

# Exiting the European Union Committee

## Oral evidence: Progress of the UK's negotiations on EU, HC 372

Wednesday 3 July 2019

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Members present: Hilary Benn (Chair); Joanna Cherry; Mr Jonathan Djanogly; Peter Grant; Stephen Kinnock; Jeremy Lefroy; Pat McFadden; Seema Malhotra; Stephen Timms; Mr John Whittingdale; Hywel Williams; Sammy Wilson.

Questions 4484-4570

### Witnesses

**I:** Chris Desira, solicitor, Seraphus, Barbara Drozdowicz, Eastern European Resource Centre, Kuba Jablonowski, the3million, and Luke Piper, solicitor and legal adviser to the3million.

**II:** Fiona Godfrey, Co-Chair, British in Europe, Luxembourg (Benelux), Jane Golding, Co-Chair, British in Europe, Germany, Kalba Meadows, Steering Committee, British in Europe, France, Jeremy Morgan, Vice-Chair, British in Europe, Italy, and John Richards, Steering Committee, EuroCitizens, Spain.

Written evidence from witnesses:

–[the3million](#)

–[British in Europe](#)



## Examination of witnesses

Witnesses: Chris Desira, Barbara Drozdowicz, Kuba Jablonowski and Luke Piper.

Q4484 **Chair:** On behalf of the Committee, I express a very warm welcome to the first of our two panels this morning. I introduce Chris Desira, a solicitor from Seraphus Solicitors; Barbara Drozdowicz from the East European Resource Centre; Kuba Jablonowski from the3Million; and Luke Piper, solicitor and legal adviser to the3million. You are all very welcome. As I said, we have two panels today, and we have lots of questions to ask. Do not feel under an obligation to answer all of the questions. If you could keep your replies as succinct as possible, that will help us to get through all the issues that we want to raise.

I begin by asking about the number of applications made under the settled status scheme. It is quite a large number now, and the results have split between settled status and pre-settled status. First, are you aware of anyone who has been told no—anyone refused?

**All witnesses:** No.

Q4485 **Chair:** Secondly, what do you understand “other outcomes” to mean? There is a definition from the Home Office, and I just wanted to check that it squares with your understanding. It says: “Other outcomes” includes any outcome that did not result in a grant of leave because the application was withdrawn...was invalid as it did not include the required proof of identity...or was void because the applicant was ineligible to apply, for example because they were a British citizen.” I cannot quite understand why a British citizen would want to apply for settled status, but hey. Are you aware of anything in the “other outcomes” category that gives you cause for concern?

**Barbara Drozdowicz:** From our point of view at the East European Resource Centre—we provide services to vulnerable users of the settled status scheme—it is the withdrawal of applications. There seems to be quite a significant number, especially by those who under the Home Office definition are vulnerable and will struggle to access the scheme or to apply altogether. There is quite a high proportion of withdrawn applications if people are not supported.

One reason that we find is the fact that, as you are aware, the application is based on some kind of automated check of the records held by Revenue and Customs and the Department for Work and Pensions of transfers in and out, so to speak. If people do not have those transfers, or they are not visible in the last five years, there is quite a high tendency to run away from the scheme. People require support and encouragement.

There is also the issue that people might not want to take up the application again once it is left behind. This is happening in communities, and not only among vulnerable adults, quite frankly. We are aware that



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there is still quite high scepticism as to whether people should need to apply to the scheme altogether, which encourages people to disengage at that stage of application.

Q4486 **Chair:** Do you mean a principled objection?

**Barbara Drozdowicz:** According to our work—based on 650 interactions with users, which is some number—people are waiting to see what will happen with Brexit. There is a group of principled objectors, but basically there is a growing sense of disbelief that Brexit will happen.

**Chris Desira:** Applications being rejected as invalid slightly concerns me, because the Home Office are meant to have an approach—it is in their guidance—to help applicants through the process. Where information is missing, they are meant to engage with the applicant to make sure that they provide the applications, so there really should not be that many invalidities.

There have not been any refusals, but the statistics do not tell us how many people were granted pre-settled status when they should have been granted settled status. The Home Office are not treating the refusal of settled status as an immigration decision, so no one is being refused settled status; they are simply told that they are getting pre-settled status instead. They cannot challenge the settled status decision.

Q4487 **Chair:** And that is because of a difference of view about whether they have demonstrated the five years' residency?

**Chris Desira:** Yes, it would be on the residency.

Q4488 **Chair:** That, presumably, would principally be the reason?

**Chris Desira:** Yes, it would be, but we delve into a lot of problems associated with residence and the checks and what data is held by the Home Office and what can be accessed by the applicant. However, it is usually based on residence. The way the Home Office are treating this dictates how their stats are published. Their stats say that no one has been refused, rather than saying x amount of people have been refused settled status but have been granted pre-settled status.

Q4489 **Chair:** That brings me neatly on to my next question: what further statistics do you want the Home Office to publish?

**Chris Desira:** Ideally, we want to know how many have been refused settled status and then granted pre-settled status, and why they were refused settled status. In terms of public engagement, we want to know how many people are applying and where they are applying from; we want to know the locations of people applying so that we know where the blackspots are where people are not engaged with the services. I also want to know how many people apply through organisations that receive funding from the Home Office, and how many of those applications are granted.



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The stats that we have right now are not enough. The Home Office produce monthly stats, and we have two sets of monthly stats at the moment that just tell us how many have applied, by nationality. They do not tell us how many non-European citizens are applying and their nationalities. We also have a problem with engagement with those communities, because we do not know who they are and where they are. The Home Office intend to produce quarterly reports—the first will be in August—but they haven't told us what will be in those reports yet.

**Q4490 Chair:** Looking at the 668,000 concluded applications, it is basically two thirds to one third between settled status and pre-settled status. Has that worked better than you feared, or worse than you hoped?

**Barbara Drozdowicz:** We were wondering about whether this is good or bad information. It is quite important to look at the periods in which those applications fall. The highest number of those close to 700,000 applications were made in and around March, when people were expecting that the 29 March deadline might be met. Also, the application scheme opened fully around that time.

When you look at the data—for Polish nationals, for example, who are particularly badly represented among applicants compared with their general proportion among the European community in the UK—the numbers slow; they shrink and fizzle out. That worries me that there was some momentum around March or April time that we are losing. It is difficult to say whether we saw a peak in applications, or whether that was an early start of something promising.

**Q4491 Chair:** But that is a point about encouraging others to apply, not an observation on how the system has worked for those who have applied. I am just trying to understand, because there is a lot of concern, but those whose applications were granted might say, "Yes, I got it and worked okay." Would that be a fair comment for those who have applied and had their application granted?

**Chris Desira:** I will take the first point about the 700,000 figure first. The problem with this figure is that we do not know the total figure. Our firm is also contracted by the European Commission Representation office in London, and we have been working with them and the embassies for a year and a half or so. The embassies have tried to figure out the true number of their citizens living in the UK but are unable to. Some have a mandatory registration process, but some do not. However, even with a mandatory registration process, not everyone registers when they are in the UK. The embassies say that figures in the ONS statistics are quite low, and they estimate that it will be 40% to 50% more than the ONS statistics, plus family members on top of that. When we talk about the 3 million, it is possibly closer to 6 million or 7 million, when you include family members. The figure does not tell us the ultimate total.

**Q4492 Chair:** I accept that entirely, but I was simply trying to understand how the process has worked for those who have applied.



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**Chris Desira:** You will have varying feedback. On one end of the spectrum, someone will say that it has been perfect, that the app works and the application worked, and that they got their status back within a day. You will then have the other end of the scale, with someone who applied more than a month ago still not having a decision. The statistics published from April to May on the number of applications show that there is now a delay of at least a month.

Q4493 **Chair:** So more statistics of the type you just described in answering my question would help us to get a better picture?

**Chris Desira:** Absolutely, on date of application and, if it is still outstanding, how long it has been outstanding for and why.

**Chair:** That is very helpful.

**Luke Piper:** I will answer your point on experience in a moment, and my colleague will speak more clearly on the issues surrounding measures. It is fine for the Home Office to produce the numbers of applicants, but ultimately we do not have the full picture, and we don't know the numbers, as Mr Desira says. Key in all of this is that we do not actually know the performance indicators that the Home Office are working to. That is a really key point to take from this. Indeed, we have come up against some resistance in trying to get that insight and information. It is not only the data itself but what the Home Office are measuring this against, and how. For example, we have key concerns about how they identify the types of people who are applying. They will get insight into nationality and national insurance numbers and things like that, but other things, such as certain other demographic issues, will not actually be identified, particularly around disability and such. We have key concerns about that as well.

On your point about experience, as a practitioner who has helped a number of people with the application process, I think that those who get the assistance and the help will generally have a positive experience. Yes, there will be delays. I have a colleague who was on the phone yesterday for half an hour with the EU settlement team, and they are very lovely people, but we are still having to struggle to get through this point and the delays and such.

However, we need to look at the wider engagement problems. How do we reach out to the people who are not going to apply and so forth? That is the biggest challenge in this, not to mention the elephant in the room regarding this whole EU settlement scheme, which is its mandatory nature and the consequences of having to go through it. I must stress that that is avoidable; there is a way to mitigate the problems that that leads to.

Q4494 **Chair:** No doubt we will return to that. Before I bring colleagues in, I have one more question, about entitlement to benefits. I know of one case of an EU national who has lived in the country for 10 years but has been told, for the purposes of applying for universal credit, that she is not habitually resident. I asked the Work and Pensions Secretary yesterday whether granting a person settled status means, automatically, that they



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are regarded as habitually resident for the purposes of applying for and receiving universal credit. The answer I got was that, yes, that is broadly true. However, since you are sitting here, do you think it is broadly true, and do you think that DWP understand that, if they are presented with people who have settled status, they cannot argue on grounds of habitual residence?

**Barbara Drozdowicz:** I think it is broadly confusing. A large part of our work is effectively fighting cases in the welfare corner of the system. Strangely, with some applications, settled status is effectively seen as indefinite leave to remain, in a way proving that the person has to be treated like a British citizen for all kinds of purposes, in terms of welfare. However, in other cases, that does not happen.

EU nationals also have to meet their treaty rights. They have to be qualified to access certain benefits—not all of them; it is confusing what sits where—which we believe is inconsistent with the way settled status is treated as evidence of status for the purposes of housing allocations and benefits. That also includes pre-settled status documentation or other decisions.

This is why there is a risk that a significant number of vulnerable disadvantaged people, such as homeless people, will seek to use their treaty rights to satisfy the evidence of settled status—the full one, so to speak—because it is believed that pre-settled status does not help them in anything. It is confusing, and we have asked for some sort of collaboration with DWP, so that we can at least understand their point—not even mentioning influencing it—but that hasn't gone far.

**Chris Desira:** On the benefits side, broadly they have to meet two steps. One is the habitual residence test, and then they have to confirm that they are eligible for benefits. The second part does not discriminate on nationality. The first part of the test is where we talk about settled status and pre-settled status. If they have settled status, they should pass that test automatically. If they have pre-settled status, we are talking about whether they are exercising treaty rights or not and whether they are lawfully resident or not.

