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Dear Monique Hawkins,

Thank you for your email of 7 June 2023, outlining issues experienced by individuals who were refused status under the EU Settlement Scheme (EUSS). Your letter has been passed to me to reply. I apologise for the delay in responding.

We always welcome feedback on how we can improve our services and I have addressed your specific questions below.

Q1. Is our understanding of the current assumed process as set out in stages 1-5 on page 2 above correct? If not, please let us know what the current intended process is.

The process set out in stages 1-5 is broadly correct, where a person has applied for administrative review. However, there are some circumstances where this process will not apply. For example, there are circumstances in which a refused applicant should not retain their Certificate of Application (CoA) for a further 40 days. This includes where the appeal has been certified or where the applicant withdrew their appeal, at the point the Home Office is notified.

Separately, your reading of the IMA's statement on individuals who received an EUSS refusal decision between 27 June 2021 and 19 April 2022 (on page 1 of your letter) is in our view incorrect. The statement does not state that individuals with an administrative review or appeal pending could, after this time, log into their UKVI account and see specific notice that their application was undergoing a redress procedure. The wording in the statement, which was; 'From April 2022, the ability to reflect pending administrative reviews and appeals was possible', in our view relates to maintaining a CoA pending appeal.

Q2. We have been informed of cases where the UKVI account is not displaying a status according to the intended process. For example, people with a pending in-time AR whose UKVI status is currently showing as REFUSED. Given that the IMA statement says that the system was fixed in April 2022, and a retrospective exercise was undertaken to correct affected statuses in January 2023:

a. What is the reason for any EUSS UKVI accounts to currently show an incorrect status?

There is no single reason why a UKVI account may show an incorrect immigration status. For example, this may be due to the system confusing identities belonging to different people with similar biometrics and/or biographics. We responded to your letter on this issue (entangled immigration statuses) on 17 November 2022, as you have published on your website:

https://the3million.org.uk/publication/2023011901

There is also a known issue with people creating multiple accounts using different identity documents (such as new passports, or a different passport where dual nationality is held), which may lead to the person seeing an out-of-date immigration status on View and Prove. We are also aware that some individuals with an outstanding appeal or administrative review are seeing a refused profile rather than a CoA. Where individuals see this error, they should contact the Resolution Centre and have their profile updated to show the correct outcome. Any employers or landlords who need to confirm an applicant's correct status before their immigration status is fixed can use the Employer or Landlords Checking Services, which will return the correct status for people experiencing this issue. We are currently investigating how we can identify and fix these records without the individual needing to contact us.

Separately, the results returned by the *Right to Work* and *Right to Rent* services can be affected by technical glitches, typically caused by errors in the underlying data – for example, human error when updating the immigration casework system.

There is a programme of work planned to resolve these issues.

b. How many accounts do you estimate are currently showing an incorrect status?

We do not publish data on the number of open incidents on our systems. We class issues reported to us as ‘incidents’ if they appear to be caused by a technical fault rather than, for example, a user needing additional guidance to use the service. It is possible for a number of incidents to be caused by a single technical problem.

We monitor incidents in two ways, firstly, incidents that are reported by individuals to the Resolution Centre, and secondly, our own internal live service management teams who constantly monitor the performance of our services. They use software tools to check the services are operating within set parameters, and which generate alerts if those parameters are being breached. Any such incidents are logged and investigated by technical teams to find the technical problem and fix the root cause.

c. What work is still being undertaken to correct accounts showing an incorrect status?

As above, online services and their constituent parts are proactively monitored for failures, which will highlight any potential problems to allow support teams to triage and resolve them as quickly as possible.

As we have set out, there are programmes of work planned to resolve issues.

Q3. During STAGES 2 and 4 above, i.e. the time window between a refusal decision and a submission of an admin review / appeal, do you agree that it is essential that people know about their legal situation in order to benefit from the safeguards and right of appeal as set out in Article 21 of the Withdrawal Agreement?

We agree it is necessary to ensure decision notices to applicants include relevant information about the ability to challenge a decision where relevant, and the timescales for doing so. Decision notices and other correspondence are served using contact details provided by the individual, which is explained to the applicant during the application process. The onus is on individuals to keep their contact details up to date and regularly check for important correspondence from the Home Office and other government departments.

Q4. Do you agree that by relying only on informing people of refusals by email – which is acknowledged by experts to have a 9% overall failure rate (20% if people have their email accounts with anyone other than the four global providers), and in other cases people do not / no longer have access to the relevant email address – the Home Office will not be able to serve all decisions on applicants and as such, will prevent some people from exercising their right of appeal as set out in Article 21 of the Withdrawal Agreement if they do not accurately display a person's legal status on their digital UKVI account?

The report to which you refer was produced by a private company, Validity, which provides services to clients engaged in marketing campaigns, including by email. It is not a peer-reviewed academic paper published in an academic journal and we are unable to comment on the accuracy or relevance of its findings in the context of serving immigration decisions. It is however worth noting that attempting to engage with individuals through unsolicited email campaigns, using email addresses that may have been provided for other purposes and not subsequently maintained is very different to corresponding by email with a person who has made an immigration application to a government department and provided contact details for the specific purpose of receiving a decision on that application.

We strongly disagree with any assertion that decision letters sent to an email address provided by the applicant for correspondence are not properly served.

Government departments communicate with individuals in good faith using the contact details provided, as is required under the legislation that governs service of such decision notices, and which explicitly makes provision for the methods by which

such notices may be served, which includes by email, and when a notice is deemed to be served.

