



UNIVERSITY OF
LIVERPOOL

School of Law
and Social Justice

Brexit Research by the European Children's Rights Unit

*EU Roma Children and the
EU Settled Status Scheme:
Awareness, Access
and Eligibility*



Photo by Caroline Hernandez on Unsplash

Research Briefing

EU Roma Children and the EU Settled Status Scheme: Awareness, Access and Eligibility

Research Briefing

Helen Stalford and Dyfan Humphreys*

September 2020

Introduction

This briefing examines EU Roma children's awareness of, access to and eligibility under the terms of the EU Settlement Scheme (EUSS), the new immigration status that enables migrants from the EEA/Swiss Member States to retain their EU free movement rights of residence and associated social and economic rights following the withdrawal of the UK from the European Union.

Public debates and initiatives relating to the impact of EUSS on children so far have almost entirely focused on looked after children.¹ Whilst such initiatives are, of course, welcome, the distinct barriers to EUSS registration facing the EU Roma Community in general, and EU Roma children in particular, have barely featured in mainstream debates about the scheme.²

* Helen Stalford is Professor of Law and founding Director of the European Children's Rights Unit, School of Law and Social Justice, University of Liverpool. Dyfan Humphreys is a legal research intern with the European Children's Rights Unit. For all correspondence relating to this paper please contact Helen Stalford: stalford@liverpool.ac.uk

¹ See notably, the Coram Children's Legal Centre, [Briefing: Settlement for European children in care](#), March 2018; the [report](#) by Macdonald, M. and Holland, S. supporting the Westminster Hall Debate on 'EU settlement scheme in relation to looked after children and care leavers', 3 September 2019; The Children's Society, ['Looked After Children and the EU Settlement Scheme: A guide for local authorities'](#); Refugee and Migrant Children's Consortium, ['EU Settlement Scheme – European looked after children and care leavers'](#) Briefing, May 2019; and Home Office, Looked-after children and care leavers: local authority and health and social care trust [guidance](#).

² Among the most important efforts to draw attention to the specific challenges facing the Roma community include Roma Support Group, ['Brexit, EU Settlement Scheme and the Roma communities](#)

This briefing seeks to address this omission. It builds on recent research and campaigning efforts that have drawn attention to children's potential to fall through the gaps when it comes to registration under the EUSS either because of their own, their parents' or carers' lack of awareness that they need to be registered, or because of a lack of documentary evidence relating to nationality and residence which is required to meet the eligibility criteria.³ Other children or their parents have criminal convictions that may mean they may fail the suitability criteria.⁴ That research has pointed to how gaps in data mean that many of the most vulnerable children who are required to register for the EUSS are invisible to the authorities: nationality data is not routinely collected and retained for looked after children or for children in the criminal justice system.

These concerns have prompted some action on the part of the Government. The Home Office has made up to £17m available to fund 57 organisations across the UK to support the registration of the most vulnerable or hard to reach EU citizens, including children. It has produced detailed local authority guidance to enable them to identify and support the registration of the estimated 9,000 EEA looked after children and children leaving care.⁵ It also commissioned the University of Liverpool European Children's Rights Unit (ECRU) in 2019 to develop child-focused communications to raise children's awareness of and access to the EUSS to supplement the (very adult-focused) EU information currently available. We were particularly interested in engaging with 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 involved consultation with 54 children and young

[in the UK](#)' June 2020; and Morris, M. ['Roma communities and Brexit: Integrating and Empowering Roma in the UK' \(2016\)](#), Institute for Public Policy Research, October 2016.

³ These issues are detailed in 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; 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.

⁴ Discussed further in 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. See also [Unlock Briefing: EU national, settled status and criminal records](#) (September 2019)

⁵ Home Office ['EU Settlement Scheme, Looked after children and care leavers: local authority and health and social care trust guidance.'](#) (April 2020)

people aged 10-18 across 8 different regions of England, Scotland, N. Ireland and Wales from June-August 2019. 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.

