The Challenges of Obtaining Permanent Residence in the UK

Practical examples of problems faced by EU Citizens in the UK when applying for Permanent Residence

Table of Contents

Revision History

Version	Description	Date
1.0 - Draft	Initial draft	26-Apr-2017
1.1 - Draft	Added minor additional information for case studies 1.1.2, 1.1.3, 2.1.2, 2.4.1	29-Apr-2017
1.2 – Draft	Added new case study 2.4.4 Employer does not recognise EU passport as sufficient proof of right to reside and work Added new section 2.5 The Home Office 'Hostile Environment' with 2 case studies	6-Jun-2017
1.3 – Draft	Added new case study 2.4.5 Uncertainty surrounding a Medical Degree	8-Jun-2017

Introduction. Why it matters

This document was prepared by the "EU27 Working Group" of **the3million**. Following the meeting between **the3million** and "British In Europe" with Mr Barnier on 28th March 2017 at the European Commission in Brussels, a request was made by the Commission for some examples of how ordinary EU citizens are dealing with the process of obtaining Permanent Residence (PR) in the UK.

This document is intended to give real-life anonymised examples of such people. They are based on people's personal stories rather than legal accounts.

We believe it is important that the European Commission has a good understanding of the current PR process for two reasons:

1) The current PR process already caused problems even before the June 2016 referendum. The process is likely in breach of EU law on several issues.
2) The examples of real-life experiences with the PR process show that if the current process were to be used as a template after Brexit, it would lead to hardship for many people, possibly even in such as a way as to be in breach of human rights.

We believe the European Commission is much better placed than ourselves to draw all the legal implications from the personal stories we provide, and to consider whether it is in a political or legal position to have influence on the current practice and steer negotiations in a way that such hardship is avoided in the future.

We therefore refrain from trying to identify all the key legal problems in these cases. Nevertheless, we thought it worthwhile to set out some general considerations in this introduction, while not providing an exhaustive list of the issues involved.

Firstly, it is worth reflecting why EU citizens are applying for PR, even though this currently not required under EU law in order to be able to stay in the UK. There are three main reasons:

- As the Government has given no guarantee on EU citizenship status post-Brexit, people believe those with PR status are more likely to be guaranteed their rights (although the extent of these rights remains uncertain, and may well be inferior to current EU citizenship rights)

- Gradually more people are faced with demands about their residence status, for instance when looking for employment, asking for a bank loan, or even obtaining access to health care. People believe that having PR status may be helpful in that regard. Similarly some people are concerned that post Brexit there may be different procedures on entering the UK between those who have PR status and those who do not

- PR status is now a first step in acquiring British citizenship (PR became a prerequisite in November 2015) , and under the current rules, British citizenship seems like the only way for EU citizens to be guaranteed most of their existing rights (even if dual citizenship might also undermine some existing rights, as discussed below)

Secondly, some people who failed their PR application have been sent a letter stating they should leave the country. In many cases this is likely to be in breach of EU law, given the complex process, the ambiguous rules about the evidence to be provided, and the near arbitrary character of how decisions sometimes appear to be taken by the Home Office.

Thirdly, some EU rules are interpreted by the UK in such a way that compliance is nearly impossible. This is particularly the case with CSI (Comprehensive Sickness Insurance). As the National Health Service in the UK is free, EU citizens have had access to it without CSI, and such CSI has never been asked for by any administration. Moreover, even if people do have private health insurance, this tends to be with exemptions, so it may well not qualify as comprehensive. Most importantly, people who do have such private insurance tend to be in full employment, implying that those most in need of CSI for PR are most likely not to have it. (For a fuller discussion on CSI, see Appendix A: Comprehensive Sickness Insurance). Other issues that particularly lead to problematic situations are carers (see Appendix B: Carers), and low income (see Appendix C: Income Threshold).

Finally, as the3million we do not believe that the current PR process is a good template for our rights post Brexit, as it only applies to those with five years of exercising treaty rights. But it is important to stress that the procedure as applied in the UK today leads to very dramatic outcomes even for many people who have resided in the UK for more than five years.

This document is divided into the following sections:

- People who are ineligible for PR

  These are either cases who have actually received a rejection from the Home Office, or who have not applied because they know they do not fulfil the PR requirements.

  - Ineligible due to the UK interpretation of EU law
  - Ineligible due to exercising treaty rights for less than 5 years
  - Ineligible due to absences from the UK
  - Ineligible due to not exercising treaty rights

- General difficulties surrounding PR and UK Citizenship

  This section describes the difficulties people face when applying for PR or British Citizenship. It includes cases where people are eligible for PR but it can be a daunting bureaucratic task to prove it.

  - Eligible for PR but difficulties proving it
  - Eligibility for PR unclear
  - Issues surrounding dual citizenship
  - Practical problems caused by bureaucracy
  - Home Office 'Hostile Environment'

For further information about this document, please email: eu27@the3million.org.uk.

the3million are preparing a report from the research they conducted about the process of applying for the permanent residence certificate (PR) which will complement this document. This research talked to people who had not yet applied, people in the process of applying and people who had already applied. For further information please contact the researcher at: research@the3million.org.uk.

1 People who are ineligible for Permanent Residence (PR)

1.1 Ineligibility due to UK interpretation of EU Law

We believe there are several areas where the UK is not applying EU law correctly. More areas are being discovered as more people are applying, and since the process is complex, this list is not meant to be comprehensive. However, the following areas are now more understood, and are causing a lot of problems for PR applications:

- Comprehensive Sickness Insurance, and the fact that the NHS is not accepted as sufficient for CSI purposes. The European Commission is fully aware of this issue, and the end of this document has some lay-person notes on the subject.
- Low income threshold
- Carers

Each of the above cases are explained more thoroughly in the Appendices.

There are other cases where there appear to be problems with how the laws are applied – for example determining whether minors are entitled to citizenship without going through the PR process. Further issues will continue to be uncovered.

1.1.1 Could not apply CSI retrospectively

A is a Swedish man came to the UK with his Nigerian wife and German child in 2009. A had arranged work before arriving and worked full time for 4 years. Then enrolled on a masters course and became a full time student. Supported himself and his family without any public funds, but did not realise that he needed to buy private comprehensive sickness insurance to maintain a right to reside. Realised after about a year that he needed sickness insurance and immediately purchased it. 18-months later he was diagnosed with stage four terminal cancer and has been told he has between 2 and 4 months to live. He and his family have been refused permanent residence documents because of the period he was a self-sufficient student, but did not have private sickness insurance. He currently has no right to reside as he can no longer study or work, etc. As he was not a worker when he became ill (he was a student) he has not retained worker status under regulation 6. He and his family have been refused any welfare benefits and are facing homelessness and destitution.