The DWP has issued guidance, titled "Memo ADM 9/10", which confirms this. However, the problem is a communications issue, because the Home Office are not necessarily talking to DWP, and those at the top of DWP are not necessarily disseminating this information to the caseworker on the ground. That is where we get inconsistent decision making.

Q4495 **Chair:** So there is an issue here?

**Chris Desira:** Yes.

Q4496 **Joanna Cherry:** Earlier, you said that the problem is that, although there have been no refusals, the statistics do not tell us how many people applied for settled status but were given only pre-settled status. Isn't there a risk that those who probably should have been entitled to settled status but were only given pre-settled status will then come up against a



habitual residency problem when try to claim benefits?

**Chris Desira:** Absolutely. Benefits are one part of it, but having a secure status is another, so that they will not have to engage with this system a second time around. This predominantly affects the more vulnerable and women and children, because they are the ones who may have less evidence of residence.

It is also a public law policy issue, because people apply for this and fail residence checks, but they do not know why they are failing because we do not have the data behind that. They could fail the residence checks because they can't provide one piece of evidence, but they might think that they need to provide seven pieces of evidence. The difference between one document and seven documents is crucial for those at the very bottom of the scale, who are the ones who most need to access benefits.

Q4497 **Joanna Cherry:** I want to move on to the fact that the British Government have chosen to have a constitutive rather than a declaratory scheme. Earlier, one of you—I think it was Mr Piper—said that the mandatory nature of the scheme is the problem, and that aspects of that might be avoidable, so I want to consider what happens when we get to the actual deadline—

**Luke Piper:** Which deadline?

**Joanna Cherry:** Well, on the assumption that there is a withdrawal agreement—I realise that is a pretty shaky assumption at the moment, but let's just assume that people come to their senses. So either there is no Brexit, which I think would be the most sensible outcome, or there is at least some kind of a withdrawal agreement. In that situation, if the scheme comes in there will be an end date after which people cannot apply, and we have all heard that there have been worries that some people are unaware of that and will miss the deadline. Do you have any clarity about what will happen to people who miss the deadline or try to apply after it?

**Luke Piper:** There are two points to be made quite clear. You say that people will not be able to apply after the deadline, but that will not be the case. People will still be able to apply, but my understanding is that the Home Office will adopt an approach whereby it will expect people to have good reason for applying after the deadline.

The Government's position on the consequences is not very transparent, I have to say. You will have heard before, and I have spoken to the Home Affairs Committee to make this exact point, that the consequences are that those people who do not apply and do not have the status after the particular date will not have a lawful basis on which to be in the UK. The consequences of that ultimately come down to the hostile environment and the effects that are felt as a result of that, so not being able to work or claim benefits, housing, lack of access to the NHS and so forth. So it is quite serious.



**Q4498 Joanna Cherry:** Do you think that having a declaratory scheme would get round that problem? Some Government Ministers, when asked about this, have suggested that a purely declaratory scheme also risks causing confusion, with people being undocumented and ending up like the Windrush generation. What would you say in response to that?

**Luke Piper:** That is perhaps misrepresenting the declaratory approach; indeed, I believe that in a recent session in the House of Commons, Stuart McDonald made that exact point. If there is this baseline—a legal declaration that people fall within a certain category—they have that legal safety net on which they can rely. Ultimately, yes, people will need to register—not necessarily apply—for status, but they will have that baseline of security that they can rely on and then have the opportunity to acquire a document to represent the status that they have in law.

**Chris Desira:** I would echo what Luke has said. However, when we have asked the Home Office this question, its line is that a person will not have a lawful residence beyond the deadline if they do not apply; that is the official line. Although they can apply late, as Luke said they need to have a good reason, and a “good reason” is not going to be, “Because I forgot and I missed the deadline.” If you look at good reasons in other immigration categories, you need to have fairly good reasons—for example, you were in hospital, comatose and incapable of completing the application yourself, and you have the medical evidence to prove what you are saying is true.

That is the kind of levels of good reason that you will need, and there will be a two-stage approach at that point: that person will need to have a good reason, and the Home Office will need to accept that it is a good reason before it even goes on to consider the application itself, and during that window the person is unlawfully resident, so they could actually fall at the first hurdle. The Home Office could say, “You have no good reason, therefore we are not even considering your settled status or pre-settled status application.”

**Q4499 Joanna Cherry:** So you could have, in theory, somebody who, in reality and on paper, qualifies for settled status because they have been resident in the UK for many years, but they are unable to apply because they have missed the deadline and the Home Office decides that they did not have good reason.

**Chris Desira:** Yes, absolutely.

**Barbara Drozdowicz:** There is also the reason why people will struggle with applications, which is very pragmatic, quite frankly, and has nothing to do with people not wanting to do it, or being comatose—obviously, these are very serious issues. We are looking, for example, at older people with dementia; someone has to do it for them; lots of them will be forgotten, so to speak. There is quite a big group of cases that will not meet the deadline.

Also, I am thinking about the simple fact that you need to have certain ID documents to be able to apply. To get a passport in certain EU countries



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you have to have an ID card, but the ID card cannot be issued outside the country—you cannot pick it up in the consulate, but even if you could, you still have to go back and apply. Quite frankly, it might take up to six months or more for an individual to acquire the documents to even be able to put in an application.

That involves cost, because it might require travel or having to stay in their home country, so leaving work for a month, for example, and waiting for the document to be issued back in the homeland. If we are looking at a single individual, it is maybe not that drastic, but if we are looking at a family, the situation gets more and more complicated. The financial cost and the stress around trying to meet the deadline will be significant, and there will be a pragmatic issue around documents.

We know that many consulates have beefed up their consular service workforce to help people apply for documents so that passports can be issued and reissued, but that will not be sufficient, especially in more remote areas—in villages and small towns—where the distance to consular services might be significant; again, that links to cost. The deadline is looming and is way too near for us to be able to collectively, as a society, secure access to the scheme for everyone within the deadline. The deadline has to be moved, regardless of the date of actual Brexit, which has moved already, although the deadline has not.

**Chris Desira:** Barbara raises an important point about the need for a declaratory system, or a system in which there is still a mandatory application process but anyone eligible is excluded from the hostile environment rules. Identity documents will be one of the biggest problems, and the timeframes to get documents from all the embassies are increasing. If you never had a document in the first place and they need to investigate your nationality, you could be looking at a upwards of a year or more to get a document from them.

Again, when we move to the vulnerable end of the scale of people who need to apply, they normally apply when they have to—when it is necessary—near the deadline, and only then will they realise that they do not have an in-date identity document. They will then either have an ineligible application, because they cannot prove their identity, or they will have that big window of unlawful residence until such time that they get that identity document and can then apply late—maybe six months to a year after the deadline.

Q4500 **Joanna Cherry:** Can I ask you about remedies for people who are refused settled status? It was agreed in article 18.1(r) of the withdrawal agreement that: “the applicant shall have access to judicial and...administrative redress procedures in the host State against any decision refusing to grant the residence status. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based.”

As the British Government’s proposals stand, what options are available to an EU citizen who wishes to challenge a decision refusing to grant him



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or her residence status, and how does that compare with what I have just read out, which promises judicial and administrative review on legality and facts and circumstances? Perhaps Mr Piper would like to start?

**Luke Piper:** Yes, gladly. Ultimately the system we have at the moment does facilitate a right of appeal process on decisions relating to the European regulation. That is in respect of right that are being exercised now. There have been some complications, shall we say, in relation to other family members and rights of appeal, which have now been resolved thanks to the intervention of the European Court of Justice. There is a process at the moment that facilitates a finding of fact function, but that it is in respect of decisions made under EU law as it stands at present.

As far as it goes in terms of decisions made under the EU settlement scheme, there is no right of appeal to a court or tribunal as such. There would be if the decision was made under regulations, but not under the EU settlement scheme. There is an administrative review, but we understand that the Government are intending, if there is a deal under the terms set out that you have just read out, to create a right of appeal on decisions made under the EU settlement scheme that a person can exercise in tribunal. We have yet to see details of that, and it is not clear when that would arise.

Q4501 **Joanna Cherry:** It is important for non-lawyers to understand that there is a big difference between an administrative review, followed by what is called judicial review, and an appeal on facts and circumstances. The judicial review can only look at the legality of the decision—have proper procedures been followed? Have the rules of natural justice been applied?—whereas a judicial review before a proper tribunal can look at the facts and circumstances, and pick through the evidence that the applicant submitted that they were entitled to settled status.

**Luke Piper:** Absolutely. Indeed, that point has been laboured recently in the European Court of Justice and the upper tribunal, which are two very senior court structures that we must adhere to. Judicial review is arguably not an effective remedy, as you have referred to there, but we must be very clear about something for the purposes of those who are not lawyers: administrative review is the internal reviewing function of the Home Office, whereas an appeal in a tribunal is an independent tribunal reviewing the facts and the decision-making process.

Q4502 **Joanna Cherry:** If we look at the statistics for current immigration appeals, the Home Office loses the majority of cases, doesn't it?

**Luke Piper:** Yes, or they withdraw their decisions before we get that opportunity.

Q4503 **Joanna Cherry:** When decisions are reviewed by a tribunal looking at the facts and circumstances, the Home Office usually loses or withdraws, so we can see how powerful a review on facts and circumstances is.

**Luke Piper:** Absolutely, and I worry, because historically there has been a culture of eroding of appeal rights by the Home Office through amendments to the statutory functions that govern the appeals process. I



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worry that, if there is no deal, there will be no right of appeal—I think that is pretty clear and I am sure Chris can confirm that for me—

**Chris Desira** indicated assent.

**Luke Piper:** And the only redress, following an administrative review, would be through judicial review, which is an expensive remedy.

Q4504 **Joanna Cherry:** Whereas, if there is a deal, the British Government will be bound to introduce a review on facts and circumstances, because that is what it has signed up to in article 18.1(r)

**Luke Piper:** Absolutely.

Q4505 **Joanna Cherry:** Mr Desira, is the UK's position on those appeal rights in the event of no deal a concern for the Commission and EU ambassadors?

**Chris Desira:** Yes. The fact that in a no-deal situation there is no appeal right at all is one of many key points for them. This is something that needs to change. Even with an appeal right, there are still deficiencies in having an appeal anyway, because the way the residence checks work, a person on appeal will not have access to the data behind the automated residence checks, because the Home Office does not disclose that data. Even on appeal, they will not know where the gaps in their residence appear or what evidence they could approve to plug that.

In cases where we have made a subject access request from the Home Office to get that information, it says either, "We don't have it," or, "We're not providing it because you fall under the immigration exemption in the Data Protection Act 2018, which says that it may affect our ability to police our borders if we disclose this data to you." So even in the appeals system, we may have problems appealing anyway.

