



There are cracks in the EU Settlement Scheme - who will fall through them?

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There are cracks in the EU Settlement Scheme – who will fall through them?

*The EU Settlement Scheme has been open to the public for over a year now, and it has over a year more to accept new applicants. So far, large volumes of applications have been processed, but cracks are beginning to show. Worryingly, there is no way of knowing how many people may fall through them – but there is a clear solution in sight, argues **Kuba Jablonowski**.*

Just over a year ago, the Settlement Scheme opened to EU, EEA, and Swiss citizens, and family members who want to stay in the UK after Brexit. It is a constitutive system: with the exception of Irish citizens, all eligible residents in the UK have to apply to the Scheme to gain new immigration status, or else they will lose their right to stay in the country. They need to do it by the end of the six-month grace period, which is set to follow the transition period ending on 31 December 2020. Given there is just over a year left to submit new applications, it is a good time to take stock and ask: is the Scheme delivering for its users?

Since it opened, the UK government repeatedly stressed the high volume of applications received under the Scheme – almost 3.5 million submitted by the end of [March](#) 2020. Until Brexit day, on 31 January, the government also [repeated](#) that nobody was being refused status on eligibility grounds. Eligibility here simply means the ability to evidence residence in the UK. There was a handful of refusals on suitability grounds, which relate to criminality. However, not a single person was refused on eligibility grounds until 31 January. And yet, in the two months after Brexit day, there were 600 such refusals. Recently published [details](#) of one such case show that, despite being in regular contact with the Home Office, an applicant to the Scheme was kept waiting for 7 months for a negative decision. They received incorrect advice along the way, and ultimately got refused once the Brexit date had passed. This adds further concern over the quality of advice provided and decisions made under the Scheme, alongside previously reported cases of the wrong status granted. A number of applicants who should have been awarded the much more [secure](#) settled status, ended up with the temporary pre-settled status [instead](#).

It, therefore, seems that while the Settlement Scheme is up and running, it is not delivering for everybody. It is neither safe for all users nor transparent in its operations.



The first problem is that not everyone knows about the requirement of Settled Status, and not everyone will know about it by the time the deadline passes. Previous research has shown that no [similar](#) programme has ever reached all of its target population. Those who will not know they need to apply are at risk of automatically losing their legal status after 30 June 2021. This may happen for a host of reasons, and groups at risk include those with diverse characteristics. Vulnerable groups may miss out: from young people, who may have even been born in the UK in some cases, to the elderly. Those who lack computer literacy may struggle to apply, and those who lack language literacy may even not know they need to apply.

But the biggest risk of all is that it is extremely hard to say which groups are most likely to be disadvantaged by the Scheme, because we do not have good enough data to monitor its performance.

If we knew the size and composition of the population eligible for the Scheme, and the population that applied, we could use the so-called residual method: subtract the number of applicants from the number of those eligible for the Scheme. This would give us the number of those who did not apply. However, multiple problems with the Settlement Scheme statistics make this impossible. Most importantly, these stats [double-count](#) applicants who apply to more than once, for example, to upgrade from the temporary pre-settled to the secure settled status. It is, therefore, unclear how many unique applicants submitted the 3.5 million applications so often mentioned by the government.

Even if these statistics were fixed to provide information on the numbers of unique applicants, rather than applications, we would not know the number of people eligible for the Scheme. Population estimates are imprecise for many reasons, summarised in a recent [report](#) by the Migration Observatory. Population figures are based on survey research rather than administrative records, they exclude certain groups, and are likely underestimate other. They also lag behind the Settlement Scheme data, which are published monthly. Currently, we rely on population estimates for June 2019; hundreds of thousands of people will have migrated in and out of the UK since then.

Just to illustrate the problem, let's look at Bulgarian citizens in the UK. Their population is estimated at around 109,000. However, they submitted over 171,000 applications to the Settlement Scheme by the end of March. It looks like all Bulgarian residents have already applied, and yet their applications keep coming in.

The second problem is that not everyone gets the right status. Some applicants were shown to be granted pre-settled status despite over 5 years of residence in the UK, which makes them eligible for the permanent settled status. Given the lack of good enough data it is impossible to estimate how many applicants found themselves in this situation, but there have been plenty of such [examples](#). It is also not clear whether pre-settled holders fully understand that their status means they will need to apply to the Scheme again before it expires. The UK government needs to do much more to inform pre-settled status holders that their rights are only temporarily secured.

The third and final problem is using the status. The lack of physical [documents](#) makes the scheme harder to understand for some, and it might increase the risk of discrimination against EU citizens. Added to that are immediate concerns related to the COVID-19 pandemic. Recently publicised cases show that some pre-settled status holders are refused [welfare](#) benefits. The Withdrawal Agreement affords EU citizens covered by it the right to equal treatment, but this is not the case for those trying to access Universal Credit and other forms of social assistance at the time of crisis.

The good news in all this is that while all these problems are serious, they can also be relatively easily fixed. It would not be necessary to change any of the mechanics of the Scheme to make it safe for its users and transparent to its stakeholders. The UK government would only need to do three things:

- First, it should remove the hard application [deadline](#) and guarantee EU rights in primary legislation. This would mean legal rights are not removed from those the government fails to reach in time, as their applications could still be processed under the Scheme.
- Second, it should add the option of a physical [document](#), so citizens can prove their rights with something tangible that is less likely to result in systemic discrimination.
- Third, it should work with civil society on the issues of transparency and monitoring.

Some of the problems with the Scheme result from its design, other have only emerged during its implementation. They can all be fixed. But first, they need to be acknowledged.

This article gives the views of the author, and not the position of LSE Brexit, nor of the London School of Economics. Image by [Rob Swystun](#), [Some rights reserved](#).