 were in insecure, low-skilled employment and found the lack of opportunities in the UK disappointing: 'I don't work, I have never worked legally ... I came here in 2008, working for £2–3 per hr, £30 per day ... I managed to survive as homeless living with friends occasionally for 11 years...' (Male, 41).

Poor well-being and mental health among homeless CEE migrants is also an issue. Periods of homelessness are linked to a greater risk of various mental and physical health problems. These often lead to the earlier experience of age-related health problems compared to the general population, including the developing of chronic medical conditions as well as experiencing stigmatisation and discrimination, being unemployed and encountering barriers in returning to the workforce (Kerman and Sylvestre 2020). During the interviews, CEE migrants in G1 talked about how the hurdles in the application system caused them problems with their mental health and well-being. Buettman (2020) made similar findings with her research with participants who were principally from Western and Southern European member states which had joined the EU before 2004.

Although the migrants in G2 did not disclose issues with their mental well-being, some noted that applying for settled status made them feel unwelcome:

I applied for permanent residency soon after the Brexit vote in 2016. The process then was long and complicated and I needed pages and pages of evidence. It was difficult to find the right information. The whole process was very stressful and, for the first time, I was unsure whether I could even remain with my family. Having to apply made me feel that I no longer belonged to a country that I have called my home. I felt that I was forced to make choices that I had not considered before (Female, 47).

Brexit is about taking away freedom from people. Forcing EU citizens settled in the UK to apply to be able to stay in their homes and carry on with their lives, making it difficult to apply and not giving people any documentation – only a number to be used online if they need to prove their right to stay in the UK – is all part of it (Male, 60).

Conclusion

Our focus in this article has been on the difficulties encountered by EU migrants in applying for and regularising their migration status. Even those EU migrants who are in regular employment or full-time education encountered problems with their settled status applications because the government databases were unable to confirm their residence for a continuous period of five years. However, most migrants in G2 were able to provide some form of additional information to the Home Office. Strikingly, even these highly mobile migrants felt that the process had been stressful and complicated and that the lack of physical documents added to the complexity. Some also said that they no longer felt welcome in

the country which they had considered their home, often for several decades; they therefore felt alienated by Brexit.

In contrast, the interviewees in G1 faced significant barriers to making their applications. In fact, many of them were only able to apply because they had been put in contact with organisations and qualified immigration advisors who submitted paper applications on their behalf. These organisations had a central role in securing life-changing outcomes for migrants in G1 who had endured low-skilled and low-paid employment and homelessness due to the exclusion of EU migrants from certain welfare and housing benefits resulting from the government's hostile immigration policy and years of austerity.

Although the British government has assured EU migrants that the procedures for attaining settled status will be 'smooth, transparent and simple', we cannot help feeling that the EUSS has been enacted to exclude certain EU migrants as part of the hostile environment for undocumented migrants. This resonates with the arguments of Monforte *et al.* (2018: 26), according to whom citizenship is by nature 'both an instrument of inclusion into a system of rights and a boundary which is designed to fail specific groups and populations'.

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