1.1.2 Did not know to get CSI

B is an EU citizen who came to the UK in 2005, and started a job the day after her arrival (arranged before, on a holiday). She is married to a British Citizen, worked for 4.5 years, and stopped because she became a full time mother to 2 children. She is not able to get PR as she did not obtain Comprehensive Sickness Insurance when she stopped working - as she had never heard of it. Her 4.5 years fall 6 months short of 5 qualifying years.

It is important to understand that if B had been married to an EU citizen, and her spouse had been exercising treaty rights as a worker, then neither B or her spouse would have needed CSI. However, since B is married to a British Citizen, she has to prove that she qualifies in her own right, and her husband cannot sponsor her. Equally, if B had been from outside the EU, and her spouse had earnt more than a certain threshold, then B would be able to obtain a spouse visa without needing CSI.

1.1.3 Cannot afford CSI

Q is a Dutch citizen, who has lived in the UK for 16 years with a British partner whose income is sufficient for both of them. She has never worked here and has never applied for PR since it was not necessary to do so. Now, through newspaper articles and **the3million** forum she has come to realise that she should have had Comprehensive Sickness Insurance.

To now obtain such an insurance would be unaffordable, since she was diagnosed with cancer a few years ago and is still being treated by the cancer team. Although she is not classed as a 'worker', Q contributes to society and does a lot of voluntary work. She has never claimed any benefits, and genuinely believed herself to have been 'self-sufficient'. According to the current regulations, she is not eligible for PR. In considering her options, returning to the Netherlands would be problematic as her partner has very elderly parents and he is their only child. She is also unsure how the Netherlands would treat him, as a non-EU citizen.

1.1.4 Carers do not exercise treaty rights

D is a Bulgarian citizen, and is a carer (receiving Carers Allowance) as she looks after her British husband and her British son. As a carer, she does not exercise treaty rights, and will therefore be rejected if she applies for a PR card.

If D had been a non-EEA citizen, she would have been able to get Indefinite Leave to Remain (although far more expensive than Permanent Residence) and Citizenship, as a wife of a British Citizen. Her husband, being disabled, would have been exempt from the £18,600 minimum income rule which normally applies to British citizens bringing in non-EEA spouses under immigration law. D would not have had to prove any income or work in the UK.

D has asked the AIRE Centre (a charity offering "Advice on Individual Rights in Europe") for help, and they confirmed that carers are not exercising treaty rights, and advised her to get a solicitor, which she definitely cannot afford.

It is very difficult to manage on Carers Allowance - far below minimum wage, and often impossible to work alongside being a carer. It would cost the state far more to pay for a professional carer which would be required if the spouse was not there.

1.1.5 Carer with a break in past employment without CSI

F is an EU citizen who had to stop working to look after her husband 2 years ago. She was a worker for several years, but this work period contained a 2 year break without CSI, so she did not work continuously for 5 years. Now as a carer she is also not exercising treaty rights.

1.1.6 Single parent Carer for adult disabled child

S is a Dutch citizen who first moved to London in 1996. Between 1996 and 2008, S worked, got married, completed a degree and started a new career. In 2008 she went abroad to volunteer in a children's home for 3 months, and while there, decided to adopt a very neglected autistic boy aged 10. The long and difficult adoption process was completed in 2010, by which time S's marriage had broken down so S did not have a home to return to in the UK. She therefore returned to the Netherlands with her son, however the language issues (S had taught him in his own language English during the adoption process) and other difficulties with his schooling caused an unstable few years, until S returned to the UK in 2013 and successfully home educated her son until he was ready to be part of a school community.

Once her son was at school, S was able to go back to work, however she had to give up after 9 months since her hours were extended without pay rise, preventing her from being able to collect her son from school. However S continued to be active in her community as a school governor and a volunteer at her church.

S has now found out that she is not eligible for PR, as she is a carer and therefore not considered to be exercising treaty rights. It has been a tremendous challenge for her son to become literate, learn the English language and deal with upheaval of moving countries, and he has worked so hard over the last 4 years in the UK. It has taken him a long time to find his way around their local town, learn to take local buses to school and now college. He feels settled and has made friends in school which is a great achievement for someone with autism.

For S and her son to not be granted full rights to remain, study and work in the UK would be devastating for them. S feels that "EU citizens should be given rights which are not purely based on economical benefit to the country but instead of human rights and personal circumstance".

1.1.7 Maternity pay renders residency claim invalid and impacts on non-EEA citizen spouse

M is a French citizen who came to the UK 10 years ago as an au pair, and decided to stay as she fell in love with the country. At the time, her partner lived in a country outside the EEA, where they got married in 2009. Under the EU Directive, he was granted a family permit to come and join M in the UK in 2010. After that, he received a “non EEA citizen family member of an EEA citizen” Residency card, lasting 5 years. When this card expired, he had to apply for the Permanent Residency Card. The application was sent in January 2016, 6 months before the referendum. As his sponsor, M needed to prove 5 years of exercising full Treaty Rights, which she was confident she had done, and she supplied every document that was requested.

6 months after sending the form, they received a deportation letter from the Home Office, who denied her Treaty Rights on maternity right grounds. During her second maternity leave, M had received the governmental Maternity Allowance, not the company Statutory Maternity Pay. The time during which Maternity Allowance is received is not counted as being a worker. The Home Office only took account of her P60s, and decided M had not earnt enough as a worker.

Since her husband’s right to stay depends on M's right to stay, the Home Office concluded had to make arrangement to leave, and confiscated his passport. He can have it back only if he leaves the UK, and he cannot apply for a new passport since he will need a new Residency/Permanent Residency Card on it. He has great difficulty finding jobs, and is being forced to take the illegal route. M and her husband have launched an appeal and are still waiting for the hearing. They are also far from having saved the £3000 needed for lawyer's fees.

1.2 Ineligible due to exercising treaty rights for less than 5 years

1.2.1 Exercising treaty rights for less than 5 years by March 2019

R and her husband are Spanish citizens who have always loved the UK - they even got married in Scotland. Their ambition was to move to the UK, and once they both managed to secure jobs they moved to Wales just over a year ago. They are both working and exercising treaty rights, but are very unsure what will happen after Brexit since they will not have been here for 5 years by March 2019. They already feel more settled and integrated into their community in Wales than they ever felt in Spain.

