

Frontline Lessons for the Future

*Collaborative research on the impact of
immigration law and policy in post-Brexit
Northern Ireland*



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Foreword

*By Úna Boyd, Immigration Project Solicitor & Coordinator,
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The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues.

CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The CAJ strategic immigration project is a successor to CAJ's work through the academic led BrexitLawNI project that examined the constitutional, legal, human rights and equality aspects of Brexit in NI. CAJ led on the project reports covering Border Controls/Free Movement and Racism and Xenophobia. In this context and the threat of NI becoming "one big border" in terms of immigration enforcement, CAJ established the strategic immigration project, designed to promote a human rights compliant and welcoming immigration regime for Northern Ireland. The initial project was put together with support from the Community Foundation for NI, with additional support from New Philanthropy Capital's Transition Advice Fund. It initiated in March 2019 and continued into 2020 and beyond having secured support from the Paul Hamlyn Foundation. This included support for the present research, as well as complementary research on Hostile Environment measures in NI entitled, [*Can Stormont Roll back the Home Office Hostile Environment?*](#).

Post-Brexit, we are facing into the biggest overhaul of the UK immigration system in decades. It is clear that the impact on the rights of migrant and minority ethnic people will be varied and severe. In Northern Ireland, many of these impacts are unique and often overlooked in the mainstream UK discourse. Frontline services are at the fore of dealing with these impacts, working to safeguard and guide people impacted by the UK immigration regime.

The work of CAJ's strategic immigration project is designed to complement the work of frontline organisations by acting as an expert legal resource and focusing on strategic legal and policy interventions. As such, our work is informed by collaboration and partnership with frontline immigration service and advice organisations. Funded by the Paul Hamlyn Foundation, CAJ partnered with some of those organisations to produce, ***Frontline Lessons for the Future: Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland.***

The purpose and rationale of this report was to bring together CAJ's policy and legal work, with the experience and expertise of frontline organisations. In doing so, we have aimed to map some of the key issues affecting migrant and minority ethnic people in Northern Ireland, in the post-Brexit landscape. This report provides a unique insight into the issues and concerns brought to frontline services, the legal and policy background to these issues, and the impacts in Northern Ireland.

The report focuses on the following key areas:

- Freedom of Movement and the Common Travel Area
- EU Settlement Scheme and Future Rights of EU Citizens
- Experiences of Asylum Seekers and Refugees
- Racist Hate Crimes and Incidents

Building on this unique insight, this report then aims to take these lessons forward into the future. In each area of focus, this report has put forward policy proposals for the UK and Irish governments and for the devolved institutions in Northern Ireland. These proposals make it clear that there are significant and meaningful changes that can be made in order to address the issues raised and protect the rights of migrant and minority ethnic people in Northern Ireland. When read in conjunction with CAJ's report, ***Can Stormont Roll back the Hostile Environment?***, these proposals provide a blueprint for the future and a path to a fair and human rights compliant immigration regime in Northern Ireland.

CAJ wishes to thank all of our research partners and participants for their contributions to this report.

Chapter I – Freedom of Movement and the Common Travel Area (CTA)

I.1 Introduction – the Common Travel Area – built on shifting sands?

A post-Brexit Memorandum of Understanding (MoU) between the UK and Ireland on the Common Travel Area (CTA) describes the CTA as follows:

The CTA is a long-standing arrangement involving the United Kingdom (“UK”), the Channel Islands and the Isle of Man, and Ireland that facilitates the ability of our citizens to move freely within the CTA. In addition, associated reciprocal rights and privileges have been enjoyed by British citizens in Ireland, and Irish citizens in the UK, since Ireland’s independence.¹

The primary element of the CTA can therefore be described as relating to border controls and the facilitation of free movement between the parts of the CTA. It is helpful to break this down into two elements – firstly whether there are *passport controls* on CTA routes and secondly whether a person requires *prior immigration permission* to cross into another CTA jurisdiction. As we shall see, contrary to what is implied by the MoU, exemptions from passport controls and immigration permission have *not* (and are not) restricted to British and Irish citizens, although this has been the direction of travel by the UK since Brexit.

