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EEA Children and British Citizenship: Why it is Important to Focus on Roma Children

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Research Briefing

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Introduction

This briefing discusses EU Roma children's awareness of, access to and eligibility for British citizenship. It is set against the backdrop of the UK's official departure from the European Union on 31st January 2020, the end of the transitional period on 31st December 2020 (by which time the terms of the UK's departure will have been agreed), and the deadline for registrations under the EU Settlement Scheme of 30th June 2021. EEA/Swiss nationals - adults and children alike - who migrated to the UK under EU free movement law risk becoming undocumented and being deported if they fail to register for this new immigration status by the deadline.¹ It also responds to a perceptible failure by the Government to consider and facilitate the British citizenship rights of children affected by the EU Settlement scheme.² Indeed, a [recent report by the Migration Observatory](#) notes that EU citizens have traditionally been less likely to apply for British citizenship than citizens from non-EU countries, largely because their status under the free

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¹ For further details of the obstacles to EU Roma children's registration under the EUSS, see Stalford, H. and Humphreys, D [EU Roma Children and the EU Settled Status Scheme: Awareness, Access and Eligibility, September 2020](#); and Roma Support Group, '[Brexit, EU Settlement Scheme and the Roma communities in the UK](#)' June 2020.

² See further [PRCNC and Amnesty International Briefing on the Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill 2019-2021](#), House of Lords Second Reading July 2020

movement provisions offered sufficient security prior to Brexit.

It draws on the findings of a project, funded by the Home Office in 2019 and conducted by the European Children's Rights Unit, to develop child-focused communications relating to the EUSS. A key objective of the project is to raise awareness among communities of children that are vulnerable to falling through the gaps in registration, namely: children in care and leaving care; children outside of mainstream education; children in Roma communities; young carers; and children with special educational needs and disabilities. The first phase, which took place from June-August 2019 involved consultation with 54 children and young people aged 10-18 across 8 different regions of England, Scotland, N. Ireland and Wales. Many of the young people fell within more than one of these vulnerable groups, and 33 were from the Roma communities of the Czech Republic, Slovakia, Romania and Latvia.

Whilst the project was primarily designed to gauge children's awareness and understanding of the EUSS and to consult with them on how to develop and disseminate more accessible information, it became very apparent during the course of our consultation that many EU migrant children who are eligible to apply for EU Settlement could be eligible to register as British Citizens.³ This appears particularly to be the case for EU Roma children whose family migration trajectory differs from that of many other EEA/Swiss migrants.

1. The recent history and profile of EU Roma migration to the UK

The recent history of Roma migration to the UK is distinct from the migration of other EU citizens who qualify under the EU settlement scheme. Many Roma migrated to the UK following the accession of Central and Eastern European

³ See further Fernández-Reino, M. 'Children of Migrants in the UK' Migration Observatory, 14 August 2020. For a more general overview of the data on the citizenship rights and practices of migrants in the UK, see Fernández-Reino, M. and Sumption, M. 'Citizenship and Naturalisation for Migrants in the UK', The Migration Observatory, 17 March 2020.

countries to the EU on 1 May 2004⁴ and 1st January 2007⁵ respectively. The accession treaties governing this period of EU enlargement allowed existing EU Member States to apply transitional restrictions on free movement rights for up to seven years after accession (ie until 30th April 2011) to guard against disruption of their labour markets.⁶ The UK was one of only three⁷ established EU Member States not to impose such restrictions and to immediately open up its labour market to nationals from the 2004 accession states. This had a profound effect on the regional distribution of migration from the new 8 Member States to other parts of the EU. Between 2004 and 2007, 70 percent of migrants from the eight Eastern European countries migrated to the UK and Ireland. Bulgaria and Romania joined the EU in 2007 and, even though restrictions were imposed on migration for an initial period,⁸ the UK still ranks fourth and fifth as a destination country for Romanian (4%) and Bulgarian (6%) migrants respectively.⁹ The popularity of the UK as a migration destination for the newer accession states, including those with a large Roma population, continues today: according to 2018 ONS data: Poland is the largest country of origin of EU-born residents in the UK (832,000 people, equivalent to 23% of the total EU-born population in the UK), followed by Romania (392,000 people, equivalent to 11% of the total EU-born population in the UK).¹⁰

Another important factor to take into account when building up a profile of EU Roma migrants in the UK is the links between family formation and migration. EU

⁴ Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

⁵ Bulgaria and Romania

⁶ These restrictions only applied to migrant workers; they did not apply to 'self-sufficient' or 'self-employed' persons.