1.3 Ineligible due to absences from the UK

1.3.1 Currently absent from the UK but sees the UK as Home

K is a Dutch citizen who moved to the UK in 1992 with her two children and her Dutch husband (now ex-husband). They all had Dutch passports and the children had been born in the Netherlands. Her son was 4 years old when they moved, and he lived in the UK until 2005 when he was 18 years old, having completed his high school. He then did a Gap year in India and did a 4-year degree in Canada. Afterwards he got a 3 year job in the USA, and now continues to live abroad working in international development. He has been back for holidays, and for one year in 2014 to do a Masters degree in the UK.

Without Brexit, his home would have continued to be England. Now however, he would not qualify for PR as his absences will have invalidated his earlier entitlement to PR. Although he has a Dutch passport, he has no ties with the Netherlands since he has not lived there since he was 4 years old, and is not at all proficient in the language. Due to Brexit, his sense of 'home' is threatened.

1.3.2 Loss of PR rights due to recent 3 year absence from the UK

L is a French citizen, married to a British Citizen with a British son. He came to the UK in 1991 as part of an Erasmus programme, and is now a researcher and professor. He was confident that he would be eligible for PR, as he kept very detailed records and had obtained 100 pages of HMRC records of tax paid during his 25 years in the UK. However, in February he received a rejection from the Home Office, on the grounds that during his 25 years in the UK he had spent three years abroad (outside the EU) from 2012 to 2015, as part of his professional development as a scientist.

Therefore the permanent residence status he would have had in 2012 was lost, due to an absence of over 2 years. Many people's career developments would include such temporary absences, and before Brexit there would have been no need to applied for UK Citizenship to prevent the loss of residence rights.

1.4 Ineligible due to not exercising treaty rights

This section contains some examples of people who are not eligible, as they did not correctly follow procedures (for example registering for the WRS).

The following examples are purely intended to demonstrate the consequences for ordinary people who did not consult with lawyers or inform themselves correctly when moving between European countries. We feel these situations are a direct consequence of the fact that the UK does not register EU citizens when they arrive in the UK – this has allowed people to obtain jobs and settle down and make their lives in the UK, paying taxes and otherwise integrating into the community without realising that they were breaking immigration laws.

1.4.1 Accession state working who was not told about WRS or CSI

G is a Hungarian woman, who has been living and working in the UK since 2004. She worked between 2004 and 2014. She then stopped work to look after her baby. When she started applying for PR, she found out that she needed proof of registration in the Work Registration Scheme (WRS) between 2004 and 2011. She had not realised she needed it at the time, as her employers had not asked for anything beyond a passport and a National Insurance number, and she has paid her tax and national insurance all these years. She can now not apply for PR as she does not have 5 qualifying years - the years before 2011 will not count because she was from an Accession State and had not registered for WRS, and the years after 2014 will not count because she does not have CSI - which again no-one told her about.

2 General difficulties surrounding PR and UK Citizenship

2.1 Eligible for PR but have difficulties proving it

2.1.1 Retired many years ago – has to prove 27 years of residence

H is a 75-year old Dutch citizen, who has lived in the UK for 50 years, and was married to a British Citizen who died some years ago. She retired 24 years ago, so to now obtain PR, she has to not only provide proof of 3 years' residence and 1 years' working prior to the retirement date, but additionally provide evidence that she was not out of the country for over 2 years for the 24 years since retirement.

If H had had CSI for the past 5 years, then she could now have qualified as Self-Sufficient, but like most other people, she had never heard of CSI, and has been in the country long before CSI was ever introduced as a requirement. Also, to obtain CSI now (and start the clock afresh on exercising treaty rights) would not be affordable - typical CSI rates for 75 year olds can be around £3,000 a year.

The UK Government itself says that one only needs to hold onto paperwork for 7 years. Most institutions like banks and local councils are unable to provide documentation going back that many years. The older someone is, and therefore the greater number of years since retirement, the more difficult this task will become - especially since older people may be more frail than H.

In answer to a possible criticism that H should have become a British Citizen many years ago, there was simply no need to do so, it is very expensive, and in some cases it means some EU rights are lost (see the McCarthy case). H would now be interested in becoming a British Citizen, but now faces the additional problem that she would lose her Dutch citizenship if she did so, because her husband has died. If her husband had still been alive, the Dutch law would have allowed her to hold dual citizenship.

2.1.2 Home Office case workers lacking knowledge

K is a Czech Republic citizen, married to a British citizen, with British children, who worked from 2002 till 2007 then was on maternity leave, followed by combinations of work and studying without CSI (because CSI was not known about). Her application for PR was refused, on the grounds of not having registered for WRS (Workers Registration Scheme - see Archived Home Office WRS Information), and not having CSI while studying. However, lawyers advised that her work from 2002 to 2007 should count as 5 qualifying years because she should have been exempt from WRS registration, and because there is a court case from ECJ that allows one to claim time before the A8 Accession (1 May 2004) as counting towards PR. This is a more complex case, and many Home Office case workers do not have sufficient experience.

PR appeals are expensive, and can take a long time - often someone is better off simply applying again - but this incurs another fee and seems very unjust.

2.1.3 Difficulties proving CSI documentation

S is a French citizen who has lived in the UK for many years. She is married to a British citizen, and has never worked. For the last 10 years at least, her husband had private medical insurance through his employer which covered both of them.

S applied for Permanent Residence and supplied all required residence documentation covering 5 qualifying years. The form had a small section in it asking for proof of Comprehensive Sickness Insurance, so she stated that she had been covered by her husband's private medical insurance for the 5 years, and included the current insurance policy schedule. She did not have the schedules for the previous years, as they had been discarded whenever a new policy started. As she had never known about the CSI requirement, she had not known of the importance of keeping these older policies.

S received a rejection of Permanent Residence from the Home Office, due to not providing proof of CSI for all 5 years.

2.1.4 Difficulties providing paperwork

T is an EU citizen who is married to a British Citizen and has lived in the UK for many years. She worked for 10 years when she first came to the UK, but stopped working when she had children and has not worked since. They have not been very organised in keeping paperwork, and most of their bills were in her husband's name. They have moved house several times over the years, and the company she used to work for no longer exists – so it is not possible retrospectively to obtain P60s. T qualifies for PR due to her earlier work, but would face a difficult task in providing the necessary paper trail. Even though she could obtain proof from the HMRC (Revenue & Customs) of her National Insurance contributions, proving the residence since her time of work would be onerous especially to the lack of documentation in her name.