A second issue relates to the ‘reciprocal rights’ of British and Irish citizens in the alternate jurisdiction. Contrary to what the MoU implies such matters have *not historically* been part of the CTA arrangements. Rather for first half century of the CTA reciprocal entitlements were grounded in the manner in which each State regarded each others citizens. (At partition, UK law continued to regard citizens of the Irish Free State as British Subjects. Ireland also has not considered British citizens as ‘aliens’.) More recently, for almost half a century, detailed and codified reciprocal rights for Irish and British citizens have been underpinned by evolving EEC/EU free movement law. It is Brexit that has led to the post-Brexit construct of ‘associated reciprocal rights of the CTA’ to ensure British and Irish citizens retain rights to reside, work etc in the alternate state. Whilst the CTA was put forward as a ‘solution’ to the gap left by EU law, such matters were not previously provided for by the CTA the arrangements. The CTA itself is not underpinned by a treaty and was notably described by the human rights commissions post-Brexit as having been ‘written in sand.’²

The advent of CTA ‘reciprocal rights’ and their limitation to British and Irish citizens, as exemplified by the 2019 MoU, has influenced a perception that the CTA only relates to British and Irish citizens. Such an assertion has become part of official discourse from both States and has become common parlance. It is however misleading and ahistorical. It would be more accurate to state that the *direction of travel* since Brexit has been to increasingly frame and limit the CTA to British and Irish citizens. This compounds pre-existing problems

¹ [Memorandum of Understanding between the Government of the United Kingdom and the Government of Ireland concerning the Common Travel Area and Associated Rights and Privileges 8th May 2019, paragraph 3.](#)

² [IHREC, 'New research recommends UK-Irish treaty is best solution to ensure Common Travel Area rights post-Brexit' 13/11/18](#)

of exclusions and racial profiling, for those who are not (or are not 'perceived' as) British and Irish citizens. The sands of the CTA have shifted, in a way that creates greater problems for migrant and ethnic minority communities.

This issue is compounded by a third purpose and element to the 'CTA arrangements' that is undeclared in the MoU that continues to be shrouded in varying degrees of secrecy. This third purpose is UK-Ireland mutual immigration cooperation within the context of the CTA, and reciprocal mutual assistance on the enforcement of immigration regimes.

Notably the very existence of a 1952 UK-Ireland MoU on the CTA was kept secret to spare political embarrassment for the Irish Republic in what could be considered a dilution of its sovereignty. More recently, a 'CTA Forum' between the two States has been meeting with its minutes kept almost entirely confidential. Irish law contains specific provisions allowing immigration enforcement on behalf of the UK. Such matters continue to be controversial and complex, not least in particular given the draconian nature of UK 'hostile environment' immigration controls. Brexit and the consequent ending of EU free movement into the UK has also curtailed a direction of travel between both states to align elements of their immigration systems.

This introductory section will explore in detail the respective legal and policy framework for these issues relating to the CTA. We will then examine the human rights law implications of such issues before going into detail the evidence base gathered in the course of this research. This includes the learning from two roundtables on the CTA we facilitated in Derry/Londonderry and Newry respectively in 2020.

1.1.1 The CTA Border Control: Passport Control and Immigration Permission

Origins

As alluded to above the primary manifestation of the CTA has related to the exemptions to passport controls and immigration controls between alternate jurisdictions.

The former relates to whether there are passport checks and consequent duties to carry and produce passports on travelling between different parts of the CTA, including across the land border. Prior immigration permission refers to whether a person can freely cross a border without the need to first apply to the State of entry for permission to do so – whether for a visa, travel waiver or other permission.

Prior to partition in 1922 the whole of Ireland was part of the UK state and hence no issues of borders arose. In contrast to today's totalitarian 'hostile environment', immigration controls in general were also in their infancy, and international travel limited. The origins of the CTA post-1922 in large part lie in the existence of the land border where there was little desire on the part of the UK to introduce passport and immigration controls along such a porous and lengthy frontier. There was also the context, elaborated on below, of mutual treatment of each other's citizens. In lay terms, the CTA was seen as a solution to part of the issues arising from partition of the island, much in the same way a century later the CTA was seen as a remedy for issues arising from Brexit. The absence of passport controls also benefited third country nationals who could also traverse the land frontier with little or no

documentation. Instead, both States pledged to operate common rules for third-country nationals entering the external boundaries of the CTA.³

The CTA was suspended from 1945 to 1952⁴, when the UK instead introduced passport controls and restrictions between Northern Ireland and the island of Britain. The original prompt for this was of course the outbreak of the Second World War. However, whilst Ireland largely dropped the restrictions in 1946, the UK did not. This was the period leading to the 1948 declaration of Ireland as a Republic. The UK would not reinstate the CTA unless Ireland succumbed to aligning its immigration policy with the UK. When this occurred with the 1952 MoU such was the political unpalatability of an independent State appearing subservient, not even the existence of the MoU, let alone its terms were made public at the time.⁵ The MoU appears to have provided that Ireland would refuse entry to a passenger if they were to travel on to the UK and did not meet UK entry requirements and vice versa. In practice this meant Ireland reflecting and enforcing UK immigration law.⁶

The political sensitivities over Ireland implementing UK immigration controls continue to contribute to the lack of transparency over contemporary CTA immigration cooperation. The 2019 MoU makes cryptic reference to the “excellent and highly valued cooperation that already exists” between the UK and Ireland on the CTA and “longstanding principles on which this cooperation is based.”⁷ We shall explore this further below in relation to matters such as the exercise of Irish immigration powers and the land border.