⁷ In addition to Sweden and Ireland

⁸ Koikkalainen, S. '[Free Movement in Europe: Past and Present](#)', April 2011, Migration Policy Institute. Fearful of a further migration influx due to their relative economic instability, the UK imposed immediate restrictions on labour mobility from Bulgaria and Romania until 2014 allowing only highly skilled and skilled workers, and implementing a quota based scheme for low-skilled work in the agricultural and food processing sectors. After those restrictions were lifted in 2014 Bulgarian and Romanian workers were permitted to enter and reside in the UK for work on the same basis as all other EU nationals.

⁹ Fic, T. 'Commentary: Migration from Bulgaria and Romania to the UK', *National Institute Economic Review* No. 224 May 2013, 4.

¹⁰ ONS, Population by Nationality and Country of Birth, cited in Vargas-Silva, C. and Fernández-Reino, M. '[EU Migration to and from the UK](#)' (September 2019, The Migration Observatory)

migrants tend to be young (below the age of 35) and of childbearing age, and so it is common for them to either migrate with young children or have children shortly after arriving in the EU host state.¹¹ Our previous research on EU family migration at the turn of the millennium revealed that 35% of EU migrants' children were born in the host state following the migration of either one or both parents.¹² 60% of the 180 children interviewed for that study had lived in the host country for 11 or more years, and an additional 15% for 6-10 years.¹³

These patterns of EU migration still prevail and are perhaps even more pronounced following the 2004 and 2007 EU enlargements. Although migration statistics are not disaggregated according to ethnicity, it is a fair assumption that many Roma people migrated from the 2004 and 2007 accession states with their young children or had children after their arrival in the UK. Whilst other categories of EU migrants to the UK - and certainly those from the 15 established EU Member States prior to 2004 - moved largely for the purposes of work, study or to pursue a relationship,¹⁴ the migration of those from less developed EU economies has been motivated more by a desire to improve their life chances and to offer their children better opportunities than what were available in their home country. The social and economic motivations for migrants from the 2004 and 2007 accession countries (and particularly Roma) are even more pronounced given that those economies are significantly less developed and the socio-economic marginalisation and stigmatisation of Roma more marked.¹⁵ Young EU migrant children tend to adapt quickly to new surroundings, which becomes a powerful reason for parents to stay and raise their children in the UK.¹⁶ Those children have never experienced life elsewhere; many identify as British but may

¹¹ Ackers, L. Stalford, H. 'Family, Work and Mobility in the European Union' in *A community for Children?: Children, Citizenship and Migration in the European Union*, (Aldershot: Ashgate, 2004) p.46

¹² Ibid

¹³ ibid

¹⁴ Ibid

¹⁵ Marczak, J. Sigle, W. and Coast, E. 'When the grass is greener: Fertility decisions in a cross-national context' *Journal of Population Studies* 72(2) 2018 pp. 201-216

¹⁶ White, A. 'Family Migration from Small-town Poland: A Livelihood Strategy Approach' in K. Burrell (ed.), *Polish Migration to the UK in the New European Union: After 2004*, (Aldershot: Ashgate, 2009) at p.82; Trevena, P. McGhee, D. Heath, S. 'Family matters: migration and childbearing decisions of 'new' Poles in the UK' *NORFACE Migration: Global Development, New Frontiers* (2013). (University College London), p.2

lack the knowledge, resources or documentary evidence to register for British citizenship (discussed further below).

