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# Housing rights

Your quarterly newsletter from the housing rights website

July 2021

## The EU Settlement Scheme deadline has passed – what happens now?

Our July newsletter focuses on the passing of the June 30 deadline and what happens to the tens of thousands of European nationals who have not yet secured their status in the UK. We open with a message of support from Geeta Nanda, Chief Executive of Metropolitan Thames Valley Housing and new chair of the G15 group of large housing associations.

Here are this month's topics:

- [We must come together to support secure, settled futures for refugees](#)
- [The EU Settlement Scheme deadline has passed – what happens now?](#)
- [More on EU nationals' rights under the Settlement Scheme](#)
- [Pressure on new rough sleeping rule leads to changes](#)
- ["No recourse" rule – further evidence of problems](#)
- [Government's 'New Plan for Immigration' receives critical reception](#)
- [Asylum accommodation – problems and court cases](#)
- [Migrant children have rights, too](#)
- [Other news](#)

Remember that the [Housing rights](#) website is your key source of guidance on housing and benefits for people with different kinds of immigration status. Popular pages at the moment are the [Brexit news page](#) and those dealing with the rights of EU nationals, all recently updated.

This newsletter from the Chartered Institute of Housing and BMENational keeps you up-to-date with new developments. Please feel free to share it with anyone interested. Click [here](#) if you would like to subscribe.

## We must come together to support secure, settled futures for refugees

*Geeta Nanda calls for housing bodies to join MTVH and CIH in supporting 'Together with Refugees'.*

A secure home provides the foundation refugees need to rebuild their lives. As organisations united by the shared purpose of providing safe homes and cultivating vibrant communities, it is important that the housing sector comes together to contribute to conversations about how we can create a fairer approach to migration. Given the Home Office's proposed reforms to the UK asylum system, this is of ever mounting importance.

Together with the Chartered Institute of Housing and 250 other organisations, MTVH have joined the [Together with Refugees](#) campaign, calling for a better approach to supporting refugees that is more effective, fair and humane.

As an organisation founded to provide homes for the Windrush generation, supporting newly arrived migrants to the UK has been central to our work from the beginning. Today, we continue to empower refugees to rebuild their lives and create places free from destitution and division through our Migration Foundation, which offers practical support with housing, integration and access to justice.

For migrant and refugee communities, the pandemic has magnified existing inequalities in access to healthcare, safe housing, and economic security.



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As the number of migrants facing destitution and hardship has risen, the vital need for tailored support has become ever more apparent.

Convened by the Asylum Reform Initiative (ARI) as part of its strategy for long-term and deep change in Britain's refugee and asylum system, the Together with Refugees campaign is centred on the principle of showing compassion to people fleeing war and persecution. This means standing up for people's ability to seek safety in the UK, no matter how they came here, and ensuring people can live in dignity while they wait for a decision on their asylum application.

As a key partner and founding funder of the ARI, we are proud to be joining with organisations such as Asylum Matters, the British Red Cross, Freedom from Torture, Refugee Action, Refugee Council and Scottish Refugee Council to stand up for our shared principles of respect and tolerance to ensure people can seek safety in the UK.

I am also delighted to be partnering with the Chartered Institute of Housing on this campaign and offer our continued support to the CIH housing rights website, a vital resource for new arrivals to the UK navigating unfamiliar systems in search of a new home.

How we treat refugees is about who we are. At our best, we are welcoming and kind to those facing difficult times. If any one of us feared for our lives or the lives of our loved ones, we'd want to know that others would help us to safety. This is something we passionately believe in at MTVH and we are proud to be joining CIH as part of this shared movement for change.

We're calling  
for a kinder, fairer  
approach to  
supporting refugees



## The EU Settlement Scheme deadline has passed - what happens now?

Hundreds of thousands of EU citizens were 'scrabbling' to attain post-Brexit status before the 30 June deadline, [according to The Guardian](#). *The Independent* [warned](#) that many could be stripped of their rights as frantic efforts to apply for settled status were hampered by jammed Home Office helplines, website delays and overwhelmed advisers turning applicants away.

Government estimates from the start of this month seen by *The Times* suggest that there are about 820,000 European benefits claimants in the UK, of whom about 130,000 had not applied for settled status.

Immigration minister Kevin Foster said that 'extending the deadline is not the solution to reaching those people who have not yet applied, and we would just be in a position further down the line where we would be asked to extend again, creating more uncertainties'. However, he promised that EU citizens who had failed to apply would not have their social welfare benefits cut off and that the Home Office would be 'flexible and lenient'.

Ministers were nevertheless accused of 'risking a terrible injustice' by refusing to extend the deadline. Luke Piper, legal director at [the3million](#), said those who end up applying late 'will not have the same rights as those who apply in time'. *The Guardian* [warned](#) that EU citizens will be issued with a formal 28-day notice if they have failed to apply for post-Brexit settled status. The notices will tell them to submit an application or risk consequences which include losing their rights to healthcare and employment.