There are also the practical issues if you do not have an appeals process, because, again, all those people at the very vulnerable end of the scale will not be able to access legal assistance to do an administrative review, which has deficiencies anyway because you cannot have an administrative review of, for example, an application that is invalid; and they cannot afford to get a lawyer to represent them for a judicial review process, which is immensely long and expensive. We have that issue as well on that side.

**Chair:** That is very helpful, thank you, but we need to move on because there is still lots of ground to cover.

Q4506 **Mr Djanogly:** We have already touched on awareness of the scheme and Government support, but I would like to go back to that in a bit more detail. When the ICIBI, the Independent Chief Inspector of Borders and Immigration, asked the Home Office about possible pressure on SRC resources, it found that senior managers "recognised that there was a link between demand on the SRC and effectiveness of the Home Office's communications about the Scheme and the quality of its published guidance." My question is, what are your views on the accessibility and effectiveness of the support provided by the SRC, and let me extend that



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to assisted digital support and the ID document scanning locations? Let's start with the basic question of whether, in your experience, people know that those services exist.

**Barbara Drozdowicz:** I am quite critical about the way that awareness is being raised about the scheme in the first place, what information is being made available to people—general and generic information about the scheme—and whether that is accessible. There is guidance to guide people through the application itself in 23 languages plus Welsh, which is available on the Home Office website, which is obviously accessible to a questionable level on its own when it comes to certain vulnerability groups. There is not really comprehensive information that is in easy language—an easy-read document—for people to understand the bits and bobs of the application and the scheme itself.

There is a list of issues that we think are not being explicitly explained to people—for example, where the evidence is coming from. When people see that Revenue and Customs and the DWP do not see them because they have never worked—for example stay-at-home mums—they tend to withdraw instead of having access to information that says that there is a number of other ways to provide that information. That information has to be accessible for people, not written in legal language that is difficult to get through even for advisers.

Other issues are, for example, third-country nationals' family members who are poorly treated in terms of access to information. There are issues about a criminal record and how it is treated—it does not mean that people will be immediately deported from the country if they disclose it—and so on. There are at least eight areas that we have identified that are not being explained. That is on the side of general awareness-raising.

There are also the instruments that you have kindly mentioned—for example, the Home Office's own resolution centre, which is not really an advice information helpline. It is the resolution centre for pending applications. That service speaks English only. We do not understand why that is the case, because just making sure that the resolution centre had a language line would encourage people to engage with their concerns about their pending applications, or to correct errors in submitted applications. For some reason, there is no step-back option in the application process, so you have to submit errors in the application if you realise that you have done something wrong. The sheer fact that you cannot ask for a Polish or French translation, or whatever, is a strong deterrent from using the service. Applications are not being completed or the decisions are wrong—not based on the actual facts.

Finally, the assisted digital service, which is a mechanism supporting people with IT literacy issues, is again in English only, therefore it is not really accessible for lots of users who struggle with English, because of their low level of the language, because of age, or because they have dementia, for example, which has an impact on how we operate in languages and so on. That is not really very accessible either.



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The funding that the Home Office has provided for supporting vulnerable users in accessing the scheme—the £9 million of grant funding—was distributed to more than 57 lead organisations, which may or may not have delivery networks. It is not yet published what the structure is exactly and who delivers what and where. There seems to be quite a heavy onus on those organisations to provide a high level of awareness-raising activities, which is not what organisations should be doing. They should be doing outreach and reaching people who are missed by communications. There is no capacity—I do not believe there is capacity as we are now.

**Chris Desira:** On awareness, I have travelled to over 100 locations across the UK and met dozens of different types of community, including non-European communities, affected by this. The huge majority of them have no awareness of the grant-funded organisations, the settlement resolution centre or the assisted digital service. In some cases—actually, quite a lot of cases—they do not have an awareness of the basics of the settlement scheme, an awareness of the scheme itself, or even an understanding—especially for the non-European dual citizens—that Brexit is going to affect their resident status.

Q4507 **Mr Djanogly:** Could you quantify that in any way? What proportion of people are we talking about here?

**Chris Desira:** It is really hard, because I am just basing it on my own experience, but the biggest concerns for me on that knowledge base are those who are non-continental Europeans—those from East Timor who are also Portuguese, those Sudanese who are also French, or those Somalis who are also Dutch. They have their passports because of the way they reached Europe and travelled through it, but all they have is a basic understanding that their passport grants them rights. They lack that understanding of what those rights are and the free movement directive, and of what Brexit means.

Q4508 **Mr Djanogly:** What should be done to remedy it?

**Chris Desira:** It is all about Home Office communications.

**Mr Djanogly:** And language, which is the point that Barbara made.

**Chris Desira:** Precisely. The Home Office had a communications campaign between March and May, and it has ended now. We have no idea from them what the next stage of the communications will be, and all of the communications that they have are in English, but some are translated—

**Barbara Drozdowicz:** Poorly.

**Chris Desira:** Yes, poorly, and that is even with embassy assistance. When they do translate documents, they have a private company that translates them, and the translations that have been done have been checked by all of the embassies. The embassies fed back their information on the translations, and they still made errors on the translations, so even



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when they are translating the European languages there is a problem, let alone when you start talking about Arabic, Somali and so on.

The comms have issues. The comms are not reaching these communities, and the communications are not clear enough anyway, because they do not talk about it being a mandatory scheme; that there is a deadline that you must apply by, otherwise you will be unlawful. They also do not talk about family members of European citizens or EEA nationals, and the comms will definitely not be translated into non-European languages, so my concern is always at that end of the language scale.

**Kuba Jablonowski:** Just to add to that, in terms of the delegated responsibility for outreach to the 57 grant-funded organisations, there seems to be a trend that the Home Office tries to say that it is their responsibility—there is now grant funding in place, and those 57 organisations have to go out and reach those communities—but there are concerns in terms of their reach within the UK.

Obviously, there is quite a lot of concentration in London. The Home Office to date has only released a heat map indicating how many organisations cover each region, but we do not know where exactly they operate, so there is quite a lot of fear that some regions of the UK will effectively be deserts without any outreach activity, or very little. In the south-west, for example, just because somebody covers Bristol and Swindon does not mean that they will be able to reach out to Cornwall or Truro, or even Exeter.

**Chris Desira:** Precisely. Although the funded organisations cover the whole of the United Kingdom, it is about how many organisations are in each area, and Northern Ireland is a massive problem, as is Wales. Not only are there not that many organisations there anyway, there are maybe one or two covering the whole of those countries, and knowledge—especially in Northern Ireland—is very sparse on this.

Q4509 **Mr Djanogly:** Finally, what are the implications of this problem? If we do not get it right, what is going to happen as a result?

**Barbara Drozdowicz:** There is a very high risk that at some point there will be some repetition of the problems experienced by the Windrush generation—I will use that term—simply because there is not enough information.

There is a difference between communications and outreach. Comms is something that you access and read about; outreach is specifically for those people who are not accessing communications, because they cannot. We have to make sure that both ends are delivered, but if people do not even know that there is a link between their immigration situation and Brexit—which in some areas, some pockets of disadvantage, might be as high as 50% of the population—or do not even know that Brexit is actually happening or has something to do with them at all, you cannot really expect that they will apply. If they do not apply, they might fall into the hostile environment and that might happen very quickly.



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**Chair:** We are going to have to crack on because we have got lots of other colleagues and we have got a second panel. My apologies. John Whittingdale.

Q4510 **Mr Whittingdale:** I have just a quick question. You talked about the embassies assisting with translation to ensure that the language was correct. Barbara talked about embassies having a role with identity documents that need to be produced. I wonder whether embassies are, or should be, taking a more proactive role. They have a pretty good relationship in some cases with citizens in this country, and they can also provide information. Since there appears to be a problem in getting information and help, can you give any examples where embassies are actually taking an active role and setting a good example to others?

**Chris Desira:** Yes. The European Commission Office have been taking points on this since November 2016. Since then, they and all of the embassies, including the EEA countries, have been meeting every month to discuss what they want out of the settlement scheme and how they can reach the most vulnerable. Since January 2017, they have been meeting monthly with the Home Office, raising their concerns every month with the Home Office and what they can do. They also raise concerns about the communications. As well as those monthly meetings, they are also having public seminars with citizens, so they are doing outreach work all of the time.

This is where I talk about having met all of these groups of communities in various areas across the United Kingdom, because they have these outreach information sessions where they try to reach people to attend these sessions, so that we can educate them on how to apply and what to do. As well as that, they are trying to push the Home Office to ensure that their communication campaigns are ramped up now, because the problem is getting the message out now, not four months before the deadline.

A lot of work needs to be done on gathering evidence at this point, especially identity documents. The Commission's view is that we will do what we can, but the communications for the scheme are the responsibility of the Home Office. Even then, with all of that work that is going on, we are only reaching the people who are aware of what is going on and have the time and space to come out and attend one of these sessions.

We are not reaching any of those we consider on the vulnerable list. We have created a list of vulnerable groups and that list contains more than 20 categories of vulnerable groups. I have it here; I could read it out to you. We are worried about not ever engaging or reaching those people because they are not the ones who are well connected or knowledgeable about the scheme, or they have issues with them that they can't engage with this as well.

However good the Home Office communication campaigns have been—to be fair, the Home Office have been doing a lot of work on communications—they are not doing enough and they are not targeting



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communication campaigns in media that will be accessible for these groups, such as television.

**Q4511 Mr Whittingdale:** I do understand your concern about people who are going to have greater difficulty in obtaining information for one reason or another. I just wondered whether there was any particular country whose embassy is doing much more in making an active effort to get out there, find people, to ensure that they understand.

**Chris Desira:** They are doing that. They range from very active to not so active. Very active include countries like Spain or Portugal, which have been doing outreach work a lot, and taking mobile units to go to places as far as Northern Ireland, to redocument their citizens. They have also employed people within their embassies to deal with casework. They are applying on behalf of people to make these applications. There is a huge effort on their part but the trouble is that they also have the restrictions of resources. These embassies sometimes have as few as 10 staff in them. They do not have the resources to do everything that they want to do.

**Q4512 Hywel Williams:** I have a particular concern about people who find it difficult to use the assisted digital service, either because they literally have no access to computers or are in areas such as my own where the infrastructure for the digital work is so bad that it is practically horrendous and useless. Do you share those concerns and do you have any observations?

**Luke Piper:** Yes, we do. One point that we need to look at—this is not something we have really touched on—is reaching out, accessing and assisting those with disabilities. There is a very quick move from the Government to say, “We have this digital assist service—go to that”, but a lot of issues have been raised with me and the organisation about comms and so forth to those who are blind, deaf and so on. There are some serious issues around that, and they extend to issues surrounding the ability to use technology and the scheme, and even to understand what they need to do to apply, so we share those concerns.

**Kuba Jablonowski:** To add to that, there are two types of concerns related to the system being digital-only. One is for the end user, but the secondary concern is for support organisations. There is currently no functionality to preview the application or to track changes to the application procedure. Something might be true for how the application form works one day, and then it might change the next. For example, we had the issue of the application form collecting national insurance numbers from people who hold permanent residency cards, which it should not do. It should not run automated checks. We flagged it up in our report to the ICIBI two weeks ago. In the meantime, as of last Friday that check was no longer in place. Inputting national insurance numbers is now optional. That lack of functionality impedes not only the ability of people to apply, but the ability of monitoring organisations to know what exactly is going on.