2. Routes to British Citizenship for children

To understand whether and how Roma children can register as British citizens, it is important to understand the various routes to British Citizenship.

Some children have a *right* under the British Nationality Act 1981 to apply and be registered as British citizens. Some children who may not have a *right* to apply for registration can still be granted British citizenship at the *discretion* of the Home Secretary, either because the child meets certain criteria, or because the nature of the children's circumstances are sufficiently compelling and exceptional.

Other children automatically acquire British citizenship and do not need to be registered. This includes children born in the UK to a parent who is a British citizen, to a parent who is 'settled' in the UK at the time the child is born, and to a parent who is a member of the UK armed forces. A child who is adopted in the UK and one or both adoptive parents are British citizens will also automatically be a British citizen on adoption and does not need to be registered. Similarly, children in another country who have been adopted by a British parent under the terms of the 1993 Hague Convention on Intercountry Adoption can acquire British citizenship.

British citizenship can also be passed on to one generation born abroad. For example, a child born abroad to a parent who is British otherwise than by descent will automatically be British by descent. Children born to parents who are British by descent - ie. their parent/s were born outside the UK and only acquired their British citizenship because one or both of the child's grandparents were **British** citizens - have no automatic claim to British citizenship. Instead, they are entitled to make an application under section 3(2) or section 3(5) the British Nationality Act 1981 if they satisfy the requirements for registration.

Alternatively, the child may apply at the Home Secretary's discretion under section 3(1) if there are compelling or exceptional reasons for registering a child as British.

It is important to note that some children born in the UK to EEA and Swiss nationals will be British citizens automatically. Different rules apply in this regard, depending on when a child was born, reflecting changes in the laws over the years.

- Specifically, a child **born in the UK before 2 October 2000** to an EEA national parent will be a British citizen if the parent was exercising EU Treaty rights at the time of birth (i.e. their parents were exercising their rights as migrant workers under the EU free movement provisions). This scenario includes the children born in the UK to those who migrated from the EU15 Member States well before the 2004 and 2007 waves of enlargement which saw the migration of most Roma families.
- A child born in the UK between 2 October 2000 and 30 April 2006 to an EEA national parent **will only be a British citizen if the parent had indefinite leave to remain (ILR) in the UK at the time of the birth.** This includes, for example, the children born to those who migrated from central and Eastern European countries (before those countries joined the EU) to claim asylum in the UK following the fall of communist regimes and who had been granted ILR by the time of the child's birth.
- A child born in the UK to an EEA national **after 30th April 2006** is regarded as a British citizen if their parent had been in the UK exercising EU Treaty rights (that is, free movement rights in accordance with the [Immigration \(European Economic Area\) Regulations 2006](#)) for more than 5 years or has indefinite leave to remain. This includes Roma children born in the UK to Roma parents following their move to the UK from one of the new

accession countries to join the EU on 1st May 2004¹⁷ and 1st January 2007.¹⁸ **So, for example, if a Polish Roma family moved to the UK on 1st May 2004 and remained there, any children born to them on or after the 1st May 2009 may be regarded as a British citizen. Similarly, if a Romanian Roma migrant couple moved to the UK for work on 1st January 2007 (although migration from the 2007 accession countries was subject to more stringent restrictions at the time), any children they gave birth to in the UK on or after 1st January 2012 could be regarded as a British citizen.**

A child of an EEA national who falls outside of these conditions and did not become a British citizen at birth **may still have an entitlement to be registered as a British citizen under section 1(3) of the British Nationality Act 1981** if the parent has since become 'settled' in the UK. The parent is regarded as 'settled' if:

- he or she has been exercising EEA free movement rights in the UK for a continuous period of 5 years ending on or after 30 April 2006. **Specifically, the children of EU Roma migrants who have been in the UK for a continuous period of 5 years are entitled to register as British Citizens.**
- he or she has been granted indefinite leave in the UK. **This includes parents who have been granted settled status under the EU Settlement Scheme.**