The absence of passport or immigration controls on the land border does not mean there were not a range of other controls on the land border, or between NI and GB. Checkpoints and security controls were prevalent across the land border throughout the conflict. The GFA and its implementation agreements provided detailed ‘normalisation’ provisions for the dismantlement of such border infrastructure. The Prevention of Terrorism Acts also meant

³ See [Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick ‘Discussion Paper on the Common Travel Area’ \(IHREC/NIHRC 2018\) chapter 2](#). See also [Blake O’Donnell ‘Not British but Not Foreign The Post-Brexit Relationship with Ireland’ Society of Conservative Lawyers para 6](#) citing MFPP Working Paper No. 2, “The Creation and Consolidation of the Irish Border” by KJ Rankin and published in association with Institute for British-Irish Studies, University College Dublin and Institute for Governance, Queen’s University, Belfast (also printed as IBIS working paper no. 48).

⁴ A more recent example of a politically contested temporary ‘suspension’ of the CTA during a time of emergency has occurred during the COVID Pandemic. During the first wave the Irish government restricted travel into the State from Great Britain (in the context of very high Covid rates in Britain). This did not include travel across the land border from NI. The Sinn Féin deputy First Minister argued for similar restrictions on NI-GB routes to prevent NI becoming a ‘back door’ for transmission to the Republic. The DUP First Minister by contrast argued that the Irish government’s restrictions were themselves a breach of the CTA. <https://www.irishtimes.com/news/ireland/irish-news/stormont-relations-further-strained-by-split-over-travel-rules-1.4309147> During other times during the pandemic travel restrictions were imposed by each constituent part of the CTA – including on the land border and the different jurisdictions of the UK – albeit ‘lockdown’ travel restrictions were even more localized and stringent.

⁵ See Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick ‘Discussion Paper on the Common Travel Area’ (IHREC/NIHRC 2018) p23-25.

⁶ Blake O’Donnell ‘Not British but Not Foreign The Post-Brexit Relationship with Ireland’ Society of Conservative Lawyers citing Bernard Ryan, ‘The Common Travel Area between Britain and Ireland’ (2001) 64 Modern Law Review 855-874.

⁷ Memorandum of Understanding between the Government of the United Kingdom and the Government of Ireland concerning the Common Travel Area and Associated Rights and Privileges 8th May 2019, paragraph Paragraph 2 and 2(e)

there were also regular document checks and examination of passengers on NI-GB air and sea routes. There was also the system of exclusion orders. The land border also had customs controls until the abolition of such checks between EU member states. NIHRC research records that late into the 20th there were only 20 approved border crossings for customs and excise purposes, with a limited permit system on other routes.⁸ This sets the context for contestation over the implications for the land border of (hard) Brexit – with both a risk of return to disruptive customs and regulatory checks and infrastructure on the border reversing its dismantlement under the GFA.

Consequently one of the core objectives of the NI/Ireland Protocol is to “avoid a hard border.”⁹ Whilst most of the focus is on trade and goods there is a specific provision on the CTA under Article 3(1), this provides that the UK and Ireland “*may continue to make arrangements between themselves relating to the movement of persons between their territories (the ‘Common Travel Area’)*” A qualification is added that these CTA arrangements must be compatible with the EU rights of persons, which is most relevant to continued EU free movement into the Irish State. Notably this provision on movement of people is *not* qualified to British and Irish citizens.¹⁰

Despite the focus on avoiding a hard border on the island of Ireland throughout the Brexit negotiations there was and remains a ‘hard border’ for visa nationals. Article 2 of the Protocol provides however for ‘non diminution’ in certain GFA rights as a result of Brexit. These include relevant rights to equality of opportunity in all socioeconomic activity on protected grounds including ethnicity, and rights to ‘choose your residence’. The Human Rights and Equality Commissions have been given enforcement powers over this commitment. Consequently, Brexit legislation that *hardens* the land border in a way which engages and interferes with these GFA rights will conflict with this legally binding commitment. Any change of CTA arrangements on the land border which diminishes existing provision for free movement for any cohort of rights holders can offend this commitment. Authoritative commentary highlights that rights holders in this section of the GFA are not limited to those resident in Northern Ireland, but includes those in the Republic of Ireland.¹¹ Compliance with these provisions of the Protocol has already been raised by the Human Rights Commissions in the context of the UK’s proposals to require EU citizens and other non-visa nationals to apply for prior immigration permission in the form of an e-travel waiver, when entering the UK including over the land border.¹²

⁸ Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick ‘Discussion Paper on the Common Travel Area’ (IHREC/NIHRC 2018) p26.