**Barbara Drozdowicz:** The application is one thing, and the easiest one, but people have to live with online products. That seriously worries us,



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because it has already been shown to be a problem. Circumstances cannot be evidenced by a decision letter. People receive confirmation of an application being put in, but it is not a decision, nor is it some form of plastic ID card. It is very dangerous, when you think about it. If you cannot apply for status yourself, how will you be able to use it to evidence your right to rent, to find employment or to open a bank account? You cannot really do it.

What is happening now is that the least harmful way for users to evidence that they have settled status for welfare purposes is to take a screenshot, because there is not really a way to pass it on to the DWP. As far as I can tell, there is still no channel to send a link. Even though it requires sending a link to someone who can receive a link and log in—it is a complicated procedure, frankly, even to describe, not to mention using it.

My question is what will happen to users who even now might struggle to access online and mobile technology. That is not to mention what will happen to them in 20 years' time when they have to apply for social care support or something of that nature. We think there is a big field of abuse and discrimination based on the fact that users will not be able to sufficiently use the status, simply because it is only online.

**Chris Desira:** A digital application form is great. It works for the majority of people, and that is the Home Office's intention. They want to get the majority of people through the system and then, at the end, they will start dealing with the more complex cases and start tweaking the system at that point. A digital application process and digital assistance are not going to help someone who is a dual third-country citizen who does not speak English but speaks Arabic, or a woman in fear of domestic violence, or someone who is trafficked, or someone who is working in informal working conditions, or an isolated citizen living in the middle of Northern Ireland. The digital assistance and the digital application form will not work for them. Digital assistance still is all about helping someone fill in the form, but it does not cover legal advice or how someone will get through the system. This is where we always fall back to the question of why this is not covered under legal aid funding.

Q4513 **Hywel Williams:** I was going to ask about that in a moment. First, can I ask about the accessibility of face-to-face services? I understand that that is or will be available in centres. Where are those centres located? Are any of them located where I would like them to be located, which is rural Wales?

**Chris Desira:** The Home Office has published on its website a list of areas where you can get face-to-face assistance and home visits, but it just gives us an area, such as Essex, and it does not tell us where. You have to call up the customer resolution centre and say, "I have this issue. Can you come out and see me or can I come out and see you?" Then you will find out the details of where this is going to happen.

**Barbara Drozdowicz:** And the service is very strictly triaged, so if there is a sliver of a chance that maybe you don't need someone physically



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helping you, then you should do it yourself—because you still have one finger left. This level of severity effectively excludes people from the service and puts them in the future, possibly, in some sort of grey immigration area.

**Chris Desira:** Outside of the Home Office some local authorities are doing this themselves. So Bristol is one area where they have got a walk-in drop-in centre, where people can sit there and ask for help filling in the form, and, in some cases, even get legal advice. Some local authorities are doing this because they feel that the Home Office are not doing this for them, so they are having to look after their constituents to try and get them through this process.

Q4514 **Hywel Williams:** I just feel that people are doubly penalised, who live in remote areas where not only can they not get access online but the services just are not there. For example, near my home area there is a large Polish community in the Llŷn peninsula, which is about as far away as possible as you can get from London. I have no idea what services—

**Chris Desira:** This is a worry—that the Home Office have issued this marked funding to those 57 organisations. As well as the funding not being enough—you are talking about £25 per head—if you calculate how many vulnerable people may be in this, you are talking about 200,000 to 300,000 people, so that £20 per head is not going to help a lot. Also, those organisations do not cover all these areas.

I did mention legal aid, but legal aid has its own issues as well. You are still going to have advice deserts in areas across the UK where there are no legal aid providers. At least if you brought this back into the scope of legal aid we would then be able to tap into the sector that already has the reach and resources and the staff qualified to be able to help in this. The Home Office is trying to mirror the system within the funded organisations, and having relationship managers and audits, and so on, when the legal aid system is really fit and ready to do that.

**Luke Piper:** One very small point to add to this is that we have very much focused on the lack of availability of services, but no clear information has been brought forward by the Home Office on exactly how it has measured these issues, and how it has identified the problems and impact assessments of all these particular problems. I have not seen any form of Equalities Act assessment, or any detailed analysis of a plan. That has not been forthcoming.

**Chris Desira:** On the other hand, we have asked for it, and they refused to publish it.

**Kuba Jablonowski:** On that very point, I understand that a freedom of information request is pending regarding those equality impact assessments, but in the first instance it was rejected by the Home Office, so we are waiting for an appeal decision.

Q4515 **Hywel Williams:** One very quick question, and a very brief answer. The Welsh Government have set up a Commission on Justice in Wales under



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Lord Thomas of Cwmgiedd, the former Lord Chief Justice, which is looking at, among other things, the provision of legal advice and the notspots for legal aid throughout rural Wales. Are you aware of this commission, and have any of you submitted any evidence?

**Luke Piper:** We will be.

**Hywel Williams:** It is getting very late. Nobody else—thanks.

**Chair:** Thank you very much.

Q4516 **Seema Malhotra:** Thank you very much for coming to give evidence today. I know there has been quite a lot of technical discussion about some of the process issues, and the variations in terms of support received. I want to ask about a policy challenge and get your view. This is about the debates in Parliament about what happens to citizens' rights in the event of no deal. You will be aware of those debates, including on the proposal by Alberto Costa MP, which many of us—including the Government—supported, on a joint UK-EU commitment as a whole to preserve the citizens' rights section of the withdrawal agreement, whatever the outcome.

I know that there have been discussions—certainly between the 3 million and also Britain in Europe—with the Secretary of State about this as well. It is one of those examples where there seems to be a political preference for one outcome but the legal challenge is in contrast to that. A recent exchange between Michel Barnier and the Secretary of State seems to lend itself towards there being unilateral measures, again, between member states and the UK in the event of no deal. What is your view of the latest exchange of correspondence between the Secretary of State Stephen Barclay and Michel Barnier on the ring-fencing of citizens' rights? Can we still seek to move towards a single UK-EU agreement or will unilateral agreements work?

**Luke Piper:** There is a lot to unpack there. From the correspondence we have seen from Mr Barclay to Barnier in recent months, the key thing to take away is very open discussion. Nothing has been closed off. A lot of the points raised are quite technical, but they are not insurmountable—that is the key thing to take away.

What is quite important is that in the correspondence, particularly from Michel Barnier, there is no emphasis on "nothing is agreed until everything is agreed." It is very much about, "You are aware that you will be buying into CJEU oversight" and, "You are aware that there are some technical problems here," but legally speaking there are no insurmountable issues.

Ultimately, there is the politics and there is the energy within the Government to push this agenda. We have only had two pieces of correspondence since the House of Commons unanimously agreed to ring-fencing. While the content of that correspondence has been positive, there is nothing else around it. Indeed, Mr Costa, in his most recent urgent question, made the point that there should be some form of taskforce to push this agenda through.



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On the consequences of no deal, there are papers we can give you that will clearly set that out. Indeed, my colleagues from British in Europe who will be speaking after us will emphasise in particular the significant problems that lie ahead if there is no ring-fenced agreement. But one thing I would like to emphasise clearly is that there is a ticking clock. The opportunity to ring-fence citizens' rights and protect the rights of EU citizens in the UK and of UK citizens in the EU must be done before we leave the European Union. A very clear political impetus needs to be injected into this, because there is a very serious urgency to it.

I believe you asked about the unilateral measures that would be implemented in the event of no deal or, indeed, no ring-fenced deal. Again, my colleagues from British in Europe will be able to speak to the unilateral measures in member states and the consequences thereof. In terms of the UK Government position, we simply have a policy document, which I am sure you have seen, which seeks essentially to erode further the rights of EU citizens in the UK by limiting their ability to bring families to the UK, and indeed limiting their ability to challenge decisions—a point we touched on earlier. The point to drive home is that when Brexit was decided, the promises of "This is what will happen" were very much that nothing would change for EU citizens. The withdrawal agreement does not exactly preserve them 100%, but in the event of no deal it will not be the same. There will be a very distinct difference between the rights that EU citizens have now and what they will have if there is no deal.

**Q4517 Stephen Timms:** Can I ask you about the problem some EU citizens had in voting in the recent European parliamentary elections? I have seen an estimate that 1 million people might have been affected. Can one of you explain what the problem was? Do you have an estimate for how many people were affected?

**Kuba Jablonowski:** The problem was with the process for registering EU nationals to vote in European Parliament elections, specifically in the UK. It related to the so-called UC1 form, which is an additional form that EU citizens have to fill in to certify that they will not vote in their country of citizenship as well as the UK.

The problems with that are that, first of all, it is a separate form—it is not on the voter's registration form—so one may register to vote and still not be eligible to vote in EP elections. Secondly, the UC1 form expires after 12 months, so even if one has registered in the past, the form would not be valid for the next EP elections. As a matter of fact, it expires after 12 months. There was a very low level of awareness of that form among EU citizens—because of the timetable of the election, the electoral officers did not have much time to send those forms out. As a result, we think that at least tens of thousands of people were disenfranchised. You mention a figure of 1 million. Our understanding is that it is actually quite hard to quantify specifically, so we would rather not throw around those kinds of figures.



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What we can tell you is that immediately after the election, we ran a survey. From 900 responses that we received, 194 councils out of 382 registered irregularities.

Q4518 **Stephen Timms:** Will you say that again?

**Kuba Jablonowski:** One hundred and ninety-four out of 382 registered irregularities, and that is just from a sample of 900 people who replied to us.

Q4519 **Stephen Timms:** You are saying that the councils registered irregularities. What does that mean?

**Kuba Jablonowski:** We had reports of irregularities and votes denied from 194 councils out of 382—so just over half—and that is just from our online survey. They were quite equally distributed. The only clustering was where there were quite a lot of EU citizens or politically engaged EU citizens. It indicates that the issue was systemic. We know of councils where well in excess of 1,000 people were denied the vote, either because their forms were processed too late and were rejected, or because they weren't informed that they had to fill them in in the first place, or because they assumed that their forms would be valid because they had already filled them in and had been registered at the same address.

Q4520 **Stephen Timms:** Similar problems arose in 2014 and at that time there was an assurance given that the UC1 form would be sent out to EU citizens who are on the register. Who made that promise? Clearly, it didn't happen, but who promised that it was going to happen?

**Kuba Jablonowski:** There were several levels of trying to push for a change to the process, which caused the same problems in 2014. The Electoral Commission made a commitment that it would change the form, possibly making it valid for five years—the full election cycle—or implementing further changes. There was also an exchange between the UK Government and the European Commission on this and that wasn't followed up. We understand there was the Věra Jourová letter, which was publicised in the press a couple of weeks ago and indicated that the Commission expected changes to be implemented, and that also did not happen.