A child born in the UK to non-British parents who are **not** settled can still make an application to register as a British Citizen if the child has lived in the UK for the first 10 years of his or her life (section 1(4) British Nationality Act 1981). **For example, a Roma child born and who has lived continuously in the UK to Polish migrant parents in July 2011 will be able to make an application to register as a British Citizen from July 2021.**

Finally, a child born in the UK to parents who are not settled in the UK and who are not applying for settlement may be registered as British citizens at the discretion of the Home Secretary. **This includes, for instance, Roma children born**

¹⁷ Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

¹⁸ Bulgaria and Romania

to Bulgarian parents who only meet the conditions for EU pre-settled status because they have failed to evidence 5 years of continuous residence.¹⁹

3. Brexit and British Citizenship: Why Roma Children Need Information and Support

Brexit has reinforced the imperative to facilitate children's access to British citizenship for a number of reasons. **The first relate to the time pressures associated with EEA migrants in the UK regularising their residence status:** there is a clear risk that the deadline for registration under the EUSS, coupled with a lack of awareness of registering for British citizenship will compel children to register for an immigration status rather than confirm the British citizenship they already possess or have a right to register for by entitlement or at discretion.²⁰ This likelihood is compounded by the fact that the EUSS is being administered online as a fast-track process by staff who are not fully qualified, regulated nationality law experts. There will, therefore, be limited opportunity or expertise to identify and refer children who may have or be entitled to apply for British citizenship to specialist support. This issue is estimated to affect hundreds of thousands of children. As Coram note:

*An estimated 239,000 EU national children were born in the UK. Some may be UK citizens automatically and about 169,000 will have a parent who had been in the UK for five or more years, but in light of the difficulties faced in securing permanent residence documents in recent years, it is not a given that the parents will be able to prove their permanent residence....*²¹

¹⁹ Further explanation of the rights of children to register as British citizens for the children of EEA and Swiss nationals are available in the following [information leaflet](#) produced by the Project for the Registration of Children as British Citizens.

²⁰ This issue is developed further by Coram Children's Legal Centre in its recent report, Lagrue, M. Bourthoumieux, C. and Layonu, J. '[Children Left out? Securing Children's Rights to Stay in the UK beyond Brexit](#)' Coram Children's Legal Centre, July 2020, pp.7-10.

²¹ Coram Children's Legal Centre, '[Uncertain Futures: the EU settlement scheme and children and young people's right to remain in the UK](#)', March 2019, p.5-6

This also emerged as a key issue in the focus groups conducted during the course of our project. At least a quarter (n=13) of the children in the focus groups indicated that they were either already British citizens (though not documented as such), entitled to British citizenship or could register for British citizenship at the discretion of the Home Secretary.

More recent evidence from the Migration Observatory reveals that, in 2019, about 39% (421,000) of non-Irish foreign citizens under age 18 were born in the UK. This included 46% (314,000) of EU citizens (excluding Irish) under age 18, many of whom may be eligible for British citizenship. Moreover, the report reveals that 129,000 EU citizen children (foreign born or born in the UK) have lived in the UK for at least 10 years to at least one British or settled parent, entitling them to register as British citizens. This includes an estimated 66,000 foreign born children, and 63,000 children born in the UK after their parents' migration.

The second reason why Brexit raises new issues for British citizenship relate to cost: Our research confirms the concerns expressed by us and others previously that children and young people are more likely to opt to register for the EUSS instead of pursuing a claim for British citizenship because the former is free, whereas the current fee for registering children as British Citizens is £1,012 in most cases.

Few are aware that EU migrant Roma children under 18 **who were born in the UK** to at least one British or settled parent (e.g. with indefinite leave to remain [ILR] or settled status) at the time of birth are automatically British citizens **and do not have to pay any fees for their citizenship application.**

For Roma children who are subject to British citizenship fees, the costs are particularly prohibitive given that Roma families tend to be larger and more economically vulnerable.