### More on the deadline's effects

- The Home Office's updated [guidance on the EUSS for caseworkers](#) now has (on pages 27-30) details on 'reasonable grounds for failing to meet the deadline' and how such cases will be dealt with. Importantly, it stresses that 'you must take a flexible and pragmatic approach to considering, in light of the circumstances of each case, whether there are reasonable grounds for the person's failure to meet the deadline'. Free Movement [analyses](#) the new guidance.
- The EU Rights and Brexit Hub released a [new report](#) in May on the emergency measures required to ensure that many EU nationals are not wrongfully exposed to the hostile environment. The report covers some of the key risks that the deadline poses.
- Bernard Ryan, professor of law at Leicester University, [explains](#) the uncertain legal consequences of missing the EU settlement scheme deadline. He says that 'the underlying legal position as regards the status and rights of those who miss the 30 June 2021 deadline remains uncertain'.



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- In [a new briefing](#), *What Now? The EU Settlement Scheme after the Deadline*, the Migration Observatory reviews the groups whose situation remains uncertain after June 30, including the two million who will need to convert their pre-settled status in due course. The briefing points out that 'it could be some time before EU citizens who have missed the deadline and do not need to demonstrate their status to anyone realise that anything has changed.'

## What happens to the housing rights of European nationals who have not yet received settled or pre-settled status?

What happens to the housing rights of EEA and Swiss nationals who were living in the UK by 31 December 2020 but, on 1 July 2021, still did not have settled or pre-settled status under the EU Settlement Scheme (EUSS)? The housing rights website [Brexit page](#) explains that this depends on whether or not they have applied to the EUSS.

- Those who were lawfully resident in the UK by 31 December 2020 and have **applied under the EUSS** or have an active appeal keep their existing residence rights in the UK until they receive a decision. In practice this covers anyone with an outstanding application. So their entitlements to housing help, benefits or right to rent from a private landlord remain as they were before 1 July. Proof of entitlement is provided by confirmation that they have applied to the EUSS.
- Existing tenants or benefit claimants who have not applied to the EUSS** do, in theory, lose their entitlement. But landlords do not need to check tenants' status if they had a right to rent when the tenancy started, and there also appears to be some flexibility about continuing benefit payments in these circumstances (based on clear commitments made by the immigration minister - but there is no clear written instruction on this, and it appears to directly contradict the DWP's guidance). However, people in this position should be strongly advised to make [a late application to the EUSS](#).
- From 1 July, **new tenants and benefit applicants** who are EEA or Swiss nationals but have not applied to the EUSS (or have been refused status) have no entitlement under free movement rules and should be treated as any other non-EEA applicant until/unless they make an application and are given leave.

More detailed guidance is given by the [Free Movement](#) website. The NRPF Network also has [information](#) to help councils uphold EU citizens' rights and identify support options when people are ineligible for benefits.

## THE EU SETTLEMENT DEADLINE HAS PASSED BUT...



You can still make a late application. **Check on GOV.UK** to see if you are eligible.



Parents still need to **check if their children need an application** and should apply on their behalf without delay.



Application support is still available through our **72 grant funded** organisations.



Even if you have lived in the UK for many years, **you should still check** if you need to apply.



If you applied by **30 June 2021**, your Certificate of Application is proof of your protected right to work, rent, and access benefits and services.



You need to **keep your travel documents updated** via the online view and prove service.

Find out more and apply now at:  
[gov.uk/eusettlementscheme](https://gov.uk/eusettlementscheme)

HM Government

## More on EU nationals' rights under the Settlement Scheme

### Pre-settled status for European nationals and access to benefits - an update

*Mike Norman of Harrow Law Centre gives the latest news on two significant cases affecting EU nationals.*

The April newsletter explained the position of two important cases, '[Fratila](#)', due to be heard on 18-19 May in the Supreme Court, and *CG v Department of Communities (Northern Ireland)* ('DCNI'), referred for a preliminary ruling to the European Court of Justice (ECJ) by a first-tier tribunal, and heard on 4 May.

The cases are on extremely similar principles, i.e. eligibility for universal credit of applicants with pre-settled status, who do not satisfy the conditions of the otherwise-defunct EEA regulations. The development is that *Fratila* has been held pending the decision on the DCNI case. The stay on quashing of the relevant benefit regulations ordered by the court of appeal in *Fratila*, continues to apply. The European Court's Advocate-General [set out his opinion](#) on the DCNI case on 24 June, and the court itself is due to give judgement on 15 July.

The opinion takes a different approach to both the high court and the court of appeal in *Fratila*, being that Article 18 TFEU is not considered directly applicable, instead an equivalent article (24) in the Citizens Rights' Directive itself is engaged.





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As British citizens can find themselves failing the 'right to reside' test in some circumstances, the Advocate-General sees the discrimination as indirect rather than direct (against the majority of the court in *Fratila*) and can consider a defence of justification. Even so, the [regulations](#) are not justified: they are too inflexible and 'go beyond what is necessary to maintain the equilibrium of the social assistance system of the host member state.' The matter should be returned to the national authority, with the view that more consideration has to be given to individual circumstances.