It was the UK Government who effectively made the commitment to change this, and then the change was not acted on, because we didn't expect to have an election.

Q4521 **Stephen Timms:** Would it have been permissible for councils to have had the UC1 forms at the polling station, so that people could have come in, been told, "You need to fill in this form," filled it in and then voted? Quite a lot of people did turn up and only then discovered that they couldn't vote.

**Kuba Jablonowski:** No, that would not have been allowed. The councils have to process all the forms and exchange information with other EU member states. They have to notify other member states before the



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election takes place. On the day of the election, it would not have been possible to do that.

Q4522 **Joanna Cherry:** Were the British Government alerted to the problems with the UC1 form in advance of polling day?

**Kuba Jablonowski:** Yes, of course. There was that discussion in 2014-15, after the Electoral Commission's report came out. Immediately before the election, we lobbied the Electoral Commission. We sent a complaint to the Electoral Commission before election day. All of that fell on deaf ears, I am afraid.

Q4523 **Sammy Wilson:** Barbara, you gave us an alarming statistic, that if you take that there are 3 million EU citizens living in the UK, so far only a quarter have applied. If we take your inflated figure of family members, only an eighth have applied. You have outlined some of the difficulties. What further can be done by the EU, by the embassies of the countries from which people have come, and by organisations such as yours to try to ensure that people who have not even started to register are encouraged to register?

**Barbara Drozdowicz:** Starting with organisations like ours, first of all it would be mainly outreach. As I said, I would put the main onus for communications on the Home Office, but outreach—reaching those who are most excluded—is probably as much the responsibility of communities themselves as of anyone else.

In terms of consulates and embassies, what they can do depends on their legal status. For example, Polish law does not allow a consular service to provide advice on law other than Polish. However, they are still venues to provide some awareness-raising activities, or just passive awareness activities, such as leaflets and the sort of materials that do not put stuff in breach of the local law applying to the country.

I do not really have any comment on what the role of the European Commission would be. I do not know whether Chris will mention that, but it is essentially awareness raising. It will not work unless we extend the deadline anyway. There is still quite a high dynamic in terms of migratory movements between EU states, so we do not really know what sorts of numbers we are talking about at the end of the day.

Q4524 **Sammy Wilson:** We accept that the EU Commission has, for example, spent all kinds of money even for drama groups putting out anti-Brexit messages, so it would not be unusual for them to help their citizens to become aware of the need to apply for settled status.

**Chris Desira:** On the Commission side, since January 2017 they have run various communication campaigns on this, including social media campaigns. If you look at all their social media profiles they are constantly advertising the scheme and its requirements, and have put case studies on there that could relate to people in similar situations.

There have been over 200 public information sessions all across the UK. The minimum attendance requirement is at least 40 people, but we had



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attendance of up to 500 at one of those sessions. As well as that, each embassy is running its own individual campaign on social media and so on to try to get the message out as far and as wide as possible.

A lot of work is being done on their side, but there is also the view that this was a decision made by the UK, and that the primary responsibility for communications, and to ensure that everyone registered on the scheme is registered by the deadline, is on the Home Office. They are doing a lot of work, but it is meant to supplement what central Government and the Home Office are meant to do, because it is their responsibility.

**Kuba Jablonowski:** Can I quickly say that we are discussing how to tweak the implementation of a scheme that I don't think anyone here believes can be fully implemented ever. We will never get everybody to apply to the EUSS. That is the grand truth that I believe the Committee has to recognise. Whether we agree with this or not is another matter, but we are saying that we will never be able to reach everybody, however hard we try.

Whether the European Commission is on it, whether the embassies are on it, or whether we are on it, there will be people who fall through the cracks. The main task is to decide whether or not we are comfortable with that, and what we do if we are not comfortable with it to avoid that situation. We believe that a declaratory system is the only way forward, as we have said multiple times.

Q4525 **Chair:** On that point, you would accept that even if you moved to a declaratory system some people might fail to declare, and they would still fall through the cracks. That is a possibility, isn't it?

One final question from me. If someone has been given pre-settled status because they have three years' residence, and in two years' time under the current scheme they then make an application for settled status—they take the initiative—would the system accommodate them doing that?

**Barbara Drozdowicz:** Yes, unless something horrifying happened. People's situations might change. The second application might fail, after some serious criminal conviction, for example. It is not an outcome that—

Q4526 **Chair:** Sure, but the way that the system works you can do that. Is your understanding currently that the Home Office will not automatically give, when two further years have elapsed, settled status to someone who has had pre-settled status, because of the example you have just given?

**Barbara Drozdowicz:** Yes.

**Chair:** They might have a criminal conviction or they may have been out of the UK for 12 months during that period.

**Barbara Drozdowicz:** Effectively, one has to go through the same procedures again.

**Chair:** The same procedure again—fine. You have all been extremely



helpful. I promised you at the beginning that we had lots of questions to ask. Thank you for your evidence. I invite the second panel to come and take their seats.

## Examination of witnesses

Witnesses: Fiona Godfrey, Jane Golding, Kalba Meadows, Jeremy Morgan and John Richards.

**Q4527 Chair:** On behalf of the Committee, I express thanks to our second panel today for coming to give evidence. In particular, I would like to thank the British in Europe group for the very comprehensive piece of work that you have put together on the rights of UK citizens in different EU countries and their plans. This is and will be extremely helpful to the Committee in considering the matters we are talking about today.

Let me welcome Fiona Godfrey, co-chair of British in Europe, from Luxembourg; Kalba Meadows, member of the steering committee of British in Europe, from France; Jane Golding, co-chair of British in Europe, from Germany; Jeremy Morgan, vice-chair of British in Europe, from Italy; and John Richards, member of the steering committee of EuroCitizens, from Spain. You are all very welcome indeed.

Could I begin by asking you this question? I think that all of you were in the room for the previous evidence session, listening to evidence on the circumstances of EU citizens here in the UK. How does that compare with the current position of British citizens in the 27 other member states—better, worse or kind of the same?

**Jane Golding:** I think it's a bit more complex than that. Obviously, we are living in 27 different member states. I would sum it up as a European version of the postcode lottery. We will all be treated differently in each country in the case of no deal. In the case of a deal, there is obviously a framework at UK-EU level. Some countries will take one system, the declaratory system, and others will go for the constitutive system.

**Jeremy Morgan:** Can I add to that? What you have had is fairly detailed discussion about a scheme that has started and for which the rules have been laid down. There isn't, I think—I am probably wrong to say there isn't a single European country in which that has happened, but we are mainly looking at potential systems, which might kick in when a Brexit happens with no deal. The main focus has been on that, so we literally do not know the detail in the same way as EU citizens do here, for the most part.

**Q4528 Chair:** That is a very important point. Would it be fair to say that the position of British citizens in the other 27 countries is behind or way behind the position of EU citizens here in the UK?

**Jeremy Morgan:** Behind in terms of time. In other words—

**Q4529 Chair:** In terms of time, but also clarity about what they need to do and what rights they will get if they do it?



**Jane Golding:** Yes.

Q4530 **Chair:** Which member state would you say is doing least well in terms of explaining to British citizens what the system is going to be and ease of application? Ms Golding, you said at the beginning, quite correctly, that it is going to be different in different places. We are interested in the detail, and your document does cover that. Who really needs to pull their socks up, in terms of the other 27 member states?

**Jane Golding:** Again, it depends on—you have to look at—the detail. We have explained in the paper that some countries have not adopted any legislation to date, other than perhaps emergency legislation. Those countries are Germany, Cyprus and Romania. They will adopt legislation on the withdrawal date, if it happens.

There are other countries that have adopted legislation but state in the EC table, which we also link to in our paper, that there could be some movement on what has been proposed, depending on how the negotiations develop and whether there might be some form of EU-UK co-ordinated solution. Then there are other countries that have adopted quite detailed legislation—for example, Spain and France—but make very clear that the framework that has been adopted is subject to reciprocity, particularly regarding the citizens of that particular country here in the UK. In Spain, for example, it is reciprocity across the board. John Richards can give further detail on that.

Q4531 **Chair:** On France and Spain, looking at what is happening in the UK at the moment, and the evidence that we have just heard, would those Governments be likely to say, “Yes, it looks like there is reciprocity in the UK for the purposes of the laws that we have passed”?

**Kalba Meadows:** Can I speak a little bit for France? The feeling that we are getting from talking to French officials and politicians is that they are not yet happy to say, “Yes, there is definitely reciprocity.” They do not trust the UK. They feel that the UK has a policy of withholding rights rather than granting rights. They would really like to see EU citizens’ rights enshrined in primary legislation.

There is a very big concern about reciprocity in France, because, as Jane has just said, it is reciprocity with EU citizens here in the UK, but it is also reciprocity among the provision of goods and services. If, for example, the UK does not reciprocate in the provisions that France has put into place via legislation on provision of goods and services, and transport of people and goods, British citizens living in France could see their rights suspended in a no deal Brexit.

Q4532 **Chair:** Could you clarify what you mean by transport of goods?

**Kalba Meadows:** Under the French no-deal legislation there are three aspects. There is an Act, which sits at the top. Then there are several ordonnances. Then there are decrees, which explain the functioning of each ordonnance. Under the Act, there are ordonnances covering citizens’ rights, transport of people, transport of goods and a number of other



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things. The Act makes reciprocity contingent on different aspects of citizens' rights, and transport of goods and people.

Each of those has an ordonnance, which has a very clear statement of reciprocity. For example, under transport of goods and people, if the UK does not reciprocate on citizens' rights for French citizens, those aspects of transport of goods and people would also be suspended in France. That is an extremely worrying thing for British people living in France, because our rights in a no-deal Brexit are contingent on the UK playing ball on transport issues.

**Q4533 Chair:** But is it not a bit unreasonable to say that the rights of British citizens in France might be held hostage to the failure to agree something on the transport of goods, when we are talking about the rights of citizens? I struggle to see the connection. I can see why a member state might say, "We will look at how you treat our citizens and we will treat your citizens the same." That would be fair and reasonable. But to bring in the transport of goods—that is why my brow furrowed at that point. Is that to do with tariffs, lorries or what? I do not see the connection.

**Kalba Meadows:** It is to do with the actual ordonnance covering transport. It is to do with three things: the right of British operators to operate on French soil; to transit France carrying goods or passengers; and to transport between the UK and France. It is those three very specific things that are subject to reciprocity.

**Chair:** Okay. Mr Richards—Spain.

**John Richards:** As far as Spain is concerned, on 1 March they adopted a decree that is designed to avoid there being a legal vacuum for a number of areas. Those include citizens' rights, but also other areas: police and judicial co-operation, financial services in part, and also, as Kalba has mentioned, there are transport aspects. Spain is obviously concerned about reciprocity because the decree has basically a number of levels of reciprocity. There is an across-the-board provision in the opening part of the decree, which says that, within a two-month period, if an assessment is that there is not reciprocity across the board on all the areas—a rather similar approach to the one my colleague mentioned—there is the possibility of revoking the decree. But I think perhaps more relevant for these sorts of discussions, when you enter into the specific parts of the decree dealing with things like social security, rights of employment and pensions, those normally all have a specific last paragraph that says what is being done is done contingent on the UK also providing similar treatment for Spanish nationals resident in the UK.