These views are captured in the following exchange with three young Roma teenagers living in Barnsley:

Elmo: *How much does it cost to apply for British Citizenship - About £50?*

Shey: *I know it's quite a lot for 7 people (the number of children in his family)*

Interviewer: *It depends, but it can be over £1,000 per person*

Shey: *Per person?!*

Ester: *That would be about £6,000 for my whole family*

Interview: *Could you afford that?*

Ester: *[Laughs] No!*

These issues were recently highlighted in a [High Court case](#) challenging the fees attached to British Citizen registration for children.²² The claimants, The Project For The Registration Of Children as British Citizen (PRCBC), contended first that the citizenship fee for children was unreasonably unaffordable for many families to the extent that the legislation setting the fee should be deemed unlawful. Second, it argued that in setting such high fees, the Home Office had failed to consider the impact of setting such high fees on children's welfare, as required by [section 55 of the Borders, Citizenship and Immigration Act 2009](#). Whilst the court rejected the first argument and upheld the right of the Home Office to impose fees on children to register as British citizens, it upheld the second claim that such costs were so disproportionate and prohibitive as to constitute a breach by the Secretary of State of her duty to safeguard and promote the welfare of children under s.55.²³ The fees were also deemed to undermine the objective of the British Nationality Act 1981 which is to ensure that all people with a common connection to the UK shared in the security of its citizenship.²⁴

²² *R (The Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 per Justice Jay (para. 20)

²³ (para 116). Section 55 requires the UK authorities to make arrangements to safeguard and promote the welfare of children in discharging their immigration, nationality and general customs functions.

²⁴ *ibid*

Although the court ruled in favour of the claimants, the fees remain in place pending a Home Office appeal against the decision to the Court of Appeal (listed for a full hearing on 6 - 7 October 2020), yielding [considerable profit](#) for the Government in the meantime.

Another reason relates to the issues of ‘ageing out’ of the concessions available to children who are eligible for British citizenship under the British Nationality Act 1981 or discretionary criteria applied by the Secretary of State summarised above. If applications for British citizenship are delayed until the child reaches 18, he or she will need to apply for British citizenship as an adult, either by registration (for those entitled to do so) or by naturalisation.²⁵ The criteria applied to adults are stricter and depend on them evidencing their lawful residence within the UK. This is likely to be more difficult for Roma people who often struggle to obtain appropriate documentary evidence attesting to their continuous residence.²⁶

A number of the children involved in our study were in their mid-to-late teens. By focusing exclusively on EUSS registration, they may be losing valuable time to register for British citizenship before they turn 18. There is a concern that even if eligible children did decide to pursue their British citizenship registration, they would fail to secure this before the deadline for EUSS registration, leaving them in legal limbo. Whilst registering for the EUSS does not preclude an application for British citizenship thereafter, none of the children we have spoken – or, indeed, those responsible for their care, advice and support in relation to the EUSS – appear to appreciate that the concessions available for children to apply for British citizenship will expire once they reach the age of 18.²⁷ Furthermore,

²⁵ Naturalisation is available to those who do not have a British parent.

²⁶ The reasons for this are detailed in our Briefing paper *EU Roma Children and the EU Settled Status Scheme: Awareness, Access and Eligibility*, July 2020; and in the report by the Roma Support Group, [‘Brexit, EU Settlement Scheme and the Roma communities in the UK’](#) June 2020.

²⁷ For detailed information on the conditions under which children can register as British citizens and the cost-related obstacles and arguments, see Valdez-Symonds, S. ‘Children’s Pathways to British Citizenship’ in Prabhat, D. (ed) *Citizenship in Times of Turmoil? Theory, Practice and Policy*, 2019 Edward Elgar Publishing, p.79; PRCBC and Amnesty International UK, [Briefing on Fees for the Registration of Children as British Citizens](#) March 2019; and Ealing Law Centre and PRCBC, ‘Systemic Obstacles To Children’s Registration As British Citizens’ Legal Research Report, November 2014

none of the children we spoke to could see the added *legal* benefits of registering as a British citizen. Other work has similarly outlined the concerning situation of many parents of children who do not possess sufficient knowledge of their children's status; many are unsure whether their child is automatically a British citizen or entitled to register as a citizen.²⁸