That consultation has exposed a number of factors that limit Roma Children's access to the EUSS and prompted some reflection on the distinct legal, procedural and practical ways in which residence status and associated entitlement post Brexit could be facilitated for this group. This briefing is informed by some of those findings and by our review of existing law, policy and research relating to the EUSS, EU-level Roma provision, and Roma migration more broadly. It should be read in conjunction with our other briefing, '[EEA Children and British Citizenship: Why it is important to focus on Roma Children](#)'.⁶

1. The invisibility of Roma (including Roma children) in EUSS registrations data

Data on the number of EEA/Swiss nationals and their family members who are eligible for EU settlement is by no means reliable or complete. As the Migration Observatory note, 'This is because of large differences between the populations covered by the Home Office figures on applications and grants of status as compared to official estimates of the number of EU citizens living in the UK...'⁷ The various factors that obscure estimates, including the way in which data is collected, "*almost all suggest that the number of eligible applicants will be higher than the estimated EU citizen population.*" By way of example, they single out Bulgarians in respect of whom "*...the number of applications greatly exceeds the official estimate of the EU population resident in the UK.*"⁸

⁶ Published online in September 2020 and available on request.

⁷ Sumption, M. '[Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data](#)', Migration Observatory, 16 April 2020.

⁸ Sumption, M. above note.

As far as children are concerned, there are an estimated 966,000 children of (non-Irish) EEA/Swiss nationals currently living in the UK.⁹ The obligation to register under the EU settlement scheme before the deadline of 30th June 2021 applies equally to them¹⁰ as it does to adults. Whilst most parents can and will complete EUSS registration for their children, children who can provide the necessary documentary evidence can register on their own behalf. In most cases this is relatively straight forward but, as of March 2020, 412,820 under 18s – less than 50% of children eligible for the EUSS – have been registered.¹¹ **This indicates that a much higher proportion of eligible children than adults remain unregistered.**

Whilst data relating to the registration of children under the scheme is patchy,¹² **data relating to the registration of Roma people is non-existent.** This is primarily because immigration data – including EUSS data – is disaggregated according to nationality rather than ethnicity. In addition, many applicants do not identify as Roma when it comes to registration. As such it is impossible to state with any certainty how many Roma people, let alone Roma children, have registered for the EUSS.

In terms of estimating how many Roma people are eligible for EUSS registration, the Council of Europe suggests that approximately 225,000 migrant Roma live in the United Kingdom, accounting for 0.36% of the entire population.¹³ Most Roma migrants in the UK come from the Central and Eastern European states that

⁹ Migration Observatory, [‘Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?’](#), 2018

¹⁰ We use this term to refer to the minor (under 18) dependant of an EU migrant who falls under the scope of the EU free movement provisions (Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77–123. This may also include children who have been born in the UK to EU migrants following their arrival in the UK.

¹¹ [Home Office EU Settlement Scheme quarterly statistics tables, March 2020](#)

¹² Home Office data on child registrations is limited to all those under 18; it is not disaggregated further to reflect registrations of different childhood age groups, making it impossible to identify if registration gaps are more prevalent in different age groups (such as very young children or older teenagers, for example).

¹³ Cited in Tileagă, C. and Professor Aldridge, J. [Roma Community Perspectives On Migration To The UK](#), (Loughborough University, 2019)

joined the EU in 2004¹⁴ and 2007¹⁵ respectively.¹⁶

The only statistical indication of Roma registrations available to date is provided by the Roma Support Group in its June 2020 report, '[Brexit, EU Settlement Scheme and the Roma communities in the UK](#)'. This reveals that, of the 30 organisations providing EUSS-related support to Roma people, by the end of February 2020, over 7,000 had been informed of the scheme of whom approximately 3,000 were supported to make applications. Whilst these numbers only reflect information provided by one fifth of the organisations currently working with the Roma, they provide a worrying indication of the number of Roma registrations still outstanding: potentially well in excess of 150,000.