2.2 Eligibility for PR unclear

2.2.1 Uncertainty whether Sickness Insurance is "comprehensive"

R is a Dutch citizen, who has lived in the UK since the middle of 2012. He is married to a British citizen, and his children have dual Dutch / British citizenship. R is a fulltime house husband, and never knew about the requirement for CSI, but he was lucky to have Private Health Insurance coverage through his wife's employment. However, due to a pre-existing medical condition, this insurance has always had exclusions and therefore is not considered comprehensive.

As explained on the website www.freemovement.org.uk, it is not easy to know whether such health insurance counts as CSI. The closest available Home Office guidance states that discretion is needed, and the article describes several conflicting PR cases, involving costly lawyers fees and appeals.

This leaves R with uncertainty as to whether he will obtain PR when he can finally apply later in the year, having lived in the UK for 5 continuous years but not sure if he has exercised his treaty rights.

2.2.2 Disabled carer with income under PR threshold

E is an EU citizen who is a carer and disabled herself. She is struggling to be self-employed but has very low income which is under the PR threshold. PR Rules surrounding low income are ambiguous and discretionary (see appendix).

2.2.3 Income below earnings threshold

L is a Finnish citizen who came to the UK with her British husband and baby before Finland was in the EU, and before CSI became a requirement. She is self-employed, has always earnt less than the National Insurance limit although she has always declared her earnings to HMRC (Her Majesty's Revenue & Customs), and paid voluntary National Insurance contributions every year. She is under the earnings limit for PR. However, even if she had earnt enough she still would have struggled to prove her eligibility for PR because
1) most of her clients pay cash (not with an intention to deceive),
2) she never wrote them an invoice and
3) L and her husband (a self-employed music teacher) have a joint bank account, she does not have a bank account of her own, let alone a business account.
She has several times asked HMRC for her NI contributions record but has still not received them.

PR Rules surrounding low income are ambiguous and discretionary (see appendix).

2.2.4 Parents obtained PR but their children are rejected

P is a Dutch citizen, with a Spanish partner, and have two children who were born in the UK. They all applied for Permanent Residence. P and his partner were successful, but their children had their applications rejected due to insufficient evidence that they had not spent any time abroad. P had not anticipated that he would have had to collect additional information to prove that his children had been with them all their lives. As the children clearly do not have anything like utility bills or other documentation, P now faces reapplying, with evidence like their schools' attendance records.

He felt the process is extremely unclear and hostile.

There is a further question mark over this, as the children are possibly entitled to British Citizenship since they were born in the UK and their parents had been settled in the UK before their birth. So the decision may even be incorrect - showing that the Home Office process is not fit for purpose.

This case was highlighted in the British newspaper The Guardian, and within a fortnight the couple received PR cards for their children. As the couple themselves commented in a follow-up article, "I just hope it's going to be like this for other people and it is not just because we were in the Guardian".

2.2.5 Resident in the UK, but income earnt abroad

J is a French citizen, resident in UK for 16 years, with a British partner. She works, but as a detached employee from the French government to teach in a French school, has been working all 16 years without a gap. Has been told by an immigration lawyer that since her contract is French, her wages are paid in euros in a French bank account, she pays taxes in France, she does not exist from the point of view of the Home Office, hence will not be eligible for Permanent Residence. She can prove residence however (mortgage, bills, tv licence, bank statements etc.). She has an NHS number since 2001.

Further advice from other lawyers have suggested she may have a chance of eligibility.

2.3 Issues surrounding dual citizenship

2.3.1 Loss of right to future family reunification

M is a Dutch citizen who has been in the UK for 33 years, married to a British citizen, 2 British children. M got her PR a few months ago, and has now applied for British Citizenship. Her mother was recently widowed and lives in the Netherlands, and is still fit and well and has no wish to move from the Netherlands. M had thought that by becoming a dual citizen, she would benefit from both EU law and UK law (and be able to vote), but M has only just found out that by applying for British Citizenship, she has lost the right to bring her mother over to the UK in the future should her mother become frail and need care. (This is assuming that all EU indivisible rights are successfully negotiated to be retained after Brexit). See this description about the McCarthy case. This is currently being challenged again in the European Court of Justice (see ECJ case reference).

2.3.2 Fear that dependents would lose right to stay on obtaining UK Citizenship

N is a Spanish citizen, whose (Spanish) parents arrived in the UK around 3 years ago. N's mother has dementia and her dad has cancer. They don't hold an S1 card from Spain as they are not Spanish pensioners because they spent their working years outside the EU. N is trying now to register them as her dependant family members as she has received her PR a couple of weeks ago. She needs to prove their dependency on her and their address should be the same as hers and they need to show they receive money from her in their account. Her mother has dementia and is registered blind so it is obvious she cannot live on her own. N is very worried they might lose their access to the NHS and she has also been advised not to opt for British Citizenship as they would lose their right to be here. She doesn't know if they would be entitled to be here after the UK leaves the EU as they would narrowly have 5 years of residence and who knows what the immigration rules might be then.

2.4 Practical Problems faced by Bureaucracy

2.4.1 Job discrimination and incorrect decisions by the Department of Work and Pensions

H is a French citizen who came to England 7 years ago. She is single but her daughter and granddaughter both live nearby, and her granddaughter is British by birth because her daughter 's partner is British.

She recently lost her job and ever since has struggled to find another one as many job adverts have started asking to provide a UK passport, or proof of Permanent Residence which she has not done. It is not legal to do so, as the UK Government states that nothing has changed for EU citizens while the UK is still part of the EU, and therefore an EU passport should suffice. In addition, this falls under employment discrimination which is illegal. However, there are many examples of employers doing this, and they can reject EU citizens due to uncertainty even without admitting that this is the reason for rejection.

She has received Job Seekers Allowance (JSA) for 6 months but recently received a letter saying that she could not receive this benefit beyond 6 months, and that she has lost the right to remain in the UK. This is incorrect, as, even without a Permanent Residence document, H still has Permanent Residence through working for over 6 years. This left H in panic as it would soon leave her destitute and homeless if she could not cover her rent. After a lot of time and effort, her MP has now intervened to overturn this decision, so that H can continue receiving JSA.