This may yet have significant effects for both benefits and housing rights of EU nationals with [pre-settled status](#). The ECJ are not bound to follow the opinion of the Advocate-General. If they did, it would surely still be viewed as a significant victory for the appellant, albeit one with some nuance as the focus would then shift back to the UK, to see how the national authorities proceed to address 'individual circumstances.'

## Defending the homelessness rights of EU nationals

*Benjamin Morgan, research and communications coordinator at the Public Interest Law Centre, writes about their new report.*

On 1 July, the Public Interest Law Centre launched a new research report, *Still Here: Defending the Rights of Homeless EU Citizens after Brexit and Covid-19*. It examines key rights issues affecting marginalised European citizens, focussing on those at risk of rough sleeping. It is based on original research, as well as casework and litigation undertaken through PILC's EEA homeless rights project.

Key findings and conclusions include the following:

- Restrictions on EU citizens' right to social assistance and the 'gatekeeping' of entitlements by statutory agencies (including local authorities and the DWP) were key drivers of homelessness before Brexit. The end of free movement and changes to the law in 2020-21 are likely to make this worse.
- Homeless EU citizens have struggled to access the EU Settlement Scheme and, as a result, a significant number will become undocumented migrants during 2021. They will lose access to essential services and social provision and could face deportation.
- With notable exceptions, the homelessness sector in the shape of local authorities and commissioned service providers is failing

homeless EU citizens. The opportunity presented by Covid-19 to 'bring everyone in' has only partly been grasped.

- The government's new rough sleeping rule, a revival of previous unlawful policies aimed at deporting homeless EU citizens, is likely to further damage homeless non-UK nationals' trust in support services.
- The homelessness sector must discard passive, 'pragmatic' and technocratic thinking about EU homelessness in favour of an approach based on citizens' rights and social justice.
- At this crucial juncture, the sector must assert the right to shelter—and to remain—of all EU citizens living in the UK.

Speakers at the report launch included the report's author Benjamin Morgan, Mihai Calin Bica from Roma Support Group, Polina Manolova from the University of Tübingen and Agnieszka Radziwinowiczowna from the University of Warsaw. A recording of the launch event will be available soon from the [PILC website](#).

The report itself, which has a foreword by Professor Charlotte O'Brien of the EU Rights and Brexit Hub at York University, can be read and downloaded [here](#).

## Migrants Organise challenges the Home Office on the EUSS and mental capacity

In September last year Migrants Organise and [the3million](#) wrote to the Home Secretary setting out strong concerns about the ability of people with mental capacity issues to access the EUSS before 30 June. Eventually, the Home Office made significant concessions in their approach:

- The issue of mental capacity is now addressed in the Home Office's [EU Settlement Scheme Policy](#) with five pages of detailed guidance (pp.127-131).
- The guidance confirms that those with impaired mental capacity will normally have reasonable grounds to make a late application to the scheme after 30 June (pp.33-34).
- Importantly, after 30 June, Immigration Enforcement must provide an opportunity for people to apply to the scheme and no immigration enforcement will be taken (pp.30-31).



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This action has also increased the Home Office's awareness of the concept of mental capacity. Caseworkers now have a substantial policy document which talks about the issue and could pave the way for a better process and policies for mentally disabled individuals across the immigration and asylum system.

Read *Without Capacity*, the Migrants Organise report, [here](#). And book [here](#) for an online event on 29 July covering immigration law and complex mental health cases.

## EU citizens win right to access personal data held by Home Office

EU citizens have [won the right](#) to get full access to records about them held by the Home Office or any other body after a legal battle by campaigners. Three judges at the court of appeal unanimously overturned an earlier high court decision that their case had no legal merit and ruled the Data Protection Act 2018 unlawfully denied access to their data through an 'immigration exemption' clause. It brings to an end a three-year challenge by the3million and the Open Rights Group.

## Are there really six million EU citizens living in the UK?

Media reports have suggested there are many more EU nationals in the UK than previously thought. This is due to the numbers applying for the EU Settlement Scheme compared to the ONS's estimates of EU nationals in the UK. Jay Lindop of the Office for National Statistics [explains](#) why EUSS data should not be used as an indicator for how many EU nationals are living here.

Nevertheless the Migration Observatory [reported new evidence](#) that EU migration after 2010 was much higher than previously thought.

## Pressure on the new rough sleeping rule leads to changes

*Jean Demars of the Public Interest Law Centre explains how they continue to challenge the new rule affecting those sleeping rough (see April newsletter).*

On 1 December the government amended the Immigration Rules to make rough sleeping a ground for cancelling or refusing permission to stay in the UK. The next day, instructed by the Refugee and Migrant Forum of Essex and London (RAMFEL), PILC wrote formally to the Home Secretary asking that the new rule be repealed. We argued that it was unlawful, disproportionate, discriminatory and violated the UK's international obligations to victims of trafficking. PILC also sent a detailed [report](#) evidencing the potential effect of the new rule on non-UK nationals sleeping rough.