2. Not just another group of children: the distinct position of EU Roma children

Children in the Roma community may be more vulnerable than all other children to slipping through the gaps when it comes to EUSS registration. They are a particularly socially and economically marginalised group which has less routine engagement with public services, less stable employment and accommodation arrangements, and proportionately higher rates of criminal conviction such that they and their parents are more likely to struggle to meet the conditions for EUSS registration. The Roma community will be especially vulnerable to poverty, social exclusion and even deportation if they fail to register under the EUSS before the deadline of 30 June 2021, with particular implications for their children. They will lose any entitlement to access employment and training, any

¹⁴ Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia became members of the EU on 1 May 2004.

¹⁵ Romania and Bulgaria joined the EU on 1 January 2007. Roma people are known to have migrated to the UK from those countries with large Roma communities, particularly Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia.

¹⁶ See further our briefing on 'EEA Children and British Citizenship: Why It Is Important To Focus On Roma Children' (forthcoming Sept 2020 and available on request) for an overview of EU Roma migration to the UK following the 2004 and 2007 waves of EU enlargements.

entitlement to access public services on the same basis as nationals such as schools, healthcare, leisure facilities and housing, and will have no recourse to public funds, such as social welfare assistance. This is compounded by the fact that the UK will lose many of the benefits arising from wider EU-level initiatives to support Roma integration and progression as outlined below. In that sense, it has been suggested that Brexit presents a *“triple whammy of risks” : uncertainty over their future legal status, rising concerns about hate crime, and a potential loss of EU funding for integration and support services*.¹⁷ The administrative delays, restrictions on travel, and economic insecurity presented by Covid-19 pose an additional threat to Roma people’s access to, eligibility under and rights arising from the EUSS.

These risks are arguably more profound for children for the reasons explained below, but we also argue that focusing on children’s rights and interests in the context of EUSS is an important strategy for securing protection for the wider Roma community; focusing on children’s understanding of and access to the EUSS is a critical means of securing their parents’ and wider community’s access to the scheme. Contrary to the presumption on which the EUSS operates - that parents will manage their children’s EUSS registration - evidence suggests that low levels of technical, language and literacy skills and resources among many Roma parents and carers mean that they are often dependent on their children to navigate such processes.

Moreover, children have distinct rights under EU immigration and nationality law which can be harnessed in the context of the EU settlement scheme. Notably, there is a statutory duty on public authorities to safeguard children’s welfare and promote their best interests in *all* immigration decision make under [s.55 of the Borders, Citizenship and Immigration Act 2009](#). This extends to the need to take children’s interests into account when determining the immigration status and potential deportation of their parents ([ZH \(Tanzania\) v SSHD \[2011\] 2 AC 166](#)). In the same vein, under UK nationality law, special rules and concessions apply to

¹⁷ Morris (IPPR), above note 2, p.3

children as regards their eligibility for British citizenship which could benefit not just the child, but their parents and other family members or carers.

3. What Brexit means for Roma protection and support

Beyond the rights associated with free movement, one cannot overstate the impact of Brexit on the Roma community. They stand to lose a range of protections and provision that arose from the UK's membership of the European Union. As Europe's largest ethnic minority, the Roma have been the focus of specific constitutional, legal and policy commitments aimed at promoting their integration and protecting their rights. These investments have imposed not only binding legal obligations on the Member States, but also stimulated a high level of political commitment and co-operation through systematic monitoring and financial incentives.

On a constitutional level, equality and respect for human rights, including the rights of persons belonging to minorities, are founding values of the European Union (Article 2 of the [Treaty on European Union - TEU](#)) and combating discrimination and social exclusion is one of its main aims (Article 3 TEU). Moreover, [the Treaty on the Functioning of the EU](#) (TFEU) provides that, in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on racial or ethnic origin (Article 10 TFEU). It is also obliged to take into account requirements linked to the promotion of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health (Article 9 TFEU). These obligations are supported by the [EU Charter of Fundamental Rights](#), which sets out the human rights to which the EU and Member States have to adhere when implementing EU law. Among the many social, economic civil and political rights protected by the Charter is a prohibition of discrimination based on any ground, such as sex, race, colour, *ethnic or social origin*, genetic features, language, or *membership of a national minority* (Article 21).