⁹ [Article 1\(3\) of the Protocol.](#)

¹⁰ Article 3(1) “*The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the ‘Common Travel Area’), while fully respecting the rights of natural persons conferred by Union law.*”

¹¹ See McCrudden, C. (2022). Human Rights and Equality. In C. McCrudden (Ed.), *The Law and Practice of the Ireland-Northern Ireland Protocol* (pp. 143-158). Cambridge: Cambridge University Press.

¹² [Joint NIHRC / ECNI Briefing Paper on the Modern Slavery and Human Trafficking and Electronic Travel Authorisation provisions in the Nationality and Borders Bill January 2022](#)

Contemporary UK Passport Control Powers

The main provision for passport control in UK primary legislation is provided for under the Immigration Act 1971.¹³ Section 1(3) of the Act that prevents passengers on internal journeys within the CTA being subject to (passport) controls under the Act:

*“Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act...”*¹⁴

There is no statutory power for passport or I.D checks to be carried out for the purposes of immigration control within the CTA, including on the land border.

In the modern era this arrangement however has been far from secure. Back in 2008 the Home Office produced a White Paper proposing to abolish the CTA as a free movement zone.¹⁵ A subsequent bill sought to entirely repeal the provision in s1(3) that prevents passport control in the CTA.¹⁶ The policy intention was to introduce blanket checks on air and sea routes from the Irish Republic to Great Britain (and it was suspected from NI to GB). This was to be supplemented by ‘intelligence-led’ checks on the land border – but only on *non-British and Irish citizens*, raising serious concerns from the Human Rights Commission over risks of racial profiling. Furthermore, stretching the concept beyond credible interpretation, when pressed on what intelligence-led meant a Minister stated “we target the odd bus, minibus or taxi, because our experience has shown that those are much more likely to be a threat.”¹⁷ Ministers acknowledged they wanted to change the law as there was otherwise no legal cover for passport controls in the CTA (indeed the effect of s1(3) of the 1971 act was to preclude them). Citing the concerns of the Human Rights Commission, the House of Lords – led by UUP’s Lord Glentoran then voted out the change and the prohibition on use of passport control powers under the 1971 Act remains.¹⁸

Undeterred by the will of the UK Parliament the Home Office nevertheless proceeded to carry out selective passport checks on CTA routes raising significant concerns over racial profiling. This has largely manifested itself on east-west checks on NI-GB routes at ports and airports. We have also heard testimony of checks at NI bus stations on arriving cross border busses.

One example is provided by the experiences of a lawyer, Jules Gnezekora, a dual Ivorian and British citizen who has lived in the UK since 1994 and now resides in Northern Ireland, who took a ferry on a return trip to Scotland from Northern Ireland. On each of the four legs of

¹³ See in particular Para 4 Schedule 2 on duties to produce passports on request

¹⁴ [Immigration Act 1971 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1971/19/section/1)

¹⁵ In a nod to the undeclared purpose of the CTA the White Paper- proposing to abolish the CTA as a zone free from passport controls was entitled: [Strengthening the CTA](#).

¹⁶ The [Borders, Immigration and Citizenship bill](#).

¹⁷ [https://hansard.parliament.uk/Lords/2009-03-04/debates/09030469000370/BordersCitizenshipAndImmigrationBill\(HL\)](https://hansard.parliament.uk/Lords/2009-03-04/debates/09030469000370/BordersCitizenshipAndImmigrationBill(HL))

¹⁸ [https://hansard.parliament.uk/Lords/2009-04-01/debates/09040160000488/BordersCitizenshipAndImmigrationBill\(HL\)](https://hansard.parliament.uk/Lords/2009-04-01/debates/09040160000488/BordersCitizenshipAndImmigrationBill(HL))

the journey Mr Gnezekora was the only black person in the queue and the only person, on each occasion, singled out and asked for a passport.¹⁹

In the run up to the Brexit referendum there were already significant numbers of these selective checks. The statistics published for 'Operation Gull', an operation in Northern Ireland ports targeting entry over the land border, record the 'interception' of 775 suspected irregular migrants in 2015/2016, an increase of 66% on the previous year. These figures, the majority of which surely relate to persons suspected of routine immigration offences rather than crimes, were nevertheless included in an organised crime annual threat assessment report.²⁰ The media reported figures of around 800 detentions in the subsequent year, along with political and academic calls for the discontinuation of Operation Gull due to the concerns over the use of racial profiling.²¹ Notably despite the number of 'interceptions' the number of persons prosecuted for entering the UK unlawfully via Ireland are very low. The current Northern Ireland Affairs Committee Chair Simon Hoare MP cites official figures of three persons in 2017; five in 2018; 32 in 2019; two in 2020 and 15 in 2021.²²

Fresh focus on such checks within the Common Travel Area was provided by the context of arrangements following Brexit. Whilst much of the focus was on the freedom of movement of goods rather than the freedom of movement of people, the latter was raised. The post-referendum 2017 UK 'Northern Ireland and Ireland Position Paper' is limited to ruling out 'regular – but not irregular- border controls.