H's health has suffered due to lack of sleep, high blood pressure despite medication, and depression.

However, we have several more ongoing cases like this where EU citizens are having to challenge the Job Centres and Department of Work and Pensions, without always having a sympathetic influential MP to help.

2.4.2 All original documents lost by the postal system

N is an Austrian citizen who has recently applied for PR. She sent originals of all her documents, as required by the Home Office as photocopies (including solicitor verified photocopies) are not accepted. The application (2.6 kg covering documents between 2011 and 2017) was sent with Royal Mail trackable guaranteed next day delivery. The package has got lost, and even though Royal Mail are trying to be helpful, nothing has been found. N has now also gone over the 10 day deadline between submitting the online application form and sending in all the documentation, so may lose not only her original documents, but also her application fee.

The Home Office has no facility for people to apply for Permanent Residence in person, insists that documents are sent by post, and that they originals. There is a facility to apply for a Residence Certificate in person, however it is reported that these appointments are extremely difficult to obtain, and have to be made months in advance.

2.4.3 Practical difficulties due to the need for Original ID to be supplied

In order to apply for PR, one must supply an original passport or ID card. Since late 2016, there is an online process, which allows the use of a 'Passport Return Service'. This means that after submitting the online form, the applicant can then go to a 'Passport Return Centre' to hand in all the supporting documentation. The 'Passport Return Centre' will take the original passport, make a copy of it, and hand the passport back to the applicant.

However, some categories of people are unable to use the online form, in which case they still need to use the paper form and send their original passport or ID card through the post. Most people manage this by having obtaining an ID card alongside their passport (or vice versa), so that they can continue to travel while the PR process is underway.

For some EU nationalities, the process of obtaining or renewing an ID card can be complicated and require a visit to the EU country rather than being able to do so in the UK.

2.4.4 Employer does not recognise EU passport as sufficient proof of right to reside and work

C is an EU national, who has been working for a large established employer in the UK for the last two years. The employer now has asked him to prove his eligibility to reside and work in the UK, and told him that his EU passport is not sufficient evidence.

C argued his case, however the Human Resources department insisted that there should be a stamp from the Home Office or a letter, and that he could be suspended from work if he did not present this extra evidence. Despite printing out a checklist from the UK Government's website (see also https://www.gov.uk/legal-right-work-uk/y/no/no/from-the-eu-eea-or-switzerland/yes), the employer initially did not back down.

Eventually, after nearly two weeks, the HR department sent C an email acknowledging that his passport was sufficient, and apologising for any inconvenience caused.

C feels a lot of damage was done in that time – as the only EU national in that branch of the employer, he feels discriminated, and it has affected his confidence to look for a new job with his EU passport.

2.4.5 Uncertainty surrounding a Medical Degree

D is an EU national, who is a medical student in the UK.

In order to have a valid diploma at the end of their studies in EU (Directive 2005/36/EC), medical students must obtain a Certificate of Experience, issued upon completion of an F1 year. In order to be eligible for F1, the student must have the right to work in the UK.

Since D will not be eligible for Permanent Residence at the time of the F1, they risk not having the right to work, therefore not being eligible for F1 posts, and therefore their Primary Medical Qualification (PMQ) obtained in the UK cannot be recognised in the EU.

Therefore D is extremely concerned about becoming trapped – potentially not being able to work in the UK due to immigration restrictions, nor in the EU due to an incomplete PMQ – and therefore throwing away 6 years of study for nothing.

2.5 The Home Office 'Hostile Environment'

The roots of the Home Office's use of the term 'hostile environment were created in May 2012 when the then Home Secretary Theresa May told the Telegraph of her 'aim... to create here in Britain a really hostile environment for illegal migration.'

Various proposals such as limiting access to work, housing, health care and bank accounts, and restricting appeal rights, became law via the Immigration Act 2014, and were subsequently reinforced in the Immigration Act 2016.

As neither the Home Office nor the police forces have sufficient resources to enforce existing immigration laws, they rely instead on indirect means to encourage compliance with and punish breaches of immigration control.

The results of this shift in policy affects a wide community of migrants whether lawful or otherwise, and has also disproportionate effects on ethnic minorities, women and young people.

A 2015 Joint Council for the Welfare of Immigrants (JCWI) report found that the Immigration Act 2014's 'Right to Rent' scheme encourages discrimination and has created a hostile environment for all migrants and ethnic minorities in the UK seeking to access the private rental market.

In addition, the hostile environment has contributed to the Byzantine complexity of the Immigration Rules, rendering immigration law less accessible, understandable or predictable.

Immigration rules are no longer built up in a sequential fashion, and are thus out of step with long-standing drafting conventions.

There has been a huge increase in the cost of immigration or nationality applications. Simultaneously, access to justice such as legal remedies against Home Office decisions has been severely curtailed. Applicants with strong grounds of appeal have been discouraged as a result.

The hostile environment has brought no benefits to the Home Office nor society in general. It appears to be driven by a view of 'migration' as a negative concept rather than by rational thought.

2.5.1 Home Office sends 'You should now make arrangements to leave' letter

M is a Dutch national who applied for Permanent Residence on 27th June 2016, but did not want to lose the use of her passport for a prolonged period, due to her father having recently died and therefore wanting to travel to the Netherlands frequently and at short notice to help her mother. Since there is a box on the PR form to give a reason for not including the original passport, she filled this in explaining the circumstances, yet also including a solicitor-verified photocopy of the passport, and a promise to send the original instantly the Home Office is actually processing her application.

After 4 months the application is refused due to the lack of the original passport. The refusal letter contains the following paragraphs:

"*As you have failed to provide a valid passport or identity card issued by an EEA state as evidence of your identity and nationality, and further have also failed to provide sufficient evidence of your inability to obtain or produce a valid identity card or passport issued by an EEA state, due to circumstances beyond your control, your application does not warrant a right of appeal pursuant to Regulation 26(2) and 29A of the Immigration (EEA) Regulations 2006 (amended).*

As your entitlement to rely on the provisions of the Immigration (European Economic Area) Regulations 2006 cannot be established there is no right of appeal against this decision, however redress through other legal channels may be possible and it is recommended you seek legal advice should you choose to do so.

As you appear to have no alternative basis of stay in the United Kingdom you should now make arrangements to leave. However, if you are able to supply the necessary identity documents, you may wish to submit a further application for consideration"

The two highlighted phrases were very alarming and hostile for M. After this case, and several similar other cases, were highlighted in the national press, the Home Office agreed to stop using the 'arrangements to leave' phrase.