Where there are extenuating circumstances, an individual may apply to the courts to appeal out of time.

It is also important to note that individuals who apply to the EUSS using a paper application form and give a postal address for contact, will receive their refusal decision by post.

As previously noted, individuals are responsible for maintaining accurate and up to date contact details with government departments to ensure they receive important correspondence. Update my details (UMD) is an online service available to EUSS and other applicants who have a UKVI account, which enables people to update their details, including email addresses. Update your UK Visas and Immigration account details: Overview - GOV.UK (www.gov.uk)

Individuals can also contact the Resolution Centre (RC), which provides telephone and email support to those using the online immigration status services. The RC supports users, including help with updating personal details.

In relation to the cohort of individuals refused between 27 June 2021 and 22 April 2022, our view accords with the statement from the Independent Monitoring Authority:

A final decision had been reached and sent to individuals within the Cohort, and included information about how to appeal a decision. The fact that the UKVI accounts of the Cohort continued to show a CoA does not extend the time limit for bringing the appeal.

Q5. During STAGES 2 and 4 above, we understand the time window is 40 days, whereas the maximum window to submit a challenge (AR/appeal) is 28 days. If people do not go on to submit an admin review / appeal (because they were unaware of the refusal decision sent by email), can you confirm the exact date at which they become liable to NHS treatment charges and recovery of Universal Credit? Is it at the refusal decision date, 28 days after the refusal decision date, 40 days after the refusal decision date, the date at which the digital status shows REFUSED, or another time point?

The time limits for bringing an appeal against an EUSS decision are 28 days for out-of-country appeals, and 14 days where a person has an in-country right of appeal. However, the Home Office accommodates a slightly longer challenge window of 40 days to encompass out of time appeals or minor administrative delays, for example in the court notifying us that an appeal has been lodged. This does not impact the timescales for challenging a decision or the point at which an individual becomes appeal rights exhausted.

Applicants under the EUSS are exempt from NHS treatment charges until the final determination of their application, which is determined on the circumstances of their case (for example, after an appeal or administrative review has concluded if they challenge the refusal decision). Under the NHS Charging Regulations, patients

should be notified, at the earliest possible opportunity, of their charges in advance of treatment, where they are not otherwise exempt. If treatment is urgent or immediately necessary, they must be notified at the earliest possible opportunity after such treatment.

The date where individuals cease to be entitled to public funds as a result of an EUSS refusal decision is when they become appeal rights exhausted, whether through failing to challenge a refusal decision or following the negative outcome of an appeal or administrative review. Where an individual does not challenge an EUSS refusal decision, DWP aligns the date where benefit entitlement ends, and overpayments would start to be generated from, with the end date of the Home Office challenge window (day 40).

Q6. If people become chargeable any sooner than the date at which their digital status shows REFUSED, do you agree that for those thousands of people who may not have received their refusal decision letter by email, they could potentially be exposed to financial liabilities outside their control, perhaps taking decisions (such as accepting secondary NHS treatment during an decision challenge time window that they were completely unaware of) that worsened their situation without having had the information at their disposal to inform those decisions?

We do not accept the inference you draw from the Validity report that there may be thousands of people who have not received their refusal decision notice by email. The decision notice serves as the notification for the outcome on an individual's application, not the information on their UKVI account. For individuals refused between 27 June 2021 and 19 April 2022, this position is supported by the statement by the Independent Monitoring Authority:

The IMA does not consider the fact that the UKVI accounts of the Cohort continued to show a CoA overrides the refusal decision and therefore does not provide continued temporary rights. Those rights only continue for as long as a decision (or any appeal) is awaited on their application. A final decision had been reached and sent to individuals within the Cohort, and included information about how to appeal a decision.

Where relevant NHS healthcare is concerned (which excludes accident and emergency treatment and GP appointments), the position is set out in response to Q5. Where a patient started a course of treatment whilst exempt, they will only become chargeable for new treatments after the date they cease to be exempt from charge.

Providers of relevant NHS-funded healthcare are required by law to make and recover charges where they apply. Where a person is destitute or genuinely without access to funds, a Trust can conclude that it is not cost effective to pursue payment at that time and write it off in their accounts. This does not mean that the debt is waived; it remains on record and can be recovered if the patient's ability to pay changes.

Q7. Given that the clear implication of the current intended functionality is that the UKVI digital status has at its disposal all the necessary information (refusal date, time windows, pending admin review and/or appeal), will the Home Office change the display to the applicant during STAGES 2 and 4 to fully inform people (and their advisors) of their legal position in order to comply with Article 21 of the Withdrawal Agreement?

Article 21 of the Withdrawal Agreement does not require the parties to adopt specific mechanisms for informing individuals of their right of redress, nor does it require this information to be served across multiple platforms.

The Home Office considers that the current process complies with the procedural protections applied by Article 21 of the Withdrawal Agreement.

Service of a refusal decision to an email address provided by an applicant is common practice across the UK immigration system. There are currently no plans to make the sort of changes suggested.

Q8. Given that the Home Office also has applicants' postal addresses and telephone numbers, will you consider supplementing the current decision delivery mechanism of a single email with, for example, daily email and text message alerts informing people they have a decision and that they must act within the relevant time window if they want to exercise their rights of appeal under Article 21 of the Withdrawal Agreement?

Service of EUSS refusal decisions is aligned with standard practice across other immigration routes. There are no plans to send additional notices or reminders about a refusal decision to this cohort. This would need to be done manually and would require significant resource.

Yours sincerely,

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