*"The development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls."*²³

¹⁹ See media reports [here](#) and [here](#). In a statement to CAJ Mr Gnezekora reports that in Cairnryan port "I was queuing with approximately 15-20 people to board the boat. I was the only black person in the queue that I could see... I passed through the check-in area having shown my boarding details to ferry staff and was called to the side by one of the officers who were present, immigration or police. I remember clearly that I was asked to produce my passport, which I did." Despite having a British passport Mr Gnezekora was then questioned about why he was traveling to Northern Ireland and his place of birth, he raised his frustration with the officers at being "the only person singled out for questioning and that I am black. While I said this, I remember pointing to the passing passengers who were looking at me being questioned." His testimony continues: A few hours later, the ferry docked at Belfast. I disembarked and was passing through the exit area in the ferry terminal. Apart from [...] two black people [...] who were waiting to collect their luggage off the boat, I was the only black person leaving the docks at that time that I could see. The only form of control that I could see in this disembarkation area was immigration control. The two officers were letting the people who were ahead of me pass through. I did not see them ask anyone for any identity documents. ... When I approached the officers, I was taken to one side. This was the fourth leg of my return trip within eight days and I had been subjected to this treatment on every single occasion. I was feeling very discriminated against. It was humiliating being singled out and asked questions.

²⁰ [Organised Crime Task Force, Annual Report and Threat Assessment 2016, Department of Justice NI, June 2016, Page 13.](#)

²¹ [Calls for suspension of ongoing 'racist' Operation Gull initiative, Derry Journal, 2 June 2017](#)

²² <https://committees.parliament.uk/oralevidence/10129/html/>

²³ [HM Government: Northern Ireland and Ireland Position Paper, 16 August 2017, paragraph 32](#) (emphasis added). See also '[The UK's Future Skills Based Immigration System' December 2018](#) "The future border and immigration system will fully respect the UK's long-standing approach to movement within the CTA. As now, there will be no routine immigration controls on arrivals in the UK from Ireland or the Crown Dependencies.

At one stage an NIO Minister Lord Duncan of Springbank went as far as stating there would be no checks at all on the land or sea border and no racial profiling:

"I am very happy to reinforce the clear statement that there can be no racial profiling at a border, whether it be routine, quixotic or even accidental. That cannot be the policy or the direction: there cannot be even a hint of that going on at the border..."

*There will be no checks whatever for journeys across the land border between Ireland and Northern Ireland, nor between Northern Ireland and Great Britain. As I said earlier, this includes any aspect of what those checks might look like or be interpreted to look like. That is not what will be happening."*²⁴

Whilst not doubting the Minister's sincerity in articulating this policy objective, it is notable that there was a gulf between the assurances and the practice at the time. This is most starkly illustrated by the statement being made on the same day as Jules Gnezekora's experiences on the ferry.

A subsequent Ministerial answer did not contain assurances there would be no checks on NI-GB routes but returned to an assertion there would be no 'routine' checks on such routes, and no checks at all on the land border.²⁵ As illustrated below however checks on the land border in practice are undertaken by the Gardaí, including at the behest of the UK.

There is also the context of 'in country' immigration checks. In a post-Brexit report on the Border, the Northern Ireland Affairs Committee, in 2018 welcomed UK commitments that free movement across the land border would continue, called for clarity as to the intentions for in-country controls, raising concerns that they should not be more onerous than elsewhere in the UK.²⁶ By mid-2020 *The Detail* however obtained official statistics that there was a higher rate of checks taking place in Belfast than other UK cities – almost four times higher than in London.²⁷ Four years earlier, the year of the Brexit vote, immigration detention of EU citizens also hit a record high.²⁸

It should be recalled that the selective passport checks on NI ports on NI-GB routes take place in a context where the 1971 Immigration Act precludes passport control on journeys within the CTA. Whilst passengers are rarely, if ever, informed, the checks are largely voluntary. This is set out in the Home Office's own enforcement guidance:

"Home Office IOs [immigration officers] do not have all of their normal powers to carry out immigration controls in respect of persons travelling within the common travel area (CTA). Operation Gull relies on the voluntary cooperation of the travelling public. Officers are entitled to carry out intelligence led operations designed to

²⁴ Minister Lord Duncan of Springbank in response to an amendment to EU (Withdrawal) Bill from Baroness Kennedy of the Shaws [HL Hansard 25 April 2018, c1m 1609.