These provisions are supplemented by a range of legal obligations on Member States arising from EU secondary legislation. The first, most notable instrument is

[The Race Equality Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.](#)¹⁸ This prohibits both direct and indirect discrimination on grounds of race and ethnic origin (such as Roma origin) in employment and occupation, vocational training, membership of employer and employee organisations, social protection, including social security and health care, education, and access to goods and services including housing. The Directive also prohibits both direct and indirect discrimination based on ethnicity. This includes any segregation of Roma children through unjustified placement in special education programmes for children with disabilities, ethnic segregation in mainstream education facilities or discrimination in housing. These obligations reinforce existing obligations under the European Convention on Human Rights which has been incorporated into UK domestic law by virtue of the Human Rights Act 1998.¹⁹ Additionally, the Directive prohibits harassment that has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. This includes any ethnically driven bullying of Roma children in schools or communities.²⁰

The second EU legislative measure of significance for the Roma is the [Race Equality Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law](#). This ensures that certain forms of racially and ethnically motivated behaviour constitute a criminal offence in all Member States. Specifically, it criminalises public incitement to violence or hatred against racial or ethnic groups, including Roma people. Moreover, it requires that for any criminal offence, the racist and xenophobic motivation is considered as an aggravating circumstance and taken into account in the

¹⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26

¹⁹ See notably European Court of Human Rights (ECtHR) case law prohibiting educational segregation of Roma Children, *D.H. and Others v. the Czech Republic* [GC], No. 57325/00, 2007 (placement of Roma children in special schools) and *Oršuš and Others v. Croatia*, No. 15766/03, 2010 (Roma-only classes in primary schools). The ECtHR has also ruled that States are under a *positive* obligation to take positive effective measures against segregation and discrimination (*Lavida and Others v. Greece*, No. 7973/10, 30 May 2013).

²⁰ Lajčáková, J. Hojsík, M. and Karoly, M. (2020) [Combatting Antigypsyism Expert reports building on forward-looking aspects of the evaluation of the EU Framework for National Roma Integration Strategies](#), European Commission, p. 24

determination of penalties.

Whilst some of these measures have been incorporated into UK domestic law,²¹ their effectiveness in protecting the Roma, including Roma children, against the heightened abuse experienced during and in the aftermath of the Brexit referendum have been limited.²² Their effective implementation depends on the awareness of the Roma community that such instances are criminal offences in the first place, and on their willingness to report such offences to the relevant authorities. This, in turn, relies on the Roma community's confidence that the authorities will act appropriately and swiftly. As the evidence presented below suggests, such knowledge and confidence is lacking but has slowly improved as a result of the comprehensive strategies and associated funding that the EU has put in place to support robust and comprehensive implementation of these commitments at national level.²³ These strategies, which will be renewed at EU level from 2020 onwards,²⁴ have centred around policy objectives in four areas: housing, education, healthcare and employment. Children are at the heart of these initiatives with Member States' achievements subject to annual monitoring and targets relating to: improvement around access to and quality of early childhood education; participation in and completion of secondary and third level education; inclusive teaching methods and the outlawing of segregated

²¹ For instance, the [Equality Act 2010](#) incorporates Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Hate crimes targeting ethnic minority communities are governed by the [Crime and Disorder Act 1998](#) (which includes 'aggravated offences with longer sentences for offences motivated by hostility based on race or religion – sections 28-33); [The Public Order Act 1986](#) (prohibiting conduct that is likely to stir up hatred on grounds of race, sections 17-29), sections 145 and 146 of the [Criminal Justice Act 2003](#) if hostility is motivated by any of the five protected characteristics, including race and ethnicity.

²² See ECRU's accompanying briefing Stalford, H. and Humphreys, D. 'EEA Children and British Citizenship:

Why it is Important to focus on Roma Children', (forthcoming September 2020 and available on request).