There is a final sort of reciprocity aspect, in that there is a 21-month grace period to apply within the decree, and during that period there are a number of rights relating to pensions, social security and health in particular, which are maintained, but they are contingent on there being some form of bilateral arrangement agreed during that time to give a more permanent nature, whether it is bilateral or a multilateral framework agreement. That means that at the end of the 21-month grace period, a



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number of areas that are certain during that period in terms of your rights to healthcare, social security and pensions have to be dealt with. So that is not quite reciprocity, but it is another aspect of uncertainty, if you like, being entered into the system.

The decree is adopted to cater for a no-deal situation. I can't speak personally, but I am not sure the Spanish authorities have embarked on an at-this-point measuring of reciprocity. I think their ideas of reciprocity will be that if there is no deal and if their decree then comes into force, they will take it on the basis of what is written in their legislation.

**Q4534 Chair:** So it is possible that in the event of no deal, after 21 months the right of British citizens living in Spain to healthcare, for example, would end. Would the Spanish Government actually do that?

**John Richards:** Spanish legislation, as I understand it, has a relatively generous provision for the healthcare of people who are in the country, but it is more a question of who pays and whether the existing arrangements will continue or not. The decree provides that the current system will be regarded on the Spanish side as being one that is to continue, but within the 21-month period there needs to be something that I think deals with things on a more permanent basis. That is my understanding of the situation.

**Q4535 Chair:** Are any of you aware of anything similar in relation to rights to healthcare that might be at risk in other EU member states in the event of a no deal?

**Jeremy Morgan:** Unlike the Spanish legislation, the Italian legislation on Brexit rights for citizens is probably two sides of A4; it is very brief and contains very little detail. However, it deals with the continuation of the S1 scheme, which is the reciprocal healthcare scheme in the EU under which the country that pays a pensioner's pension is also responsible for the cost of healthcare administered in the country where that pensioner lives. The Italians have provision in their law to extend that to end of 2020, subject to reciprocity.

**Fiona Godfrey:** It is also potentially an issue in Luxembourg for people insured under the S1 scheme.

**Jane Golding:** It is potentially an issue in Germany. The situation at the moment is that emergency legislation was passed that covers some issues post withdrawal date, one of which is healthcare. I think the German authorities hope that ultimately there will be some form of reciprocal arrangement at EU-UK level, or bilateral arrangements. However, obviously the S1 scheme, under the current state of affairs, would fall away. The only option that would then be open to S1 holders would be to switch to a German health insurance company, but that would be at a cost. They would have a three-month window during a grace period, following the withdrawal date, in order to make that decision.

**Q4536 Chair:** Listening to what you have said, what would you, as an organisation, say to those in the UK who advocate, to borrow a phrase,



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that come hell or high water we should leave, either with a deal or, if not, with no deal, on 31 October? Where would leaving on 31 October without a deal leave the people you represent?

**Jane Golding:** It would leave us in a significantly worse position than leaving with a deal. The overriding issue would be the uncertainty of our situation. Grace periods might come into place in all of the EU27 at that point. However, many countries have no idea or little clarity about what the final, permanent status would be.

Q4537 **Chair:** I do not know whether you have taken a view, but would a no-deal Brexit be something that you would recommend on behalf of the people you are representing today? I see your facial expressions, but for the record, would you recommend a no-deal Brexit?

**Kalba Meadows:** No.

**Fiona Godfrey:** No.

**Jane Golding:** We would absolutely not recommend a no deal.

Q4538 **Chair:** Any of you?

*All witnesses indicated dissent.*

Q4539 **Chair:** No. So five witnesses say they would not recommend a no-deal Brexit. Do you think that point is being heard by those who are making that argument?

**Jeremy Morgan:** That is very hard for us to say. It is not featuring high in the list of topics of discussion, if I can put it that way.

**Chair:** That is extremely helpful.

Q4540 **Peter Grant:** Good morning, everyone. Thanks so much for coming in to give evidence today. There are two different views that you can take on the responsibilities of your host countries to protect your rights. One is that the Governments of France, Spain, Italy and Germany have a responsibility to you, regardless of what happens anywhere else. Another is that they did not cause the problem, and that it is reasonable for them to wait and see what the UK Government's approach to their citizens is, on the basis that it is not realistic to expect Germany, for example, to take British immigrants significantly differently from Britain's taking German immigrants here.

What is your take on that? Obviously, from your individual interests, you would like your host countries to give you an absolute guarantee of everything, but as organisations, where would you put yourselves on that spectrum? On the one hand, there are those saying that it is entirely up to the British Government to fix it, and that other Governments will follow suit, whereas the argument we get from some people in the UK is that, regardless of what Britain does to immigrants living in Britain, British immigrants living overseas should have their rights protected unconditionally by their host countries.

**Fiona Godfrey:** Primary responsibility lies with the British Government—our own Government. We are British citizens, and so far we have been very badly let down, I think it is honest to say, by the British Government's response. We are losing a whole set of rights because of red lines laid down by the British Government, and there is a lot more that they could do to protect our rights. Although it varies from country to country, on the whole our host countries have shown a degree of flexibility and understanding of our position, but they are increasingly hard line, given what is happening, or rather not happening, here in London, and the lack of political decisions being taken. Ultimately, our host states are saying, "We will do what we can," but they will not go out on a limb, especially when they are still concerned about the fate of their own citizens.

I go back to the point about reciprocity. Even though legislation in other countries does not overtly mention it, these Governments make it very clear in meetings that they will also act on reciprocity. We are living in limbo, three years on. We are looking to our own Government to provide some answers and support, because that has been sadly lacking.

Q4541 **Peter Grant:** Does anyone else want to add to that? I saw quite a lot of nodding from the rest of the panel. Does anyone disagree with anything that Fiona said?

**Jeremy Morgan:** In a sense, I don't think we are so concerned about who is morally responsible for the state we are in. We are really concerned about the effect of the debate on citizens' rights. It has got to the stage where our initial call, and that of the 3million, was that we should not be treated as bargaining chips. Increasingly, as this game plays out, we are more and more becoming bargaining chips, which is a real concern. I would not want to say it is the fault of the British or the EU's fault. It is a process that is going on and it should not be, because citizens' rights are above that. Both sides promised from the beginning that they would be above that, but it is not happening.

Q4542 **Peter Grant:** Thank you. We previously heard evidence from the 3million that, regardless of what the UK Government said about migrants always being made welcome here and having their rights protected, there has been a very worrying increase in incidents of xenophobia and racism—not only against EU migrants living here, but against migrants from other countries and anyone who looks like they might be a migrant. Have you experienced anything similar directed against UK nationals living in other EU countries since the referendum, or as a result of what has happened since then?

**Kalba Meadows:** It is fair to say no, we haven't experienced anything along the lines that EU citizens here report on a pretty much daily basis. Most of us feel that our countries on the whole still welcome us as people on a personal level, even if there are political issues of how to protect our rights. On a day-to-day basis, we have asked all our member groups whether they have evidence of discrimination. Very little has come up apart from some discrimination, possibly in the field of employment rights



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in Belgium, which we mentioned in our evidence. On the level of day-to-day living, no. We are not experiencing discrimination.

**Jeremy Morgan:** The example of employment rights that Kalba mentioned is quite interesting, because it is very practical. It is people saying to British employees, "Your future may be in doubt, because we don't know what is going to happen down the line." People are applying for jobs and not getting them because they are British and there might be a problem. It is that sort of rather practical thing—it is not "racist" or whatever. It is not because we are British that they don't like us and things are happening; it is because there are practical concerns about the future that mean it might make more sense for a particular company to employ someone different.

**Jane Golding:** We have heard incidences of employers contacting their employees to say, "When the UK withdraws from the EU, you will have to present us with a residence permit." They are already warning them about this issue.

Q4543 **Peter Grant:** Would it be fair to say that the approach you have described some employers are taking towards hiring employees who are British citizens is similar to what some businesses are doing in their setting of trade contracts? They do not have an issue with taking on a contract with a British supplier, but they are a bit concerned about whether the contract will be deliverable in the future. You are saying it is more of a practical issue—they might give a job to a UK national who will become an illegal resident in a year's time, and the employer then has to sort it out. It is certainly an interesting comment, and I think you have mentioned that in the evidence document that you submitted to the Committee a few days ago, so that will be recorded as part of today's evidence.

I have one final question, on an issue that the Chair touched on earlier. At the moment, you are all living with full citizens' rights in a collection of countries across Europe, simply because you have citizenship of one of 28 countries. As well as those who are suggesting that we leave at the end of October regardless of what the consequences are, there are some who have been saying—pretty much since the day after the referendum—that we could just hand in our notice immediately, walk out and it wouldn't make any difference.

If the UK was to leave without a deal next week, next month, or at the end of October, leaving aside for a moment what we all hope the reaction would be from your host countries, what rights do you have as a UK citizen living in an EU country on Saturday if the UK walks out without a deal on the Friday? As a matter of actual law, what legal and enforceable rights do you have the day after we leave without a deal?

**Jane Golding:** The really major things we have at the moment are the right of free movement obviously, which gives us the right to work across the whole EU27, the right to have our professional qualifications recognised across the EU27, and it means we can work cross-border and we can provide cross-border services. In terms of employment, those



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would be huge rights that would fall away. Free movement would not even be covered by the withdrawal agreement, and some of these issues are not fully covered by the withdrawal agreement.

**Jeremy Morgan:** And if there was no deal, you would have the additional problem that, as we have said, we face uncertainty. I think a lot of countries are doing a “wait and see”—“let’s see what happens by September/October, and perhaps fill in the gaps”. At the moment, those gaps would not be filled in and those countries would have to start thinking very hard and very quickly about rights. I would imagine that the consequence would be that for issues of healthcare, social security and all sorts of issues of getting into the country—all sorts of practical problems—you would have a very mixed bag, because there would not be enough central direction in the countries to lay down what should be happening.

Q4544 **Peter Grant:** You would no longer have the guaranteed rights under the EU treaties?

**Jeremy Morgan:** No.

**Jane Golding:** No.

Q4545 **Peter Grant:** So you would depend on the sensibleness and reasonableness of your host country—

**Jeremy Morgan:** We also depend on the laws that, in so far as there has been legislation in the various countries, would generally kick in automatically. However, our point is that, for the most part, there remains a great deal of uncertainty, even with those laws.

**Kalba Meadows:** Just to be even clearer, in elderly contingency legislation, we would become illegal.

Q4546 **Peter Grant:** Right. Does that apply to all 27 states, or are there some EU member states where British nationals face the prospect of no longer having the right to live there the day after—?

**Kalba Meadows:** If a country has no legislation in place and no grace period, then the moment that the UK leaves without a deal the UK citizen has no rights, because they have not entered that country as a third-country national and they have not gone through the process of obtaining a visa or obtaining a residence card as a third-country national, hence the importance of the contingency legislation, which actually stops a cliff-edge between being legal and being illegal.