Then on 6 April the new rule was amended so that permission may only be refused or cancelled where a rough sleeper has also:

- repeatedly refused suitable offers of support; and
- engaged in persistent anti-social behaviour

On 20 April the Home Office published [guidance](#) on the interpretation of the rough sleeping rule, which significantly limits its scope. There is little doubt that these changes have come about as a direct result of PILC's legal action and strong opposition from the [voluntary sector](#), [local authorities](#) and [trade unions](#).

After changes to the rough sleeping rule, we have updated our [factsheet](#) for homeless non-UK nationals and those supporting them.

## What next for PILC's legal challenge?

Even after new guidance, there are significant concerns:

- The rule may result in people who find it hard to engage with services as a result of mental health difficulties, lack of mental capacity or substance-misuse issues being targeted for immigration enforcement. Their behaviour could easily be misinterpreted as 'anti-social'.
- The rule presents a significant risk to Roma people whose needs have historically not been met by support services and who have been disproportionately targeted for local authority and immigration enforcement.





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- The 'available support' listed in the Home Office guidance is largely applicable to people with recourse to public funds. Little effective support to leave the streets is available to the group most likely to be affected by the new rule: non-UK national rough sleepers with no recourse to public funds (NRPF).
- The rule may be used coercively, with rough sleepers being offered 'voluntary' return and threatened with deportation if they refuse. It remains unclear who will decide whether voluntary return is a 'suitable' support option. Although the guidance suggests it as an option for those 'who want to go home', voluntary return or 'reconnection' has historically been offered to rough sleepers as a 'single service offer'.
- Anti-social behaviour powers raise significant issues around proportionality, due process and accountability. Rough sleepers are commonly targeted by ASB enforcement measures—often just for sleeping rough. The evidence threshold for the issuing of Community Protection Notices (CPNs) is significantly lower than for older ASB orders.
- The rough sleeping rule lends itself to misuse because it gives powers to local authorities to advise immigration enforcement if support is available and refused, and to target individuals/groups with ASB orders or notices.

PILC is still committed to:

- pressuring the government to scrap the rough sleeping rule altogether
- monitoring how the rule is being implemented on the ground and challenging the government in cases where it is being abused or misapplied.

## What can I do?

If you or someone you know is affected by the rule, or if you believe the local authority in which you live or work is planning to co-operate with the rough sleeping rule, please contact [office@pilc.org.uk](mailto:office@pilc.org.uk)

You can also support active campaigns opposing the rough sleeping rule by the Union Coalition (or contact [jack.jeffery.unite@gmail.com](mailto:jack.jeffery.unite@gmail.com)) and by Homeless Link.

Many councils are refusing to work with the Home Office to implement the new rough sleeping rule. However, ten English local authorities have signed up to a controversial Home Office service that could lead to the removal of some migrant rough sleepers from the UK, *The Guardian* [reports](#).

## "No recourse" rule - further evidence of problems

### Challenge to NRPF in the high court is partially successful

In the April newsletter, Adam Hundt, a partner at solicitors Deighton Pierce Glynn, explained how a black British boy took action against the Home Office's NRPF rule, arguing that it discriminates on grounds of race, by denying families like his access to benefits and putting children at risk of destitution.

In its judgment in April, the court rejected some of the boy's arguments but upheld one of them, saying that 'the NRPF scheme does not comply with section 55 of the 2009 Act' which requires caseworkers to 'have regard to the need to safeguard and promote the welfare of children'.

Free Movement [points out](#) that this is the second case in less than a year to weigh into the NRPF scheme. Previously the high court found the guidance did not adequately provide for those who are not yet destitute but who will shortly become so. Following that case, the guidance was amended. It adds that 'it remains to be seen what steps the Home Office will take in light of this latest ruling. It could introduce more changes to the caseworker guidance to further "clarify" the existing position, or it could go for an all-out rewrite of the source provisions'.

### Councils still failing to accommodate rough sleepers despite court ruling

Also in the April newsletter, Shelter's Jo Underwood reported on the Ncube case, which has wide implications for the treatment of people sleeping rough during the pandemic or similar public health emergencies. Shelter warned that councils are leaving themselves open to legal challenge if they fail to accommodate people facing street homelessness while Covid-19 is still prevalent.

However, *Inside Housing* [reports](#) that councils still turn away rough sleepers following the court ruling. Steve Douglas, chief executive of St Mungo's, said: 'The Ncube judgement has resulted in an inconsistency in approach. Some local authorities have fully embraced the spirit of the judgement, whereas others are still reluctant to, or are unsure about what to do.' Ruth Jacob, senior policy officer at Crisis, said that the judgement has provided 'assurances' for local authorities that were already providing emergency accommodation to those not normally eligible for support. But she said that 'there's definitely still people falling through the gaps'.





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Putting the Ncube judgment into practice clearly gives variable results even though the 'Everyone In' scheme still officially exists. However, it should be possible to argue that people are still unable to sofa surf and that the protections normally in place are still not available.