²³ Communication from The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions, [The Social and Economic Integration of the Roma in Europe](#), COM(2010)133 final; and Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions [An EU Framework for National Roma Integration Strategies up to 2020](#), COM(2011) 173 final

²⁴ Lajčáková, J. Hojsík, M. and Karoly, M. (2020) [Combatting Antigypsyism Expert reports building on forward-looking aspects of the evaluation of the EU Framework for National Roma Integration Strategies](#), European Commission;

schooling.²⁵ The UK's fulfilment of these commitments to date has been patchy: while it has introduced in a number of measures to fight early school leaving, it has failed to eliminate school segregation, to support children in the transition between educational levels or to proactively facilitate Roma participation in tertiary education.²⁶ Research reveals that fewer than 10% of Roma pupils achieve 5 GCSEs graded A*- C or equivalent, compared to approximately 60% of all pupils nationally. It is not surprising, then, that only 3-4% of Roma young people access higher education compared to over 50% of the national 18-30-year-old population.²⁷

Finally, and importantly, the EU has provided significant funding to support implementation of these obligations. Roma integration initiatives in the UK have been funded through the EU Structural and Investment Funds (primarily the European Regional Development Fund and the European Social Fund), which are aimed at reducing economic and social inequalities between the EU's regions and nations. From 2014-2020, the UK has received an estimated €10.6 billion to support various social cohesion initiatives, some of which has been delegated to local councils to invest in Roma integration programmes and support. Examples include the establishment of 'Romanet', a multi-agency programme in Glasgow to improve health, education and social services for its Roma community, and funding to support a complex case group led by Derby City Council, aimed at tackling barriers to public services access for Roma families and at relieving community tension.²⁸

All of this funding to the UK will cease at the end of the Brexit transition period (31 December 2020) with no clarity, as yet, as to how and whether it will be replaced. The political declaration on the future UK-EU relationship does not

²⁵ See the latest [Report on the implementation of national Roma integration strategies – 2019, COM\(2019\) 406 final](#) and the accompanying [Commission Staff Working Document Roma inclusion measures reported under the EU Framework for NRIS](#), SWD(2019) 320 final.

²⁶ [Report on the implementation of national Roma integration strategies, COM\(2019\) 406 final](#) s.1.1

²⁷ 'Participation Rates in Higher Education: Academic Years 2006/2007 -2017/2018' National Statistics, DfE, 26th September 2019; and Mulcahy, E., Baars, S., Bowen-Viner, K., and Menzies, L. 'The underrepresentation of Gypsy, Roma and Traveller pupils in higher education A report on barriers from early years to secondary and beyond' Research brief, Kings College London, 2017.

²⁸ Morris, M. (IPPR) above note 2, p.12

envisage the UK continuing to contribute to or receive EU Structural Funds after that point. In 2017, the UK government announced that it would replace EU Structural Funds with a successor arrangement, the UK Shared Prosperity Fund. In its 2019 manifesto, the Conservative Party reiterated this pledge and committed to “at a minimum match the size of [Structural] funds in each nation” but very few details about the operation of the Shared Prosperity Fund have been released to date.²⁹

Bearing in mind the likely loss of EU-level provision for Roma children - and not least the additional layer of legal and financial protection it provides to ensure that the UK is delivering on its obligations to protect and promote the rights of this community - maintaining core residence and associated economic and social rights as EU settled nationals or, indeed, as British citizens, is particularly critical.

4. Awareness and Accessibility of EU Settlement Scheme to the Roma Community

Evidence so far suggests that the Roma community face distinct and substantial challenges in accessing the EUSS, arising out of a lack of awareness of the scheme, lack of access to the internet to complete the application, lack of language and literacy, including technical skills to understand and complete the application, and lack of access to appropriate and trusted support to assist their application. This is confirmed by Roma Support Group in its recent review of Roma applications to the EUSS, that “*a considerable part of the community is still not aware of the EUSS process or could not make an application yet*”³⁰

In the course of our consultation with children across the UK (including 33 Roma children), when asked whether they knew whether they need special permission