²⁵ [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

²⁶ "We recommend the Government sets out in detail how it proposes to apply existing, or whether there will be new, internal immigration controls for EU nationals. In the Committee's view, the residents of Northern Ireland should not be subject to more onerous documentary checks to determine entitlement to stay and to access public services and the labour market than anywhere else in the UK. It must also establish the resource implications of conducting checks on people away from the border" [Northern Ireland Affairs Committee 'The land border between Northern Ireland and Ireland' HC 329 Published 16 March 2018, Paragraph 31.](#)

²⁷ [The Detail, 'Concerns over 'disproportionately high' levels of immigration checks in Belfast' 08/06/20](#)

²⁸ [The Detail, 'Detention of EU citizens in Northern Ireland hits record high in year of Brexit vote' 12/09/18](#)

intercept persons who should not be in the country on the basis of cooperation from the general public. However, individuals are under no obligation to comply...”²⁹

Despite this, and the context whereby in 2008 Ministers implied a law change would be required to permit passport checks on CTA routes, seemingly emboldened by Brexit and a populist UK Government, the Home Office issued new Guidance in September 2021 that appeared to state passengers are now ‘required’ to carry and produce passports on most CTA routes, with the exception of the land border. For British and Irish citizens it states that “you don’t need to show your passport” but you may be asked to “show a document that confirms your identity and nationality” the first example given on a list is “a valid passport.” For most non-British/Irish citizens passports are asked for.³⁰ A response to a Parliamentary question from Stephen Farry MP confirmed a Home Office view producing passports/id docs is now compulsory.³¹ The checks are not ‘routine’ but are irregular, with differentiated document ‘requirements’ with seemingly no legislative basis.

Immigration Permission in UK law

The ability to enter Northern Ireland across the land border without prior immigration permission has not been restricted to British and Irish citizens.

S1(3) of the Immigration Act 1971³² and the Immigration (Control of Entry through Republic of Ireland) Order 1972 creates a system of ‘deemed leave’ for persons crossing across land into Northern Ireland, subject to certain exemptions – most significantly UK visa nationals.³³

In practice therefore this means that not just Irish and British citizens, but also almost all EU/EEA citizens and non-EEA nationals who are not UK visa nationals, have been able to freely cross the land border – and live fluid cross border lives without the need for any prior UK immigration permission.

UK visa nationals resident in the border counties do however face an invisible ‘hard border’ and risk arrest and detention if straying across it. There are other exemptions (e.g. persons who have previously been refused UK entry) and this list has been extended post-Brexit.³⁴

It is worth again emphasising though, that it is not the case that the CTA just applies to British and Irish citizens. The present situation has been for some time that almost all EU/EEA and non-EEA citizens who are non-visa nationals present in the Republic of Ireland can cross the land border freely on local journeys into NI without any requirement for prior

²⁹ [Home Office Guidance, 'Enforcement visits' 22/12/20](#) p20 This enforcement guidance also states that ‘in country’ powers involving to question persons on streets rely, where reasonable suspicion threshold is met, on the control powers in schedule 2 of the 1971 Act (i.e. the powers that are disapplied persons on CTA journeys).

³⁰ <https://www.gov.uk/guidance/travelling-between-the-uk-and-ireland-isle-of-man-guernsey-or-jersey>

³¹ <https://members.parliament.uk/member/4856/writtenquestions#expand-1353294> “We are therefore confirming the documents people will be required to present when entering the UK from another part of the CTA as part of an intelligence-led immigration control if they are encountered by a Border Force officer.”

³² [S1 \(3\) Immigration Act 1971](#) Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as “the common travel area”.

³³ [The Immigration \(Control of Entry through Republic of Ireland\) Order 1972](#)

³⁴ [Article 2, The Immigration \(Control of Entry through Republic of Ireland\) \(Amendment\) Order 2021](#)

immigration permission. This permission is restricted to entry as a visitor and certain activities such as work are restricted when entering the UK this way.³⁵ However, this system has allowed non-visa nationals resident in border areas to enter NI freely for a range of activities and to live fluid cross border lives.

This situation could be significantly changed by the UK plans for ETA (Electronic Travel Authorization). Under this system non-visa nationals would also have to apply for pre-clearance before entering the UK. It will not apply to British or Irish citizens, or persons with an immigration status in the UK (including persons who have visas, or who have EU settled status). It will however apply to a range of (non-Irish) EU/EEA and other non-visa nationals who are resident in the border counties and would harden the border for such persons. It is a further post-Brexit example of a direction of travel of limiting core provisions of the CTA to British and Irish citizens.