## 'We are here' - the wider problems facing undocumented people

*Zoe Gardner, policy advisor at JCWI, writes about the We are Here campaign.*

Priti Patel is pursuing a new Borders Bill in parliament which she claims will put an end to irregular migration to the UK. Rather than addressing the real issues in our immigration system, which create the conditions for people to end up without status, the Bill takes a carving knife to the rights and protections we provide to refugees. On top of this, Patel has been deaf to criticisms of her hard deadline for EU citizens to apply for Settled Status, which is bound to leave hundreds of thousands of people undocumented. On 30 June, undocumented EU nationals will join the other migrants who have been forced out of the immigration system and become exposed to the hostile environment.



JCWI's campaign, [We Are Here](#), highlights the voices and experiences of undocumented migrants for whom the UK is home. It reveals how the weaknesses in the immigration system cause people to lose their status, and how the [hostile environment](#) empowers criminals in our society.

It is impossible to know exactly how many people are living in the UK without the right immigration paperwork. The Home Office [estimates](#) there are 430,000 undocumented migrants but a [more recent estimate](#) puts it between 800,000 and 1.2 million. The undocumented population keeps growing because the immigration system itself makes it extremely difficult to secure a permanent status.

Most migrants, when they come to the UK on a visa, are initially granted 30 months' leave to remain before they must apply again and pay [extremely high fees](#). For many migrants, this cycle is repeated every 30 months for ten years before they can apply for the permanent right to stay. During these ten years, any crisis that people experience can impact on their ability to reapply. People often find they can't renew their visa if they experience mental health difficulties, a relationship breaks down, they lose their job or can't afford extortionate fees.

There are no good options for a person once they have failed to renew their visa. Pathways back into a regular status are almost completely inaccessible, as they are expensive and require evidence of decades-long residence before a person is eligible. In the meantime, just keeping their heads above water becomes incredibly difficult. The hostile environment is designed to drive people further underground by removing access to essential services and protections. If you have no right to work, rent or to access benefits, then you have to rely on exploitative employers and landlords to provide for yourself and your family, have shelter and survive. If you are the victim of abuse by an employer or a partner you can't go to the police, as they [may arrest you instead of your abuser](#).

But undocumented people don't simply disappear. In the majority of cases, they are long-term residents with families and communities. Many fear return to dangerous situations, or quite simply no longer have any a connection to countries abroad. The UK is their home. It is vital that the government introduces an immigration system which takes control back from exploitive bosses, slum landlords and the abusers who prey on our society's most vulnerable. The only way to do that is to provide affordable, faster routes to a stable, permanent status for all migrants and reasonable routes to regularisation for all those who have fallen off the track.

Support the campaign by writing to your MP with JCWI's tool [here](#).





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## Government's 'New Plan for Immigration' receives critical reception

CIH, Metropolitan Thames Valley, Homeless Link and NACCOM joined forces to criticise the New Plan for Immigration [in their submission to the Home Office](#) on 6 May. We said that in response to the Windrush inquiry, the Home Secretary promised 'a fairer, more compassionate Home Office that puts people first and sees the "face behind the case"'. Yet the plan does little to address this. It makes no mention of either the 'hostile' or the 'compliant' environment. It refers to the highly controversial policy of designating large groups of people as having 'no recourse to public funds,' but only to extend the NRPF rule to more cases. It makes no mention of the Home Secretary's equality duties nor the steps being taken to comply with these after the ruling by the Equalities and Human Rights Commission that followed the Windrush scandal.

The four organisations urged the Home Secretary to show how she will change the immigration system in response to the Windrush inquiry and the promises she made then, and make a radical move away from the 'hostile' or 'compliant' environment, as many bodies have recommended.

Proposed changes to the asylum system would undermine access to justice and the rule of law, the Law Society of England and Wales [warned](#) as it responded to the consultation. Law Society president I. Stephanie Boyce said: 'The Home Office plans for the asylum system pose a serious threat to the rule of law as well as undermining access to justice and making a mockery of British fair play.'

### Priti Patel vows to count every person coming to UK - but can't say numbers will fall

Despite this and many other criticisms, Home Secretary Priti Patel went on to unveil her [wholesale reform](#) of the immigration system, at a conference hosted by British Future and the Bright Blue thinktank on May 24. *The Mirror* [reported](#) her plans for a 'digital by default' regime which will mean officials can count who is entering and leaving the UK, and the introduction of a US-style electronic travel authorisation form. But she 'swerved' saying whether the overhaul would slash numbers of migrants coming to the UK. She said: 'This is not about the language of old and I'm not going to get into that at all'.

The plan reaffirms the commitment to the hostile environment: 'Compliance with UK immigration laws and rules is an essential part of an immigration system that operates fairly, robustly and with integrity. Controls such as right to work and right to rent checks are key components of this.'

In a further instalment, the government's [Nationality and Borders Bill](#), published on 6 July, will make it a criminal offence to knowingly arrive in the UK without permission, leaving asylum seekers who travel to the UK through unofficial means to face up to four years in prison. [According to the 'i' newspaper](#), campaigners call it a 'nasty anti-refugee Bill' which 'criminalises' vulnerable people. Charities said it would leave thousands fleeing persecution and war no longer able to seek safety in the UK purely due to their method of arrival.

Alasdair Mackenzie, a barrister at Doughty Street Chambers, [imagines](#) how an asylum seeker escaping persecution might fare, if the Home Secretary's new bill becomes law. He said it 'caters for fantasy refugees, not real ones'.