No refund was ever given, and M had no choice but to submit an entire new application and pay another fee.

2.5.2 Home Office sends 'Consequences of Illegally Staying in the UK' letter

S is a French national who was rejected for Permanent Residence, due to only sending one year's worth of proof of Comprehensive Sickness Insurance instead of 5 years (see 2.1.3 Difficulties proving CSI documentation).

After receiving the rejection in April 2017, S telephoned the Home Office to point out that at the time of her application in February 2017, the guidance notes had only asked for a schedule proving medical insurance, and had not made it clear that schedules covering the entire period were needed. (The guidance notes were changed in April 2017 and they now state "*Evidence that you had Comprehensive Sickness Insurance for yourself and any family members for the relevant period of self-sufficiency*".) S asked if she would be able to write to the Home Office case worker, providing proof that all 5 years had been covered (the employer's insurance company was unable to re-supply old schedules, but was happy to write a letter confirming that S had been covered since 2012). The Home Office staff member agreed that S should do this.

Therefore S wrote to the Home Office at the end of April 2017, politely explaining the change in guidance notes, but accepting the need to prove all 5 years and therefore attaching the letter from the employer's insurance company. She finished her letter with the paragraph "I would be grateful if you would confirm that I do not need to re-submit the whole application as I have now provided the extra evidence."

On the 1st June 2017, the Home Office sent S a letter entitled "*RECONSIDERATION REQUEST: REJECTION*". It sets out the reasons for this rejection (reconsiderations are only possible in some very strictly defined circumstances, not covering this particular case). However, the rest of the letter is then extremely strongly worded:

However, please be aware that following changes to the Immigration Rules which came into effect on 1 October 2012, most applications for further leave to remain will normally fall for refusal if the application is made after the applicant has overstayed their leave by more than 28 days.
...
CONSEQUENCES OF ILLEGALLY STAYING IN THE UK

Persons who remain in the UK without lawful basis may be prosecuted for the offence of overstaying under the Immigration Act 1971, the penalty for which is a fine and/or up to 6 months imprisonment. If you do not leave voluntarily and removal action is required you may face a re-entry ban of up to 10 years. If you decide to stay, then your life in the UK will become increasingly more difficult. For example, some of the consequences of not leaving immediately will be that:

- *You will not be allowed to work in the UK. Immigration Enforcement Officers visit workplaces and any employer found to be employing an illegal immigrant may be liable for a civil penalty of up to £20,000 per illegal worker.*
- *The Immigration Act 2014 will require landlords to conduct immigration checks. Landlords will face a penalty if they let a property to an illegal migrant.*
- *You are not entitled to claim benefits. Immigration Enforcement will share your details with HMRC or DWP. You may be liable for prosecution if you make a false declaration to these organisations or fail to inform them of a change in your circumstances which affects your entitlement to benefits.*
- *You may be charged for any secondary healthcare you receive.*
- *Immigration Enforcement may share your details with financial fraud prevention organisations to allow service providers to decide whether you should have access to financial products such as bank accounts and credit agreements.*

- *Immigration Enforcement will ask the DVLA not to issue you with a driving licence. If you already have one, we will ask the DVLA to consider cancelling it. If your licence is cancelled, you will then be unable to drive legally in the UK.*

IF YOU HAVE FURTHER REASONS FOR WANTING TO STAY IN THE UK

If you have reasons to stay in the United Kingdom that were not part of your recent application, you must state them. This requirement is being given under section 120 of the Nationality, Immigration and Asylum Act 2002. If you do not tell us as soon as reasonably practicable and you tell us later without good reason, you will lose any right of appeal you may have otherwise qualified for if we refuse your claim.

What you must do now:	*You must **now** tell us about any reasons or grounds you have for wishing to remain in the United Kingdom. You do not need to tell us about any reasons or grounds which you have already told us in your claim or application.* *Where you do have something new to raise now, you should do so straight away or at the latest within 14 days of receipt of this notice.* *Where you do have a reason or grounds for wishing to stay in the United Kingdom you should submit an application using the relevant form. You can find the application form on our website: gov.uk/ukvi* *Where you do not have a reason or grounds for wishing to stay you must leave the UK.*
What you must do in the future:	*In the future, if you fail to depart from the United Kingdom and your circumstances change so that you have new reasons or grounds for wishing to remain in the United Kingdom, you must tell us about them, by making an application to remain in UK, as soon as reasonably practicable.*

HELP AND ADVICE ON RETURNING HOME

The Home Office Voluntary Departure Service can be contacted for help on returning home.

The team can discuss your return, obtain your travel document and send it to the port of departure, help with the cost of your tickets or provide other practical assistance.

... (contact details)

Bearing in mind that this is a reply to a letter where S had merely asked whether her supplementary proof of Comprehensive Sickness Insurance could be considered instead of making a new application, this reply was a great shock to S.

S is of course still an EU national, she is not obliged to apply for Permanent Residence, and she is able to submit a new application which in all likelihood will succeed. This reply from the Home Office is in all probability a mistake, referring perhaps to non-EEA applicants, however it well illustrates the "hostile environment". This has also happened in June 2017, months after the Home Office stated that it no longer sent out "make arrangements to leave" letters to EU Nationals.

It is causing S huge distress.

Appendix A Comprehensive Sickness Insurance

This section is written from a lay person's perspective, rather than a legal one, as clearly we are aware of the 2012 Infringement procedure by the European Commission against the UK, and the UK Court Judgments upholding the need for CSI.

However, I wish to demonstrate how ordinary people would come to be in the position of not knowing about CSI.

- Fundamentally, there is no registration system in the UK when EU citizens come to work, live or study in the UK. Therefore there is no central point in time at which EU citizens' rights and obligations could be explained.

- We have anecdotal reports of EU citizens checking with Citizens' Advice Bureaux over the years whether there was anything they needed to do to comply with the law, and CSI was not mentioned.

- Students have asked their universities whether there are any conditions they need to fulfil in order be lawfully in the UK, especially regarding healthcare. Students are regularly told (even now after much publicity) that they are entitled to use the NHS and they can simply register at the local GP (General Practitioner doctor), and they do not need to do anything else.