²⁹ In the March 2020 budget, the government committed to setting out further plans at the next spending review. See further [Institute for Government: European Structural Funds after Brexit: the UK Shared Prosperity Fund](#), June 2020; and House of Commons Library Briefing – [UK Funding from the EU](#), November 2018

³⁰ RSG, June 2020 ‘[Brexit, EU Settlement Scheme and the Roma communities in the UK](#)’, p. 4

to remain in the UK following Brexit, the majority (56%; n=30) agreed that such permission is necessary, 20% (n=11) were unsure and 24% (n=13) disagreed. Although the majority (56%) of young people recognised the need to obtain special permission to remain in the UK post Brexit, 70% (n=38) of the young people had no idea of how to apply for it. Few had received any information about it. Of those young people who did know about the EUSS, there was a sense that they will be supporting their parents through the EUSS process because of their parents' limited technical and language literacy, not the other way around. This was a particularly evident in the Roma young people's responses:

"My parents won't know....They can speak for work and stuff and for doctors, but they won't know for anything else. I don't think out parents got much education"

[Ester, Roma Latvian]

Only two of the 54 young people in our sample had registered for the EUSS. **None of the 33 Roma children involved in the study had even applied.** Wider research suggests that even when Roma families do apply, they face additional obstacles when it comes to satisfying the criteria for settlement.

5. Meeting the Conditions for EU Settlement: Challenges for Roma Children and their Families

The Main requirement for eligibility under the settlement scheme is continuous residence in the UK. Specifically, Settled Status (the equivalent of Indefinite Leave to Remain) is available to all EEA/Swiss nationals and their families who have been resident for at least 5 years by 31 Dec 2020. If a child has accrued less than 5 years residence he/she will be entitled to settled status by virtue of their relationship with a relevant EEA citizen who has acquired settled status.

Pre-settled status (the equivalent of limited leave to remain) is available to all EEA/Swiss nationals and their families who have been resident for less than 5 years by 31 Dec 2020 with the possibility to 'upgrade' to settled status thereafter

once they have accrued 5 years of continuous residence.

Applicants generally prove residence through employment records, tenancy agreements, banking and healthcare records, or through their children's school records. This can be particularly challenging for the Roma community whose employment and engagement with public services may be more erratic and undocumented. Research suggests, for instance, that work undertaken by Roma in the UK post-migration is commonly obtained through family connections, and often involves precarious employment agreements, temporary jobs offered through non-statutory agencies, under harsh working conditions that are less likely to be properly documented.³¹

Roma children are more likely to experience interruptions in their education than other EU migrant children, making it difficult to prove continuity of residence through school records. This is supported by Research on Roma, Gypsy and Traveller children which consistently reveals significantly higher levels of patchy attendance and exclusion than for other ethnic groups.³² Roma children, in particular, are 4-5 times more likely to be excluded from school than their peers, with many deciding to self-exclude due to high levels of discrimination and a perceived lack of future academic opportunities.³³ This is supported by recent [ethnicity data published in January 2020](#) by the Department for Education showing that Gypsy, Roma, and Irish Traveller pupils had the highest temporary and permanent school exclusion rates for any ethnic group. Specifically, in the School year 2017-18, Gypsy and Roma children comprised 16.52% of temporary exclusions.

Whilst there is relatively little research on the housing experiences of the Roma migrant community compared to traveller and gypsy community, it is widely

³¹ Dagilyte, E., Greenfields, M., 2015. 'United Kingdom Welfare Benefit Reforms in 2013-2014: Roma Between the Pillory, the Precipice and the Slippery Slope' *Journal of Social Welfare and Family Law*. 37, 476-495; Poole, L. and Adamson, K. (2008) 'Report on the situation of the Roma community in Govanhill, Glasgow', University of the West of Scotland; Morris, above note 2, p.5

³² Mulcahy et al, above note 27

³³ UK Parliament, '[Tackling inequalities faced by Gypsy, Roma and Traveller communities](#)', House of Commons Women and Equalities Committee Report April 2019.