The system would require such persons to apply in advance and pay for, ETA before crossing the border into NI, or they commit an offence. It is clear that this will have a unique detrimental impact on EU26 and other non-visa nationals who need to enter Northern Ireland for activities such as visiting family, accessing childcare, permitted work engagements and accessing services and goods. This system will also impact the ability of members of the migrant community to take part freely in cross border projects and programmes. This constitutes a Brexit-related 'diminution' in existing entitlements, and as it engages specified GFA rights, conflicts with the provisions under the NI Protocol.

The primary legislation to establish the scheme – the notorious Nationality and Borders Act 2022, has now passed. During passage of Parliament the ETA provision was amended in the House of Lords through an amendment by Baroness Margaret Ritchie and others. This amendment removed the requirement for an ETA on land border journeys. The UK Government however voted down the amendment when the bill returned to the Commons.³⁶ However, the contestation and evidence of the unworkability of the system on the land border has at the time of writing led to UK Ministers expressing a willingness to explore an exemption for persons *resident* in the Republic of Ireland from an ETA.³⁷

Contemporary Irish Passport Control

Irish law providing for passport control is differentiated and complex.

The main provision is found in a duty to carry and produce passports to immigration officers when entering the State under s11 of the Immigration Act 2004.³⁸ However, this duty is expressly disappplied on journeys within the CTA, including the land border, but *reapplied* to "non-nationals."³⁹ Non-nationals are defined, for this provision, as persons who are not Irish or British citizens or persons exercising EU treaty rights.⁴⁰

³⁵ [Gov.uk guidance, 'Visit the UK as a Standard Visitor'](#)

³⁶ [The Irish Times, 'Non-Irish EU citizens crossing Border face travel 'clearance' requirement after MPs' vote' 22/03/22](#)

³⁷ <https://committees.parliament.uk/oralevidence/10129/html/>

³⁸ [Section 11, Immigration Act 2004](#)

³⁹ [Section 11\(4\) Immigration Act 2004](#)

⁴⁰ Non-nationals" is defined in s11 (5) as a person who is not an Irish citizen, a citizen of the United Kingdom of Great Britain and Northern Ireland, or a person who has established a right to enter and be present in the State under the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977), the European

In summary therefore this duty to carry and produce passports does not apply to British, Irish or most EU citizens and their family members when traveling over the land border or other CTA routes – but does apply to other non-EEA citizens.

Following the UK exiting the European Union, it seemed that British citizens would fall into the definition of ‘non-national’ and be subject to the requirement to produce identification, as they would no longer be EU citizens. CAJ raised this potential impact and the 2004 Act was then amended to define non-nationals as someone who is not an Irish, British or EU citizen.⁴¹

This differentiated approach fuels racial discrimination as it is clearly not possible to tell who is Irish or British or an EU citizen or not by looking at them, other than by applying ethnic stereotypes as to what an Irish, British or EU citizen ‘should’ look like.

Senior Gardaí before the Policing Authority in early 2022, whilst avoiding the question as to how passengers are selected for checks, did concede that ‘particular nationalities’ would be a focus of attention at times based on information provided by UK Border Force ‘who work very closely with us’. It was conceded the Immigration Act itself was discriminatory in requiring some nationalities to have visas which then have to be the focus of checks and that not engaging in profiling was a ‘challenge’. Assurances were also given on the question of profiling that immigration related instructions were currently under review in light of legitimate concerns raised. The review would take into account the ethics code and human rights law.⁴²

Gardaí have also been recorded as stating that the exemptions only apply to Irish and British citizens, and that EU nationals are required to comply and produce a passport/ID document. Gardaí have even gone as far as to imply that Irish and British citizens have to produce ID to prove they have an entitlement as a British and Irish citizen not to show passports/ID.⁴³ In practice this circular reasoning is one of the reasons that certain Irish citizens (on the basis of ethnic indicators including skin colour) are expected to carry and produce ID and others are not. Although this is also a product of the general impact of the law itself differentiating.

Another section of the same Act also requires the same ‘non-nationals’ to produce ID on demand when in the State.⁴⁴ Other provisions of the Act require ‘non-nationals’ (here

Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997) or the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).