4. Assessing the Legal Advantages of British Citizenship as Compared to EU Settled Status

British Citizenship offers legal benefits and security above and beyond that associated with EU Settled Status. First and foremost, unlike EUSS, British Citizenship allows a child to apply for a British passport, and gives them the opportunity to participate more fully in the life of their local community as they grow up.²⁹ Citizenship would enable Roma children to enjoy full civic rights;³⁰ on reaching the age of majority, British citizens can vote in general elections and referenda, unlike settled status migrants who can only vote in national assemblies, local elections and local mayoral elections.

British Citizenship allows an individual to enjoy unchallenged access to all forms of welfare benefits, including unemployment allowances, pension schemes and universal credit. Although EU settled migrants have access to similar benefits such as universal credit and social housing allocation, these rights are subject to proving their immigration status and would impose a further barrier to Roma migrants who tend to experience documentation issues. **Moreover, recourse to public funds along these lines is not available to *pre-settled* EEA nationals as recently affirmed in the High Court ruling of *R (Fratila & Tanase) v Secretary of State for Work and Pensions* ([2020] EWHC 998 (Admin)).**

²⁸ Coram Children's Legal Centre, *Uncertain Futures: the EU settlement scheme and children and young people's right to remain in the UK*, March 2019

²⁹ Secretary of State (Guide MN1, July 2019)

³⁰ <https://www.gov.uk/elections-in-the-uk>

Most importantly, British citizenship leads to a near unconditional right of residence in the UK. As described by Lord Mance,³¹ a right of abode is a “fundamental” benefit offered to British citizens. British citizens enjoy the right to leave the UK for as long as they want without any hindrance upon their return to the UK. However, leave for pre-settled and settled EU Migrants is not indefinite, and exiting the UK for longer than the allowed period can consequently lead to a revocation or refusal of settled status (two years for pre-settled individuals and five years for EU settled individuals).³² As further explained by Justice Jay in *R (The Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536, “The [EU Settled] status may lapse; it may be cancelled; and individuals holding such leave are liable to be deported on conducive grounds under s.3(5)(a) of the Immigration Act 1971.”³³

Finally, whilst any child of 10 years and above has to be ‘of good character’ (ie. without criminal record) to be granted British Citizenship, if a person receives a criminal conviction after being registered as a British citizen this will most likely not affect their residence status in the UK. This is a key distinction from EU settled status and pre-settled status, whereby a criminal conviction can immediately place these individuals in a vulnerable situation and undermine their application to remain in a post-Brexit UK. Criminal convictions can not only lead to a refusal of status or an upgrade in status (from pre-settled to settled status), but an individual’s continuous residence will be discounted upon commencement of a custodial sentence, resulting in individuals having to ‘restart the clock’ upon their release.³⁴

Whilst the benefits associated with British citizenship undoubtedly outweigh those associated with EUSS, it comes with a note of caution: in registering as a

³¹ *R (Bancoult) v Foreign Secretary (No 2)* [2009] 1 AC 453 para 151

³² <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>

³³ *R (The Project for the Registration of Children as British Citizens & Ors) v Secretary of State for the Home Department* [2019] EWHC 3536 per Justice Jay (para.16)

³⁴ See further Hollingsworth, K. and Stalford H. (2019) [Briefing - The EU Settled Status Scheme and Children in Conflict with the Law](#), Newcastle University and The University of Liverpool; and [Unlock Briefing: EU national, settled status and criminal records](#) (September 2019)

British citizen, a child may have to relinquish his or her citizenship of origin, depending on the nationality laws of their country of origin. Some EU countries do not allow for their citizens to possess dual citizenship or only allow dual citizenship under particular conditions. This includes Poland, the Netherlands, Lithuania, Slovakia, Estonia and Austria. This is a particularly critical issue now that the UK has left the EU, insofar as, in the absence of the UK negotiating otherwise, **only those who retain the nationality/citizenship of an EU Member State may be able to retain all of the benefits associated with EU citizenship.** Children seeking to obtain British citizenship, therefore, will have to weigh the potential loss of these opportunities associated with being EU national (to work, study, retire and travel freely with their families across all countries of the EU countries in the future) against the current benefits associated with British citizenship in the UK.