**Chair:** I have other colleagues who have other parliamentary business who want to come in. Jeremy Lefroy.

Q4547 **Jeremy Lefroy:** Very briefly, thank you very much indeed for the extremely helpful document that you have produced. I notice—this would probably have been obvious to those people who live across the EU but not to many others—that the rights for holding dual nationality are clearly very different from one country to another.

I noticed particularly in the case of Spain that, after leaving the EU,



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Spanish citizens living in the UK will have rights—after permanent residence in the UK—for five years to apply for UK citizenship, but the converse would not apply for British citizens living in Spain, because of Spain's rules over dual nationality, and the same seems to be true in other countries as well.

Is it commonly appreciated by British citizens living across the EU that there are these big differences in application for citizenship and holding dual citizenship, and is it your appreciation that this is known to British citizens more generally who might be thinking of going to work in other EU states?

**John Richards:** Just to start, because others will also have comments, Spanish nationality is something that involves a long period of residence. It is 10 years—shorter, obviously, if you are married to a Spanish person—and then there are cultural and linguistic tests, but that is common to most nationality systems. If you are British, you have to give up your passport. Certain nationalities can retain their passports, but those are more those with, shall we say, South American connections. They are the traditional countries with which Spain has other links, but you would have to renounce your British nationality to get a Spanish passport.

Q4548 **Jeremy Lefroy:** But it would not be the case the other way round.

**John Richards:** The other way round is that you do not have to renounce your Spanish nationality if you as a Spanish person take nationality in the UK. Spanish citizens living in the UK have a shorter residence period; they have a relatively hefty fee, but they can obtain UK nationality in circumstances where a UK resident in Spain has a rather different, more cumbersome and much longer procedure where dual nationality is not a possibility.

You asked the question of whether people appreciate this, and I think certainly in the UK, there tends to be a bit of an off-the-cuff reaction of "Why don't you just apply for nationality? Surely they'll give you nationality." That is obviously, from what I have described, not an appropriate response.

Q4549 **Jeremy Lefroy:** Just to make a point about reciprocity, in many cases, it is not going to exist. UK citizens will have worse rights reciprocally than Spanish citizens, because a UK citizen going to Spain and wishing to take up Spanish citizenship would have to renounce UK citizenship, whereas the reverse is not the case. I am wondering quite how this reciprocity actually applies, or whether it is only applicable in certain areas and not where it favours the EU27.

**Jeremy Morgan:** It is not designed like that; reciprocity on citizenship is not really a matter for the Brexit debate. Citizenship is, par excellence, a national issue that each country decides, and the EU itself has no role in determining it.

Q4550 **Jeremy Lefroy:** I just wanted to make that clear, because it is quite clear from your paper that there isn't that, in terms of citizenship. All we are talking about is EU citizens' rights, but the taking of citizenship is



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something that your members are clearly having to consider and in many cases have considered, and it is very different from one country to another.

**Jeremy Morgan:** Yes.

**Jane Golding:** Yes, that is absolutely right.

**Jeremy Morgan:** You could make a parallel with voting rights. Three bilateral agreements have recently been made between Britain and certain EU countries to enable voting rights in local elections to continue. That is because it is not an EU responsibility, and therefore it is a matter for each country to decide. Citizenship is very much in the same camp: it is a national issue that the EU does not interfere with.

Q4551 **Jeremy Lefroy:** Do you think that this difference between national issues and things that have come out of our membership of the EU is understood sufficiently and made clear, both by our Government when interacting with EU citizens in the 27 and vice versa, or are the two sometimes mixed up?

**Jane Golding:** It is very hard to say. Sometimes it is mixed up, and I think a lot of UK citizens who do not understand what is going on at UK-EU level in terms of the negotiations or contingency plans see citizenship as their insurance policy. They do not completely understand how that relates to everything else that is going on. That is true to say.

**Fiona Godfrey:** And they don't necessarily appreciate, as we point out in the paper, that even if you are fortunate enough to be able to become a dual national, that is not a panacea for everything. There will still be rights that we will lose, even as dual citizens, such as Surinder Singh rights, for example, on spousal reunification.

**Jane Golding:** Or professional qualifications. You can change your citizenship; that doesn't change the origin of your qualification.

Q4552 **Jeremy Lefroy:** Finally, it also seems that in some countries, such as Belgium, different local authorities might take a different approach to applications for citizenship. Is that the case? That seemed to come out of the paper.

**Fiona Godfrey:** That is mainly related to British citizens who have been EU officials, because they hold a different type of residence card. There we can see a clear difference between the approach of the Belgian Government and the Luxembourgish Government. In Luxembourg, the special ID card for British EU officials is enough to recognise the five years of residence needed to apply for citizenship. The Belgian Government up until recently has not been recognising even 30 years' residence under that particular card as residence sufficient to acquire citizenship. There have been court cases now, so it is being worked out, but in some communes and some areas, you still have to threaten to go to court before you are granted citizenship.

Q4553 **Seema Malhotra:** I have a brief question for you. Thank you for coming



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to give evidence to us today. The Chair wrote to the Foreign Secretary in May and asked for an update on the progress with plans in each member state. The Foreign Office had overseen a series of almost 500 outreach events for UK nationals over the last 18 months. I was interested to know whether you had attended any of those events and whether you felt that they had picked up all the issues. We have been through the key issues, which vary slightly by country but are still broadly similar, around residency, pensions—although we haven't talked so much about that—healthcare, travel and free movement. Was that an effective process? Does it need to continue? What would your feedback be? Was there anything you felt that that had not brought out as much, in terms of what is of most cause for concern for UK citizens?

**Jane Golding:** I will start with Germany. As well as being co-chair of British in Europe, I am also chair of British in Germany. With the embassy in Germany, we have co-operated on a large number of events across Germany. Of course, Germany is a federal state, so there will be differences in the approach from Land to Land, so we have been trying to cover as many areas as possible.

I would say that there have been a lot of events, which is good. I would say that some of them, until recently, focused too much on the withdrawal agreement and not enough on no-deal contingency. I think now there has been more focus from the embassy side on no-deal contingency. What they have done with us and with German authorities, for example in Berlin, in the last few months, is to organise info fairs. There is a very short presentation at the beginning, rather than a long speech about what the current Government position is, and people can go to stands where they can actually talk to German officials about issues like residency, insurance, health insurance, employment, professional qualifications and all those different areas. I must say that I think that our members in Germany have appreciated that approach. That sort of event is needed more and more—more co-operation with the authorities in-country and more focus on being able to answer people's individual questions when they come along to an event.

**Kalba Meadows:** I will talk a little bit about the situation in France, which is not quite as developed as the situation in Germany. We have a very different population. We are a rural population. British citizens in France are spread over a really wide area, with some living an hour or two hours from a big centre of population. That means that events that have been arranged don't necessarily have a very large catchment area for people.

One of the big problems has been that they have often been arranged at very short notice—sometimes a week or 10 days—and they have often been arranged during working hours. We have noticed that the numbers of people attending have been decreasing. Whereas when they began, we were perhaps seeing 100, 200 or 300 people and they were selling out, now it can sometimes be 20 or 30. There is a kind of vicious circle, where fewer people are attending, so fewer events are organised. They do not have terribly good feedback, because people say to us that they are not really addressing the issues. Therefore, people do not go.



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Another problem is that they are only advertised via social media—Facebook particularly—and you are simply not going to reach all British people living in France via social media. Of course, that leads on to a whole big question about communication and outreach; if we have time, it would be good if we could come back to that. We do not have the same very positive report that Germany has. It could do better.

**Jeremy Morgan:** Speaking for Italy, we have had a lot of outreach meetings. Again, it is a population that is difficult to reach because it is partly rural and partly urban, but spread all over a very long country, so if you get 30 or 40 people at a meeting you have really done quite well. We have had the same experience as British in Italy, organising our own things.

One of the problems was that, certainly in the early days, there was a great tendency to sell the party line. For example, I remember the ambassador giving a talk about a week before the second of the votes in the House of Commons on the withdrawal agreement, when it was fairly clear from the press that it was highly unlikely to be passed, being confident that it was all going to go through. That kind of thing is not helpful, because people are realistic. I would say there has been a great improvement over the past year, with much more focused attention on rights.

There is always the problem that Government spokesmen have of not going too far. By and large, if you want to find out what your rights are in Italy, you are better off looking at a British in Italy website, because we can be franker and clearer, or we can express doubts, whereas, because of the desire of the Government to maintain a relationship with the Italian Government, they will perhaps be rather more cautious in their wording. For example, there is a "Living in" guide for each country in the EU27; it is organised by the FCO, but you get it through your local embassy website. That is all vetted by London, so it tends to be a bit bland at times and not helpful.

**John Richards:** In Spain, the British embassy has made a lot of effort in respect of outreach, because there is quite a large population, but its main thrust has been to try to ensure that those who are resident, who who have not been through the Spanish formal residence procedures but are really living in Spain, get formally registered so that they can take the benefit of either the withdrawal agreement, as originally assumed, or now this decree, because they will already be within the system and can continue.

A lot of effort was put into that, but a lot of information has been given. I agree that, as representatives of the British Government, you are obliged to have a party line approach, which is difficult to avoid. Residents also use the filter of our associations. There are associations on the coast and mine, EuroCitizens, is basically concentrated on Madrid; we have all had a lot of interaction with both the British authorities, in the form of the embassy, and the Spanish authorities. There is a way that people can get information. We all have meetings of our respective organisations, which



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are well attended from time to time and less so on other occasions. That is combined with the fact that the Spanish Government has a really rather comprehensive website—echoing a linguistic comment made in the earlier panel—which is also fully in English, so if you are an English speaker you can look and see the basic components of the decree laid out.

It is not that people are living completely in the dark, but of course things can always be better. People are always concerned about their situation. There is an element of uncertainty that just cannot be explained however much outreach you have.

**Fiona Godfrey:** For Benelux the same is true. Everything that has been said previously is true for Benelux as well.

Q4554 **Chair:** How does the declaratory system that some member states are using work? Where does that leave those who have declared when it comes to paperwork to show that they do in fact have the right to be in the country they have been living in for quite some time?

**Jeremy Morgan:** The answer is, we do not know, because it has not started yet.

Q4555 **Chair:** Nowhere has it started yet.

**Jeremy Morgan:** I do not think it has. People in Holland have received letters.

**Fiona Godfrey:** In Luxembourg and the Netherlands, letters were sent out to every British citizen by the Government. We have a system of registration in most of our countries, so most of us are already registered anyway, but the withdrawal agreement declaratory or constitutive system has not started yet.

**Jane Golding:** The declaratory system is a system that we have across the EU27 now under EU law—declaratory of our rights as EU citizens. It has been working for a long time and it does not seem to cause any problems.

Part of the reason for that is that there is a misunderstanding. A declaratory system does not mean to say that the country—your host country—cannot insist that you are registered. In most countries, there may be a declaratory system under EU law for EU citizens currently, but there is also a mandatory registration system, which is exactly the system that could be implemented under the withdrawal agreement, if the choice was to go down the route of the declaratory system.