- The official NHS guidance on charging overseas visitors states "*Within England, free NHS hospital treatment is provided on the basis of someone being 'ordinarily resident'. It is not dependent upon nationality, payment of UK taxes, national insurance contributions, being registered with a GP, having an NHS number or owning property in the UK.*" and "*Treatment in A&E departments and at GP surgeries remains free for all.*"

  To aim to understand 'ordinary resident', the UK Government states in this guidance that "*there is no definition of "ordinary residence" in the 1948 Act. Therefore, the term should be given its ordinary and natural meaning subject to any interpretation by the courts.*" and goes on to say that the leading court interpretation is that "*'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration*"

  Indeed, if a very diligent person were to try to work out for themselves if anything else were required, they would perhaps have found this official NHS Information Page specifically for people moving to England from the EEA. It states "*The NHS operates a residence-based healthcare system and not every person is entitled to free NHS treatment in England. Provision of free NHS treatment is on the basis of being ordinarily resident and is not dependent upon nationality, payment of UK taxes, national insurance (NI) contributions, being registered with a GP, having an NHS number or owning property in the UK. Ordinarily resident means, broadly speaking, living in the UK on a lawful and properly settled basis for the time being.*"

  Neither the Government nor the NHS pages mention Comprehensive Sickness Insurance anywhere.

- Private medical insurance in the UK is very expensive; the average premium is £1,120 per year. It tends to rise each year above the rate of inflation and premiums are typically three times more expensive for a 70-year old than for a 35-year old. Currently quoted premiums on this price

comparison website show that the premiums for a healthy, non-smoking 35-year-old typically range from £540 to £950 a year, whereas for a healthy, non-smoking 70-year-old from £2,200 to £3,000 a year.

- Many people will only have private medical insurance as part of an employers' scheme. In the context of PR / CSI, this is the exact opposite of when it is required – PR does not require one to have CSI when in work, only when self-sufficient or a student.

- Private medical insurance in the UK often has many exclusions for pre-existing conditions. Even without such exclusions, it is rarely comprehensive.

  People who do have private medical insurance will tend to use it only on planned elective procedures, and still use the NHS for most doctor's visits and emergency hospital treatments. In fact, private health insurance can not be used at a hospital Accident and Emergency.

  This well-known financial price-comparison website has a page on Health Insurance, which states commonly understood principles such as "***Private health insurance should be seen as a luxury, not a necessity, as the NHS provides comprehensive medical treatment to anyone who needs it, regardless of their ability to pay.***" **and** "*Health insurance covers the cost of private medical treatment and people who buy it typically do so because they receive faster consultations and private treatment, which can be in a private or NHS hospital. While it can cover the cost of private day patient surgery, tests and hospital accommodation, you wouldn't be able to use it if you were taken to accident and emergency.*" and "*The UK is one of a handful of countries in the world which provides people with free NHS treatment at the point of service covering so paying for private healthcare is a luxury not a necessity.*"

- Clearly the Home Office and the NHS have a different interpretation of the need to have Comprehensive Sickness Insurance. However, if an EU citizen were to check the guidance for residence registration on the Home Office website, it states (as of the 14th April 2017):

> ***Article 50 and UK residence***
>
> *You don't need to do anything as a result of Article 50 being triggered. There will be no change to the rights and status of EU nationals living in the UK while the UK remains in the EU.*
>
> *Under EU law, you don't need a document to confirm your permanent residence status in the UK.*
>
> *If you're planning to apply for a document to confirm your status, you can sign up for email alerts instead.*
>
> *These email updates will let you know about developments that might affect you, including the steps that you may need to take to confirm your status after the UK leaves the EU.*
>
> ***4.1 Who can apply***
>
> *You usually need a:*
>
> - *registration certificate if you're an extended family member of someone from the EEA or Switzerland*
> - *permanent residence document to apply for British citizenship*
>
> *You don't need either document to live in the UK if you:*

- *are a 'qualified person' (you're working, studying, self-employed, self-sufficient or looking for work)*
- *have a family member who is a qualified person*
- *have a retained right of residence*

However, a document can make it easier to claim certain benefits and services.

Note that the definition of qualified (highlighted in red) simply summarises "working, studying, self-employed, self-sufficient or looking for work". Before this website was updated for Article 50, it also only contained those categories for the definition of qualified. Comprehensive Sickness Insurance is not mentioned anywhere.

If a person goes ahead (despite this page saying it is really not necessary) and goes to the actual application page, the following is presented:

You're usually qualified if you're a citizen of a European Economic Area (EEA) country or Switzerland and you're one of the following:

- *working*
- *studying*
- *self-employed*
- *self-sufficient*
- *looking for work (only if they meet certain conditions)*

You must provide proof that you're qualified. Read the guidance notes with the form to check the supporting documents you need in your situation.

Again there is no mention of Comprehensive Sickness Insurance. Compare this with the PR pages of other EU countries where this requirement is listed on the comparable pages, and with other countries where there is an obligatory registration process which explains this requirement. (For example the Netherlands, where everyone, not just non-Dutch EU citizens, is required to have sickness insurance).

In fact, the page showing general residence (as opposed to permanent residence) card eligibility shows the following:

Qualified persons
A qualified person is someone who is in the UK and one of the following applies:

- *they're working*
- *they're self-employed*
- *they're self-sufficient*
- *they're studying*
- *they're looking for work (only if they meet certain conditions)*

Note how the job seeking category states there may be conditions attached, but the self-sufficient and studying pages do not.

If the person is then extra careful to find out all the requirements, and downloads the 40-page guidance notes above, they would need to read through to page 13 before Comprehensive Sickness Insurance is mentioned for Self Sufficient and Students.

- The first time most people hear of CSI is when they

    - try to apply for a Residence Certificate or a Permanent Residence Document
    - more recently, read about it in the national press highlighting cases of PR rejection due to lack of Comprehensive Sickness Insurance
    - when joining the3million Facebook forum, or other forums dealing with EU citizens in the UK

  It is worth mentioning that I personally had to explain about CSI to various UK Government Members of Parliament. Many of the3million forum members have had appointments with their MPs and have found out that they knew nothing of the CSI requirement.

- EU citizens have been able to do everything in their normal daily life, except vote in national elections. I myself have been here for 33 years, and have definitely been led to believe that I am here completely legally and lawfully. I have been able to find jobs, use the NHS, be on the electoral roll for local elections and European Parliament elections, get Child Benefit for my children, in short, fully participate in UK life without ever being made aware of CSI. I had several periods of not working, and in these periods I was without CSI, as I genuinely never heard of it. I am fortunate that I have just completed 5 years of continuous work so that I was able to obtain PR – but this could easily have not been the case.