First statistics on the Home Secretary's new system show limited take-up so far of the new visas now available, [reports](#) the Migration Observatory. EU nationals in particular are showing little interest in applying, making up only 5% of applications made in the first quarter of 2021.

### News on the Windrush Compensation Scheme

Previous newsletters have reported on progress and problems with the scheme to compensate victims of the Windrush scandal. The NAO [finds](#) that the compensation scheme is still proceeding too slowly, and concludes that the Home Office has opted not to compensate people who were wrongly ensnared in the hostile environment to a sufficient degree to make it as if - financially speaking - the affair had never happened. It will simply do the minimum required to see off the risk of large-scale litigation.

Home Office data shows that [21 people have died while waiting for Windrush compensation](#) claims to be paid, and more than 500 applicants have waited more than a year for a decision. On 1 June, the Home Office [said](#) the scheme had paid or offered more than £29.5 million in compensation. Its guidance on the scheme is [here](#).





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## Right to rent checks – latest news

The date when landlords have to make full document checks to establish a tenant's 'right to rent' has been put back (again) until September 1. The housing rights website pages on right to rent have also been updated (both the page for [migrants](#), and the page for [advisers](#)). Updated guidance for European nationals on right to rent checks is on the housing rights [Brexit page](#).

The official [landlord's guide to right to rent checks](#) and the [landlords' code of practice](#) have both been updated to reflect the position after 1 July 2021.

Law for Life is updating their [right to rent guide](#) to make sure it is up to date for EU citizens following the EU Settlement Scheme deadline on June 30. Please could you share [this survey](#) with anyone you know who helps others find accommodation in the private rented sector, particularly EU/EEA citizens, refugees, people whose first language is not English, and people on benefits. Those who complete the survey will help in informing the revised guide.

Law for Life will publicise the updated version of the guide as soon as it's ready.

Meanwhile, a [recent blog](#) for Shelter calls the new right to rent rules for EU citizens 'a disaster waiting to happen'.

## Asylum accommodation – problems and court cases

### Conditions at Napier Barracks found to be 'unlawful' and curfew rules 'amounted to false imprisonment'

*Here is an update on the legal challenge to the use of the barracks by Clare Jennings, Olivia Halse and Kathryn Gooding of Matthew Gold and Co who represented two of the claimants.*

In April the High Court heard six claimants' applications for judicial review, challenging the decision to accommodate around 400 men in 14-bed dormitories in Napier barracks, contrary to public health advice. The Court heard evidence that conditions in the barracks, including a massive Covid-19 outbreak in January during which more than half of the residents tested positive, had detrimentally affected residents' mental and physical health.

On 3 June judgment in R. (on the application of NB) v Secretary of State for the Home Department [2021] EWHC 1489(Admin) was handed down – and it was

held, in part, that the Home Secretary had acted unlawfully.

Mr Justice Linden found that conditions in the barracks, which included the 'detention-like' setting, overcrowded dormitories and lack of privacy, fire safety risks and a virtual inevitability that residents would contract Covid 19, were not adequate for the health of the residents and were unlawful. Insofar as the Home Secretary considered the accommodation to be adequate, that was held to be irrational.

The Home Secretary had accepted that the barracks were not suitable to house vulnerable men, but she had failed to adopt an appropriate system to identify those for whom accommodation was unsuitable. The process failed both at the point of allocation and on a continuing basis post-transfer, with barely any of the onsite staff even aware of the criteria, much less trained to apply them.

The Court also found that the barracks-wide lockdown during the Covid-19 outbreak in January, with residents unable to leave under any circumstances and later confined to their rooms for a number of weeks, amounted to false imprisonment. It breached the claimants' rights under Article 5 of the European Convention on Human Rights. However, despite internal Home Office documents describing a 10pm "curfew", and evidence from claimants that this had been applied, Linden J accepted the Home Office's account that it was not a rule enforced by sanctions: it was an expectation that residents remained on site during these hours and therefore did not breach Article 5 or amount to false imprisonment.

Surprisingly, given the High Court's conclusion that conditions in the barracks, including the high risk of contracting Covid-19, affected the health of residents, it held that there had not been a breach of Articles 2, 3 and 8 ECHR.

The judgment acknowledged that if Napier Barracks continue to be used to house asylum seekers, there need to be substantial improvements, a smaller number of residents living there for significantly shorter periods of time, measures imposed to reduce the risk of infection, and a better allocations process put in place to identify vulnerable individuals considered unsuitable to be placed there.

In response to further judicial review claims brought by men moved to the barracks since April, the Home Secretary confirmed that she has suspended all transfers to Napier whilst she considers the judgment in order to determine whether the barracks can be operated in a lawful manner. What does seem clear is



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that if Napier continues to be used to house asylum seekers, very substantial changes are going to be needed.

## More on barracks accommodation

The BBC [pointed out](#) that during the hearing on Napier there wasn't even a witness statement from Clearsprings - the Home Office contractor running the site - about any plan to manage Covid-19 risks. In June, The Independent [revealed letters](#) showing that health officials had advised that single rooms and single bathrooms would be required at former military sites to be Covid-secure.