Q4556 **Chair:** Right, but if someone said, “Show us that you have the right to reside or work in one of the 27 member states,” what would British citizens be expected to produce, bearing in mind you have just said, “We don’t know”? Presumably there would have to be some documentation.

**Jane Golding:** The documentation that I have to provide in Germany now, to show that I am registered under the mandatory registration



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system, is a simple document that shows I am registered. In other countries, there are forms of registration cards—

**Chair:** Suddenly they are all coming out.

**Stephen Kinnock:** Put your cards on the table. *[Laughter.]*

Q4557 **Chair:** So it is declaratory but with a document.

**All witnesses:** Yes.

Q4558 **Chair:** So even for those who are declaring, who are arguing that there should be a declaratory system here in the UK, for the other countries where there may well end up being one, it will still involve a document.

**Jane Golding:** It will involve a document. It just will not involve an application that could be rejected.

Q4559 **Chair:** So you would get the document automatically.

**Jane Golding:** It is a simple registration system. If you fulfil the conditions under EU law, you will get your document. You do not have to apply for the status.

Q4560 **Chair:** You said, “fulfil the conditions under EU law”, so if you do not fulfil the conditions, you might be rejected for the document. Is that right?

**All witnesses:** Yes.

Q4561 **Chair:** A bit like if you are applying for settled status under the current scheme here in the UK. If you fulfil the conditions, you get it, and if you do not fulfil the conditions, you might not. I am just trying to see what the difference is.

**John Richards:** I think the difference is that settled status is a different status from what you have under your EU rights. You are applying for something different.

If you look at the Spanish system in the decree, it is declaratory in the sense that there is a distinction between those who have been there for more than five years, and so have a right to permanent residency, and those who have been there for less than five years. Life is more complicated for those who have been there for less than five years, but from reading the decree the impression that I have is that, if you produce your piece of paper that shows that you were registered at a particular point in time, that will allow you to receive what is called the TIE—tarjeta de identidad de extranjero. You will get that simply on production of the document, so to that extent it is declaratory, but you will have gone through the procedure that Spain has under EU law to have the document.

If you have been there for less than five years, you will also have to produce, as is the current position under EU law, proof of health insurance and a minimum income level, employment or whatever. It is basically referring back to a level that is the previous existing EU level. The income requirement, for example, has been taken as what is in EU law rather than



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what the Spanish have for third-country nationals arriving afresh in the country, for example.

**Jeremy Morgan:** There is an element of angels dancing on the head of a pin in the discussion between declaratory and constitutive, but I will make this point: your rights under a declaratory system derive from the law, rather than from the possession of a piece of paper. That affects you if you are one of the many hard-to-reach people. I think Kuba, who gave evidence in the earlier group, made the point very well that there are people who will never be reached through any amount of outreach.

That is obvious, but if, in five years' time, they need something and they need to produce evidence of their status, they will not be told, "You haven't got the piece of paper. You didn't get it in time. You're out. You're not having what you want, and you might have to leave the country." They will be able to get it if they can demonstrate that at the appropriate time they met the requirements. The piece of paper is less important. It is not all important, as it is under a constitutive scheme, where you have to have evidence of your status, and those who have not got it in time will not have the status. That is the difference.

Q4562 **Chair:** Can I pursue the point about the Costa amendment. What do you think of the EU's response that says, "It's all very difficult. It will have to be member state by member state, because even outside a withdrawal agreement—even in the event of a no-deal Brexit—we can't really conclude a deal that binds all of us"? What do you think of their response?

**Jeremy Morgan:** We are very disappointed, quite frankly. We mentioned in our paper the process that the UK went through after the Costa amendment. We thought the initial approach to the EU was pretty lukewarm, but we were very much heartened by the letter that Stephen Barclay wrote after our recent meeting with the3million and with Mr Costa. It was a strong letter that set out the position very clearly.

What has to be appreciated—I think this is a response to Ms Malhotra's question on the3million—is that the reason why a ring-fencing agreement has to be made before Britain leaves the EU is not simply that we need the certainty of knowing what our rights are going to be. That is, of course, an important reason, but there is a legal reason.

If the agreement is made under article 50, while Britain is still a member of the EU, the process is very much more simple. It does not require unanimous agreement across all the Parliaments, including regional Parliaments. It is absolutely critical that any default agreement, if I can call it that, on citizens' rights takes place before Britain's exit. We would strongly encourage the British Government to keep up the pressure. We are doing so, for our part, among the nation states in the EU, and centrally in our lobbying there.

Q4563 **Chair:** Do you think that the EU is being unreasonable in saying, "No, we're not going to separate out the question of citizens' rights in the



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event of a no-deal Brexit”?

**Jeremy Morgan:** Frankly, I do.

Q4564 **Chair:** They could do it if they wanted to, couldn't they?

**Jane Golding:** If the political will was there. I wanted to add something to what Jeremy said, from the political perspective, on Michel Barnier's letter. Nothing will move on this via the Commission. This will only move if the EU Council makes a decision, so the decision on this lies in each of the EU27.

Q4565 **Chair:** But isn't it a bit odd that we have spent quite a bit of this evidence session discussing the 27 member states' insistence on reciprocity? The means of ensuring reciprocity all ways round would be to ring-fence an agreement on citizens' rights, but the EU member states do not appear very keen on that. Is it that they haven't noticed that the Commission has said that they can't really do that under article 50, and that it will have to be down to each member state individually? Why do you think that is?

**Jeremy Morgan:** I think a strategic line has been taken: it is the withdrawal agreement or nothing. That includes citizens' rights. "No mini deals" was the original catchphrase. The important point that the 3million made was that, in Barnier's letter in reply to Stephen Barclay's recent letter, we did not get anything about "nothing is agreed until everything is agreed" or "no mini deals". We would hope that there is still room for that discussion to take place, but as Jane says, it requires pressure from the member states to change their minds. As you probably know, the Dutch Parliament passed a resolution supporting ring-fencing.

Q4566 **Chair:** What is the position regarding offers of voting rights to UK citizens remaining in EU member states in the event of no deal?

**Fiona Godfrey:** It varies by country to country. Some countries allow everybody, whether EU or non-EU, after a certain period of residence—usually five years—to vote in local elections.

Treaties and agreements are being signed at the moment between the UK and certain countries—I think Spain just got one, Luxembourg got one a couple of weeks ago and Portugal got one as well—so we will have local voting rights, although obviously we will lose European Parliament voting rights and we won't have national voting rights. However, 60% of us don't have general election voting rights here in the UK either.

**John Richards:** The Spanish draft agreement with the UK goes a good deal further than most Spanish agreements, from a Spanish perspective, because it allows people not only to vote but to stand for election in local elections; they can sit on a council and be a mayor of a council, as well as just voting. That is something that they have negotiated with the UK that, on my understanding, goes a bit beyond—they have other agreements that do that as well, but not many.

Q4567 **Chair:** That is certainly welcome, but I also think it is quite logical. It



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would be a bit odd to give someone the right to vote in an election but not the right to stand for office.

**Fiona Godfrey:** There is another outlier: the Republic of Ireland. A memorandum of understanding between the UK and the Republic of Ireland, which was signed on, I think, 8 May, continues the right of UK nationals in Ireland and Irish nationals here to continue to stand and vote, even in general elections.

Q4568 **Chair:** Sure, and that stems from the common travel area and agreements that predate our membership of the common market, as it was originally, so that is quite a specific case.

What has come across very clearly from the evidence today is that what you and your members may end up getting depends on the perception of the state in which you are living of what the British Government are offering to their citizens living here. Are there things missing from the British unilateral offer to EU citizens here in the UK in the event of no deal that you would like to see the UK Government offer in order to maximise the chance that the member states in which you are living will offer those to you and your fellow British citizens?

**Jane Golding:** The biggest point that is often mentioned in our discussions is primary legislation setting out the rights. That would be very helpful. A second point that would help us would be if the UK changed its mind on the system and moved to a declaratory rather than a constitutive system. That would help us.

**Jeremy Morgan:** It is quite hard for us to say that these are particular points that have been picked up with us by member states. I certainly feel that the removal of appeal rights, when the UK was saying, "This is our no-deal package compared with the deal package," sent a very bad signal about the future prospects of EU citizens here.

Q4569 **Chair:** Just in conclusion, was there anything you had wanted to say that the questions you have had from us haven't given you the chance to express? Once again, thank you very much for the terrific document that you submitted to us. Were there any other points that you wanted to add before we bring the session to a close?

**Jane Golding:** I just wanted to add to the point on voting rights, just to make the point very clearly that those of us who have been living in a host country for more than 15 years, if in that host country there are not voting rights for third-country nationals or for British citizens post-Brexit, will have no voting rights anywhere until they can obtain citizenship. We have already had a discussion about the difficulties of obtaining citizenship and the differing conditions across the EU27.

Q4570 **Chair:** There were problems, were there not, in those who are able to vote in the UK getting their ballot papers in time? I know that from one constituency case that I dealt with in the recent elections. Is that correct?

**Jane Golding:** Yes, and that is a perennial problem, not just in the European elections but in every national vote. It is a problem that came



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up in 2015, 2016 and 2017. Bear in mind that only less than 40% of UK citizens abroad could vote in those votes.

**John Richards:** There is also a problem, which I think is linked to loss of the right to vote, which is basically that you end up in a situation where you have no elected representatives to which you can address yourself, because even if you write to the person who is the MP for your last known constituency—in other words where you would be put if the right to vote for life legislation were to be carried forward—basically MPs, if you do not have an address in their constituency or a relative who can provide an address, tend to ignore any correspondence. I have written to the person who would be my point if things were to progress in that direction, but I have had no reply. This is very common to—our membership stress over and again that it is impossible to engage with an elected House of Commons representative, or very difficult.

The UK obviously doesn't have a system of a representative for an external constituency or some of the solutions that are provided in other jurisdictions. I was asked specifically to bring this point up with the Committee: that there is a feeling of basically being in a void and not being able to have any response from a democratically elected person anywhere because you have ended up in that situation. So that is maybe something that Members would like to bear as a way to carry things forward in terms of their interaction with the 1.2 million or 1.5 million UK citizens who are living in Europe.

**Chair:** Well I hope, concluding on that point, that today has helped to fill any void there may be, because you have had the opportunity—

**John Richards:** It has been a great privilege to—

**Chair:** I am not fishing for thanks; I was just pointing out that you are here precisely because this group of Members, as the Exiting the EU Committee, are very keen once again to hear from you about the experience and the worries and concerns of your members and our fellow citizens—that is who we are talking about—in the other member states. I am confident you will continue to see the concerns you have raised with us reflected in the reports that we produce in an effort to influence those who are making decisions. In this particular case, it is the other 27 member states we are trying to talk to through a megaphone, as well as the Government of this country. On behalf of all the Members, can I thank you very much for coming? It has been a really useful and informative session.