  I therefore personally argue that the UK Government is 'complicit' in letting EU citizens believe they are fully complying with the law, and they only disclose the need for CSI once people try to apply for PR.

- Finally, whilst the UK Home Office appears to be hardening its stance on the CSI requirement, the House of Commons Exiting the European Union Committee report on the rights of UK and EU citizens (1st March 2017) states as one of its conclusions "*The Government should state that access to the NHS is considered sufficient to fulfil the requirements for CSI, and that it will introduce legislation to that effect if necessary*."

Appendix B Carers

In order to qualify as a carer, one has to prove that one spends at least 35 hours a week looking after the person who is ill. One is paid £65 Carers Allowance per week which is means tested, and one cannot earn more than a further £100 a week without losing the Carers Allowance. National Insurance Contributions are paid, and the time is considered valid towards the State Pension. Carers like this are in a strange position, they are not illegal however they are not exercising treaty rights as they are not considered workers in the usual sense as their income derives from a state benefit rather than a salary.

The AIRE Centre (Advice on Individual Rights in Europe) has written an Information Note about this, giving more extensive background on this problem. The summarising statement on this note says:

"This information note is designed primarily for EEA nationals who are full-time carers in receipt of Carer's Allowance in the UK. It sets out the AIRE Centre's general position on full-time care of this nature as constituting work under EU law.

It must be noted from the outset that the UK Courts and Tribunals have been unwilling to recognise persons providing full-time care as 'workers' under the broad European Union definition. As a result, EEA nationals who are providing such care and are therefore unable to perform other work, are generally unable to assert a right to reside under the domestic provisions for the purpose of claiming benefits. However, at the AIRE Centre we are currently involved in litigation which seeks to reverse this position."

Appendix C Income Threshold

The problem of the "Minimum Earnings Threshold", as applied by the Home Office to Permanent Residence applications, is described here: https://www.freemovement.org.uk/using-minimum-earnings-threshold-determine-worker/

The MET (Minimum Earnings Threshold) is around £157 a week from the financial year 2016-2017, which is equivalent to working 24 hours a week at the current national minimum wage.

If an EU Citizen applying for PR earns below the MET, the Home Office decision maker will subject their case to a thorough examination to determine whether the work is genuine and effective.

This can also affect their potential entitlement to Jobseeker's Allowance (JSA).

Appendix D Dual Citizenship

D.1 Difficulties obtaining Dual Citizenship

The following EEA countries either do not allow dual citizenship, or only allow it with varying degrees of restriction:

- Austria
- Denmark
- Estonia
- Germany (*)
- Ireland
- Latvia (*)
- Lithuania (*)
- Netherlands
- Poland
- Slovakia
- Slovenia
- Spain
- Norway

(*) in the case of Germany, Latvia and Lithuania, there are conditions tied to the other citizenship being an EU citizenship, hence Brexit will have an impact on this.

For EEA citizens living in the UK, many will now want to secure their rights by requesting British citizenship. This can be for any of the following reasons:

- wishing to vote in national elections
- not losing permanent residence rights if temporarily living abroad for over 2 years for career or other reasons
- to address fears of having fewer rights than British citizens

However those EEA citizens who would lose their original birth citizenship may be very reluctant to do so, as they would lose the option to move back to the EU/EEA in the future, and also many people have an emotional attachment with their birth citizenship.

D.2 Unintended consequences of obtaining Dual Citizenship

This is the problem as described in 2.3.1 Loss of right to future family reunification. The fuller description, taken from https://www.freemovement.org.uk/dual-eu-uk-citizens-rights-eu-law:

There is a problem with becoming a dual national British citizen, as the UK changed its approach in 2012 and now denies any dual citizen any rights under EU law.

This happened after a Court of Justice of the European Union case called *McCarthy* C-434/09. In that case a British woman applied for and obtained an Irish passport on the basis of her Irish ancestry. Without ever leaving the UK to exercise Treaty rights in another Member State, she then tried to argue that as a dual citizen her Jamaican spouse should be allowed to live in the UK under EU law. The Court rejected this argument and held that neither Directive 2004/38 nor Article 21 TFEU apply to:

a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State

Until then, the UK had followed a relaxed approach to dual citizenship and where an EU citizen became British the EU citizen would retain his or her EU rights. Following the *McCarthy* judgment, the UK changed its approach and now takes the view that EU rights are instantly lost the moment a person becomes British.

The Immigration (European Economic Area) Regulations 2016 impart rights to EEA citizens, but EEA citizen is defined as follows at regulation 2 on interpretation of terms:

"EEA national" means a national of an EEA State who is not also a British citizen

The effect is to remove EEA citizens and their family members from the scope of the UK's implementation of EU law immediately on the EEA citizen becoming a British citizen.

Very limited transitional arrangements are set out in Schedule 6 of the Immigration (EEA) Regulations 2016 but these only protected a narrow group of EEA citizens and family members already resident in 2012 who had permanent residence or had applied for residence documents.

Upcoming legal challenge

Many lawyers believe the new UK approach is wrong. And shortly the Court of Justice will be ruling again on the issue, in the case of *Lounes* C-165/16. In this case a Spanish citizen came to the UK, exercised her Treaty rights, acquired permanent residence and eventually naturalised as British. She married an Algerian citizen, who applied for a residence card under EU law on the basis of being a family member of an EU citizen. The application was refused by the Home Office.

When the case reached court, the court referred the following question to the Court of Justice:

Where a Spanish national and Union citizen:

i. moves to the United Kingdom, in the exercise of her right to free movement under Directive 2004/38/EC (1); and

ii. resides in the United Kingdom in the exercise of her right under Article 7 or Article 16 of Directive 2004/38/EC; and

iii. subsequently acquires British citizenship, which she holds in addition to her Spanish nationality, as a dual national; and

iv. several years after acquiring British citizenship, marries a third country national with whom she resides in the United Kingdom;

are she and her spouse both beneficiaries of Directive 2004/38/EC, within the meaning of Article 3(1), whilst she is residing in the United Kingdom, and holding both Spanish nationality and British citizenship?

The reference was made in March 2016 and the hearing is apparently due to take place in May 2017, according to Counsel instructed in the cases Mr Parminder Saini.

Update: On the 30th May 2017, a formal Opinion of Advocate General was delivered, suggesting that the UK was wrong to deny EU rights to dual citizens and their family members. The final verdict is still awaited.