accepted that they face serious problems in their accommodation, making it difficult to evidence residence on the basis of their housing records. One report from 2014 states:

“[Roma] ...are often located in poor and deprived areas and because of the shortage of social housing, tend to end up renting in the private sector. A number of respondents highlighted that unscrupulous landlords are charging Roma tenants high rents for low quality and overcrowded accommodation..” – Such arrangements commonly lack proper tenancy agreements making it especially difficult to evidence their residence.³⁴

Roma are also more likely to fall foul of the suitability criteria underpinning EU Settlement. These require that all applicants of 10 years are subject to a criminality check while applicants aged 18 or over have to explicitly declare if they have been convicted of a criminal offence or if they have been arrested or charged with an offence for which they are awaiting trial, either in the UK or overseas.

Evidence of ‘serious or persistent criminality’ will affect an application; whether to grant settled or pre-settled status to those who have a history of serious or persistent criminality is determined on a discretionary case-by-case basis. Moreover, periods of imprisonment break the continuity of residence for EUSS applicants. This means that applicants in prison/detention cannot apply for settled status unless they have already accrued 5 years of residence prior to being detained.³⁵ If they have not accrued a full 5 years of residence before being detailed, the clock starts again from scratch (cancelling out previous residence) on their release. These conditions are particularly challenging for the Roma community who are more likely than other EU nationals to have a criminal record. Research by Her Majesty’s Inspectorate in 2014 claims:

³⁴ Lane, P. Spencer, S. and Jones, A. [‘Gypsy, Traveller and Roma: Experts by Experience Reviewing UK Progress on the European Union Framework for National Roma Integration Strategies’](#) Anglia Ruskin University, 2014.

³⁵ Whether or not an EEA national can apply for the EUSS whilst in prison is unclear. See further Unlock’s [Policy briefing: EU nationals, settled status and criminal records](#), September 2019.

*“Even on the lowest estimates ... it is clear that prisoners of Gypsy, Romany and Traveller backgrounds are significantly over-represented in the prison population....Our survey findings suggest that the proportion might be as high as 5% – the same proportion as women prisoners – and much higher than this in some establishments, particularly those holding children”.*³⁶

This is supported by David Lammy’s independent Review in 2017 into the treatment of Black and Minority Ethnic individuals in the Criminal Justice system which identified a serious ‘blind spot’ in the treatment and support of Roma people: *“Though Gypsies, Roma and Irish Travellers represent just 0.1% of the wider population, they are estimated to account for 5% of male prisoners.”* In some prisons, the report reveals, Gypsy, Roma and Traveller people account for up to 12% of all prisoners.³⁷ This trend is replicated in the youth justice system where recent studies have estimated that Gypsy, Traveller and Roma children constitute up to 12% of the population in Secure Training Centres and up to 17% of the population in some Youth Offender Institutions.³⁸

6. The Spectre of Windrush: Accessing Appropriate Legal Advice and Representation

Some have argued that the failure to facilitate the registration of eligible EEA/Swiss nationals under the EUSS could signal a second Windrush scandal: it would render them undocumented and leave those with limited means to pay for legal advice and representation vulnerable to deportation.³⁹

We suggest that the failure to respond to the specific needs and vulnerabilities of EU Roma people, including children, has the potential to be significantly

³⁶ [‘People in prison: Gypsies, Romany and Travellers: A findings paper by HM Inspectorate of Prisons’](#), February 2014.

³⁷ The Lammy Review An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, pp.11 and 45

³⁸ [‘Overlooked and Overrepresented: Gypsy, Traveller and Roma children in the youth justice system’](#), The Traveller Movement (2016), p. 5; and The Traveller Movement, [‘Gypsy, Roma and Traveller children in the CJS’](#) August 2020.