The Guardian also [reported](#) that an unpublished report by prison inspectors showed 'serious mistakes' and 'fundamental failures of leadership and planning' by the Home Office in its management of Napier barracks and of Penally camp in Pembrokeshire. A letter to the Home Secretary also criticised the failure to consult local authorities and the 'wholly inadequate' health assessments.

## Hundreds of asylum seekers in UK being considered for removal to EU

The Independent [reports](#) that more than 1,500 asylum seekers in the UK are being considered for removal to Europe on the grounds that they may have travelled through the continent on their journey - despite the Home Office having no mechanism to carry out these returns (see April newsletter).

New government data show that 1,503 people - one in four of those who arrived in Britain in the first three months of 2021 - have been told that their asylum claims are not being considered as the Home Office is determining whether removal action on 'inadmissibility' grounds is 'appropriate and possible'.

## Thousands of asylum seekers left unable to afford food as financial support stops

In June, over 50 refugee and migrant organisations, lawyers and academics across Scotland, Wales and England [signed an open letter](#) to the Home Secretary to raise questions about the ongoing Aspen Card Crisis and the card contractor PrePaid Financial Services.

The Payment Card changeover (from Sodexo to Prepaid Financial Services) was supposed to happen over the weekend of May 21-24, but whole families were left without money despite assurances of Emergency Crisis Payments. Refugee and migrant organisations were plunged into a full-scale crisis trying to keep up with one emergency after another.

The hiatus again raised the question of whether asylum seekers can work and earn money while waiting for a decision on their case? Most can't, but the Free Movement blog [looks at](#) circumstances in which they can.



## Migrant children have rights, too

Some positive news stories for migrant children:

- Free Movement [explains new rules](#) aimed at ensuring that certain children born from 1 July 2021 onwards will automatically acquire citizenship where a parent qualified for EU settled status before that date but is only granted it after the child's birth.
- A '[Zambrano](#)' carer is a person from a non-EEA state whose residence is required in order to enable a child or dependant adult, who is British, to live in the UK (or the rest of the EEA). On 9 June the high court ruled that the Home Office had misunderstood EU law; Zambrano carers' rights to reside under EU law until 30 June 2021 were not affected by a grant of limited leave to remain, or by the possibility of getting limited leave to remain. Hackney Community Law Centre [explains the implications](#). Free Movement asks [whether it's best to Zambrano, or not to Zambrano?](#)
- Healthy Start Vouchers are [now be accessible by households who do not have recourse to public funds](#). Matthew Gold Solicitors have published a [briefing note](#) explaining the extension of the Healthy Start Scheme to British children under the age of 4 who are from NRPF families. It includes guidance on how families can apply to claim support.



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- Free Movement has an [article](#) explaining the different rights to social care for children that apply in Wales under the Social Services and Well-Being Act (Wales) 2014.
- Maya Alexander, development manager at Safe Passage [writes for](#) Campbell Tickell's CT Brief on how they help unaccompanied child refugees travel legally to a place of safety, where they can be reunited with family members.
- The Home Office settled a judicial review brought by teenagers challenging the policy under which they were refused registration as British citizens under section 3(1) of the British Nationality Act 1981. Read more about the case [here](#). The photo shows some of the teenagers who challenged the Home Office policy.

The government's system of support for survivors of modern slavery is called the National Referral Mechanism, or NRM. We know from NRM statistics that among adult victims, more non-UK nationals experience modern slavery than UK nationals. When we look at people who are homelessness specifically, we see the proportion of UK nationals being exploited increases, but non-UK nationals are still more at risk.

It's also likely that government statistics only tell us half of the picture. Lots of people experiencing homelessness choose not to be referred to the NRM, and so don't figure in these statistics. A survivor's immigration status may affect whether they accept support from the NRM at all. People from outside the EU might be more likely to accept support from the NRM because it is still available to people with no recourse to public funds. People seeking asylum may also accept support because if the NRM confirms they are a victim of modern slavery, it could be helpful to their asylum claim. However, this does not guarantee they will be granted refugee status. A small number of people may also be granted 'discretionary leave to remain', which allows them to stay in the country for a limited period.

Support from the NRM can include accommodation, if it is decided that someone needs to be taken to a safe house to escape from their exploiters. However, our research found that once NRM support ends, survivors often can't access secure, suitable accommodation. Some people are pushed back into homelessness or remain trapped there. Others go into asylum or temporary accommodation, which is often unsuitable for survivors of modern slavery, who are likely recovering from the trauma of their experience.

Unlike domestic violence, modern slavery does not automatically place someone in the 'priority need' category for accessing housing from local authorities, although it could if they are deemed sufficiently vulnerable. If someone remains trapped in homelessness, as well as jeopardising their recovery, it could push them into a vicious cycle where they are re-exploited. Now that we know more about these links, we need to do more to break this cycle.