5. Assessing the Social Advantages of British Citizenship as Compared to EU Settlement Status

Baroness Hale, former President of the UK Supreme Court noted: "the fact of belonging to a country fundamentally affects the manner of exercise of a child's family and private life, during childhood and well beyond."³⁵ This is reinforced in the [Migration Observatory's recent report](#) which refers to citizenship as an important indicator for integration. It cites The [Home Office Indicators of Integration framework](#) (2019 p. 18), noting: "*The acquisition of citizenship and exercise of the rights and actions this entails in itself provides an important bedrock to the integration of any individual in a society.*"

Registration of Roma children, either under the EUSS or as British Citizens, has particular implications for their sense of belonging and integration. This is particularly pertinent in the context of Brexit in that Roma children have borne the brunt of heightened anti-immigration sentiment since the Referendum. Misguided voters blamed the European Union for the UK's perceived immigration crisis (33% of Leave voters identified immigration as their most

³⁵ *ZH (Tanzania) v SSHD* [2011] 2 AC 166 para 32

prominent reason for voting to leave).³⁶ This was compounded by media campaigns which erroneously conflated EU migration with an upward trend in other forms of migration (including forced migration) into the UK, reinforcing negative attitudes towards certain EU migrants (Polish, Romanian and Bulgarian) and ethnic (Roma) groups in particular.³⁷

This was noted in a report by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following a visit to the UK in 2019:

The referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric....Politicians and prominent political figures not only failed to condemn such rhetoric, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities.

In the days following the referendum, the Government reported a spike in the number of hate crimes in England and Wales for 2016-2017. (80,393 hate crime offences, of which 78 per cent were classified as race hate crimes). During 2017/18 hate crimes increased by a further 17 per cent compared with the previous year³⁸

Other research supports this point, with James and Smith evidencing a 1000% increase in hate crimes targeting migrant (including Roma) communities following the referendum.³⁹

³⁶ Fox, B. (2018) 'Making the Headlines: EU Immigration to the UK and the Wave of New Racism After Brexit' in Balica, E. and Marinescu, V. (eds) *Migration and Crime: Realities and Media Representations*, Springer, pp.87-107

³⁷ Fox, B. above note

³⁸ UN special rapporteur, 2019, paras 65-67

³⁹ James, Z. and Smith, D. 'Roma Inclusion post Brexit: a challenge to existing rhetoric?', 2017, *Safer Communities* 16(4)

Unlike other European migrant communities who may ‘blend in’, the socio-economic and ethnic distinctiveness of the Roma community have made them a particularly easy target for such hostility. Roma children have been subject to especially high levels of targeted bullying in schools.⁴⁰

Consistent with these findings, a number of the Roma young people involved in our study attributed the referendum results to wider xenophobic sentiments and recalled incidents of racial abuse from other British children and adults alike:

“[There’s a] stereotype going around that Brexit is just to get rid of immigrants. If it’s true, it would be devastating”

[Krav, Roma Latvian]

“People in school say “Go back to your own country” ”

[Ariana, Roma Slovak]

“They [British children in school] say only English people can stay here”

[Jazzy, Roma Czech]

“English people say this is not your home...English kids call us Pakis because we are ‘black’”

[Lolita, Roma Czech]

Several children and young people spoke of how regularising their status, particularly as British citizens, would enhance their sense of belonging and integration, an assertion supported in the British citizenship fees case.⁴¹ The High Court ruling pointed to *“a mass of evidence supporting the proposition that children born in the UK and identifying as British...feel alienated, excluded,*

⁴⁰ Confirmed by the UN special rapporteur report, above note 37 at para 26

⁴¹ Above note 33

isolated, “second-best”, insecure and not fully assimilated into the culture and social fabric of the UK.”⁴²