³⁹ See Commons Select Committee [‘Settlement Scheme risks repeat of Windrush Scandal’](#) 30 May 2019

worse than Windrush both in scale and its effects. In terms of scale, the Roma Support Group and the network of EUSS advice and support organisations connected with the Roma community claim to have supported approximately 2,600 people to register for the EUSS scheme. This is drop in the ocean given that there may be more than 200,000 eligible claimants, representing a mere 2.6% of those likely to require registration. If we look at these figures against the backdrop of EUSS registrations more generally, recent Home Office statistics (as of June 30th 2020) indicate that 3,402,000 EEA/Swiss migrants have been granted settled or pre-settled status so far, whilst 57,600 applications have been refused, withdrawn or deemed invalid. Set against the most recent estimates⁴⁰ of the EEA/Swiss migrant population living in the UK of around 3.72 million people who were nationals of other EU countries living in the UK, this implies that approximately 91% of those potentially eligible have registered...significantly higher than the estimated proportion of registered EU Roma migrants.

Whilst further disaggregation and analysis is necessary, and allowances should be made for disparities and gaps in data, Roma people are likely to constitute a significant proportion of those yet to be registered or of those whose claims have been rejected or deemed invalid. This exposes the potential for the EUSS to operate in an indirectly discriminatory way insofar as it is so much more difficult for Roma people to access the scheme and meet the eligibility requirements than for other EEA migrants. This is compounded by the fact that Roma children and their families have limited financial means to pay for the appropriate legal advice and representation should their application for EUSS be refused for failure to meet the eligibility criteria.

Government support and concessions to date do not fully meet the complex practical and legal issues emerging from the Roma community. Specifically, legal aid has only been reinstated for unaccompanied children's immigration and nationality claims⁴¹ whilst the claims of children and families who remain

⁴⁰ UK Labour Force Survey and are published in an ONS annual statistical release on 'Population by Country of Birth and Nationality', cited in House of Commons Migration Report Published 05/06/2020

⁴¹ See further 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.

together, no matter how vulnerable, remain out of scope. Moreover, even though the government has provided additional funding for front line organisations to provide support and advice to register people on the EU settlement scheme, this is not designed for more complex cases requiring specialist, qualified immigration support. Complexity characterises Roma people's claims and yet, of the organisations funded by the government to support EUSS registration among the Roma community, few have the necessary accreditation from the regulatory body, the Office of the Immigration Services Commissioner (OISC), to enable them to provide much needed, more complex advice and representation.⁴²

Conclusions

- The Roma community, including Roma children, have been largely absent from debates and initiatives aimed at promoting EUSS registration. Their marginalised social and economic status, low engagement with and trust of public services, lower levels of language, literacy and technical skills, and proportionately higher representation in the criminal justice system render them particularly vulnerable to failing to meet the EUSS registration criteria and deadline.
- These vulnerabilities are compounded by the impending withdrawal of EU level financial and policy initiatives aimed at facilitating Roma integration and by a lack of specialist, accessible immigration advice and representation that are accessible to Roma communities.
- Much more extensive, targeted efforts need to be made to raise awareness and capacity among the Roma community and those working with them to support EUSS registration and to provide advice and representation on more complex immigration cases.
- Such efforts should focus as much on children as adults, since it is children who are likely to be more equipped, linguistically, educationally and

⁴² Roma Support Group, above note 2.

technically, to navigate the EUSS on their own behalf and on behalf of their family. Children also benefit from specific entitlement under immigration law which could secure their own and their carers' residence rights in the UK beyond June 30th 2021.

- Efforts to promote Roma children's awareness of and access to the EUSS should be accompanied by efforts to promote their awareness of and access to British citizenship registration.

~



Helen Stalford is Professor of Law and Founding Director of the European Children's Rights Unit, School of Law and Social Justice, University of Liverpool.

For more information about her work in this area, contact:
stalford@liverpool.ac.uk

<https://www.liverpool.ac.uk/law/research/european-childrens-rights-unit/>



Dyfan Humphreys is studying Law LLB at the University of Liverpool and is currently Legal Research Intern and Project Assistant with the ECRU Research team, working with the Home Office in regards to the European Union Settlement Scheme.

<https://www.linkedin.com/in/dyfan-humphreys/>