## Other news

### New report from Crisis on modern slavery

*Sam Parker from Crisis writes about their new report.*

It has been recognised for a long time that there is a link between modern slavery and homelessness. Lots of staff at homelessness organisations have seen that the people they support have been exploited. Equally, they have seen people that have experienced modern slavery and been forced into homelessness as a result. *No way out and no way home*, [the new report by Crisis and others](#), sheds new light on the links between these issues.





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## Latest on new arrivals from Hong Kong

The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2021 (SI 2021/665) came into force on 29 June 2021. These amend the rules to create a new category of persons subject to immigration control eligible for an allocation of social housing under Part 6 of the Housing Act 1996 or homelessness assistance under Part 7 of that Act.

Regulations 3 and 5 of the eligibility regulations are amended to provide that the following are eligible for an allocation of social housing or homelessness assistance, those:

- who have leave to enter or remain in the UK under Appendix Hong Kong British National (Overseas) of the Immigration Rules,
- whose leave is not subject to a condition requiring them to maintain and accommodate themselves, or any person dependent upon them, without recourse to public funds, and
- who are habitually resident in the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

A consolidated version of the rules, updated with the latest changes, can be [downloaded from the housing rights website](#) (pdf).

## Glasgow stand-off: Residents cheer as immigration officials have to release two men



Photo from Positive Action in Housing

Glasgow residents again defended members of their community in May when Border Force officials arrived to remove two asylum seekers. Chanting [these are our neighbours, let them go](#), people spent hours resisting

attempts to take the two Indian men, Sumit Sehdev & Lakhvir Singh, and were eventually successful. Lakhvir, 34, said through a translator: 'I've been astonished and overwhelmed by the support I've received from the people of Glasgow.'

*Open Democracy* [commented](#) that 'It's not often you defeat Priti Patel: Will Glasgow be a wake-up call?', while the 'i' newspaper [said](#) that 'immigration raids don't work - they just leave communities scared and divided.' A local man - who asked not to be named - who lay down under the Border Force van so that it couldn't move away [said](#) he was 'proud' to have helped.

## More examples of UK residents losing their status

- Consolata Thembe Chikonde was on her way back to London from Paris on a work trip when she suddenly became 'undocumented'. She [explained](#) to Metro why her visa was cancelled and how she lost her job and had to travel back to Zimbabwe before she could return to her home in London and see her daughter again.
- Dr Jolanta Opacka [writes](#) of the shock she felt on receiving a letter on immigration status that was sent to some long-term UK citizens. Her citizenship was questioned even though she had held it since 1998.
- UK Visas and Immigration (UKVI) wrongly classed a Mr Everett as having no status in the UK when he had indefinite leave. Mr Everett arrived in the UK from Jamaica as a 19-year-old in 1962 and lived here legally for over 50 years. However, after a trip to Jamaica in 2015, he started receiving threatening letters. One included a threat of potential prosecution and imprisonment, and the chilling line that his 'life in the UK will become increasingly difficult'. The letters had a profound effect on Mr Everett, who 'began to feel helpless and oppressed and became depressed'. He died in 2019 and the case was pursued by daughter. The ombudsman [found](#) UKVI guilty of maladministration and made a number of recommendations for improving its services.





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## Why stopping refugees is 'un-British'

Writing in the *Spectator*, Conservative supporter Shabnam Nasimi [explains](#) why she thinks that stopping refugees is 'un-British'. She says that she voted for Brexit and wants economic migration to be controlled, but for Britain to continue to protect those who are forced to flee. As a refugee herself, she points out that:

*My journey to the UK would be classed as 'illegal' under the government's 'New Plan for Immigration', which outlines a two-tier system where those seeking asylum irregularly have a lesser chance of being heard. But there were no legal routes open to my family at that time – my parents had to give up their dignity and respect for the chance of safety.*

She concludes by asking, 'Why don't we offer legal ways for refugees to escape persecution and death?'



## More news

- **New guide on supporting refugees and those seeking protection.** CIH Scotland and the Scottish Refugee Council are about to publish a new guide – and details will be included in the next newsletter. In the meantime, frontline housing staff can join an event on 19 August to introduce the guide. See the details [here](#).
- **What is the difference between refugee status and humanitarian protection?** The Free Movement website [discusses the differences](#) and also has a useful post answering the question, [what is the definition of a refugee?](#)
- **Lewisham's allocation scheme found to be lawful.** Under Lewisham's scheme, applicants can only qualify for an allocation if they have lived in the borough for at least five years, making it difficult for recent migrants to apply. However, a court case ruled that the residency requirement is legitimate. The [judgment](#), issued on 13 May, reviewed other, similar cases that were cited in evidence.
- **Do you live in a City of Sanctuary?** If you're not sure, check out the dozens of cities now listed on the City of Sanctuary UK [website](#).



## Contributors

The newsletter is produced at CIH by John Perry with help from Sam Lister. We are grateful to all the contributors to this issue, named in each of the articles. Anyone interested in contributing to future issues can contact [john.perry@cih.org](mailto:john.perry@cih.org).

## Do you have any comments on this newsletter?

Send them to [policyandpractice@cih.org](mailto:policyandpractice@cih.org)

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