This sense of isolation is further compounded by the imminent withdrawal of EU level support for the Roma community, which has prioritised investment in social inclusion and integration programmes.⁴³

6. The specific situation of Roma who claimed asylum in the UK

Through conversations with the Roma Support Group (RSG), we are aware that many Roma migrants initially came to the UK as asylum seekers in the aftermath of the fall of communism in central and Eastern European countries. RSG have informed us that in the period 5-14 April 2004, the Home Office issued letters to 2,614 families informing them that their asylum support will cease by the end of the month. Most of these families were Roma. By the end of May 2004, RSG had supported over 500 Roma families to submit individual appeals to Asylum Support Adjudicators and numerous local authorities. It is not clear what has happened to the remaining families affected.

We do know, however, that of those who were initially granted asylum, children were named on their parent’s Indefinite Leave to Remain (ILR) letter but did not receive letters in their own name. This has created problems for those children in later years, particularly when it came to claiming benefits or applying for the EUSS as adults, since they had no independent evidence of their residence status. The RSG told us of Roksana who is 28, for example. She came to the UK in 1996 at the age of 4 with her parents to seek asylum. On being granted asylum, she was mentioned as a dependant on her parents’ Indefinite Leave to Remain (ILR) letter. As an adult, and some years after her parents’ death, in 2019, Roksana made a Universal Credit application using the ILR letter as a proof of her status in the UK. Her application was refused on grounds that she had “no status in the

⁴² Above note, para 21

⁴³ Detailed in Stalford, H. and Humphreys, D. *EU Roma Children and the EU Settled Status Scheme: Awareness, Access and Eligibility*, ECRU Briefing Paper, September 2020.

UK". She successfully appealed this decision with the help of RSG but her case leaves a worrying question mark over many other, similar cases, who may wish to apply for the EUSS to secure their residence in the UK⁴⁴. For instance, Roksana has 3 brothers and they all have children. Those children have grown up with no documentary evidence of their legal right to remain in the UK. This has come to light now for those who have attempted to register for the EUSS.

Conclusions and Ways Forward

- **More research is needed on the specific vulnerabilities and opportunities for Roma to apply for British Citizenship:** Our research has involved only a small qualitative sample of Roma children affected by the EU settlement scheme/Brexit. A much more statistically robust sample is needed to support the assertions made in this briefing.
- **Fees exemption:** It could be argued that the current fees indirectly discriminate against Roma children. Insofar as a higher proportion of Roma children are likely to be entitled to register for British citizenship than many other EU migrant children for the reasons described above, and insofar as they are more economically disadvantaged than many other migrant groups, the fees preclude many of them from exercising their right to register as British citizens. Moreover, Roma migrants are likely to be disproportionately disadvantaged by Brexit (in terms of their limited access to and problems with meeting the eligibility conditions for the EUSS). British citizenship, therefore, is a key way of securing their rights into the future. **Positive discriminatory measures are required to offset these disadvantages** and level the playing field. Introducing an exemption from the British citizenship fees for EU Roma migrant children would be one positive step in this regard, subject to clarity on whether acquiring British citizenship will preclude

⁴⁴ Whilst individuals with proof of their ILR can continue to live in the UK without applying to the EU Settlement Scheme, there are more stringent limitations on the amount of time they can live outside the UK without losing their ILR status (2 years under ILR as opposed to 5 years as an EU settled national).

retention of their EU citizenship (which would, in turn, imply them relinquishing all of their EU-related rights).

- **Roma with prior ILR status** – further efforts should be made to identify and support those who were granted asylum and ILR prior to their countries joining the EU in 2004 and 2007, to ensure that they have documentary evidence not only of their own residence rights, but of the rights of their children. Children who were included on initial ILR letters should be reissued with documentation in their own right. They should also be referred to specialist immigration lawyers, with knowledge of and a relationship with Roma communities, to provide appropriate legal advice and representation where EUSS, British Citizenship or benefits claims are rejected on grounds of residency concerns.

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