⁴¹ The original 2004 s11 only exempted British and Irish citizens and was amended in 2011 to add persons exercising EU treaty rights, in light of *Ebere Dokie v. DPP*. The amendment also removed reference to British citizens (as British citizens were then covered by EU treaty rights). [Civil Law \(Miscellaneous Provisions\) Act 2011 s. 34\(a\), commenced on enactment](#). The definition was amended again in 2020 to re-add British citizens due to the UK exiting the European Union. [Section 114, Withdrawal of the United Kingdom from the European Union \(Consequential Provisions\) Act 2020](#)

⁴² [February 2022 - Policing Authority meeting with the Garda Commissioner in public](#)

⁴³ [The Journal.ie, 'Cross-border travellers face 'racial profiling', says human rights group' 19/09/19](#) “A Garda spokesperson said: “All persons arriving into this jurisdiction are subject to immigration controls; however citizens of Ireland and the UK are entitled to avail of the common travel area agreement, which allows for unrestricted movement by citizens of either jurisdiction across the common border without passport/immigration controls.” “Citizens of Ireland or the UK may be required to assert their right to travel by producing a relevant document. The common travel area arrangement is applicable ONLY to Irish and UK citizens,” the spokesperson said.

⁴⁴ [Section 12, Immigration Act 2004](#)

seemingly a reference to non-Irish/British citizens to make a declaration on request from an Immigration or Garda officer as to whether they are carrying or conveying any documents, and if so they are required to produce them. There are also powers to search the luggage of a 'non-national' for documents.⁴⁵ Albeit documents is not focused on passports rather it relates to any written, audio, video material or even bank notes (but is non-exhaustive).⁴⁶

There are also powers of examination on 'non-nationals' arriving over the land border.⁴⁷ There are also a number of powers under the Aliens Acts that appear to still be on the statute books.

EEA regulations provide that an EU citizen/family members *cannot be refused permission to enter the State* if they are in possession of a passport/ID card (subject to limited exemptions) although this is not an express duty to carry a passport over the land border per se.⁴⁸

Immigration permission in Irish law

Persons in Northern Ireland who are Irish Visa Nationals also face a 'hard border' in not being able to cross into the Republic of Ireland without first passing an onerous visa application process. As set out in a briefing produced by CAJ and the North West Migrants Forum, this impact is most felt in border communities by visa nationals who live in Northern Ireland (including permanent residents) who are 'trapped' inside a border invisible to most others.⁴⁹

This is particularly felt by visa nationals who live close to the border, where for example persons living in Derry-Londonderry cannot visit Donegal to take children to the beach, shop, visit friends, or even visit family members.

The North West Migrant Forum (NWMF) sets out a number of case studies. One relates to an Irish citizen with family in both Co. Antrim and Co. Donegal married to a Jordanian Palestinian citizen resident in NI. As set out by NWMF "His visa status meant he was unable to visit her maternal family in Donegal and only met them when they visited family in the North." Whilst originally on a student then work visa after marriage he had to apply, from Jordan, through the UK Spouse Visa route, this took some time and whilst allowing residency in NI, an Irish visa is then still required for him to travel into the Republic of Ireland. This "meant years of not accompanying [his wife] or their children to family visits or trips to Co.

⁴⁵ S7(3) [Section 7, Immigration Act 2004](#)

⁴⁶ In this section, "documents" includes—(i) any written matter, (ii) any photograph, (iii) any currency notes or counterfeit currency notes, (iv) any information in non-legible form that is capable of being converted into legible form, or (v) any audio or video recording.

⁴⁷ [S4\(5\) Immigration Act 2004](#) provides a permissive power for an Immigration Officer to examine a non-national (non Irish/British citizen) on arrival into the State 'otherwise than by sea or air' to determine whether permission to enter be granted. It applies the same reasons for refusal as for passengers entering by sea or air, which include not possessing a valid passport. [It however \(as with above\) qualifies the obligation to section 2\(2\) of the 2004 Act which subordinates the application of the requirements under the Act to EU obligations.](#) This appears to imply that EU citizens and their family members are exempt from these requirements. The powers also do not appear to expressly extend to Gardaí, only to immigration officers. [Section 4, Immigration Act 2004](#)

⁴⁸ See regulation 4 and 5 [S.I. No. 548/2015 - European Communities \(Free Movement of Persons\) Regulations 2015](#)

⁴⁹ [NWMF and CAJ, 'CTA and Freedom of Movement in the Island of Ireland, Policy Brief' 2022](#)

Donegal.” Another case study provides a reminder that some services are provided on a cross border basis. This includes children attending school in the alternate jurisdiction; families availing of childcare; cross-border health care arrangements including the provision of paediatric congenital cardiac services in Children's Health Ireland at Crumlin or in the North-West Cancer Centre, Derry. The case study highlights the issues for essential cross border health services faced by visa nationals:

*“A refugee child born in Belfast with a congenital heart condition requiring urgent treatment. The child was taken to Paediatric Cardiology in Dublin for treatment as part of the all-island congenital heart disease (CHD) Network scheme. Unfortunately, due to her immigration status, the mother was not able to accompany her child for treatment, causing undue stress on the family. A visa was eventually granted after an emergency application. However, the stress and anxiety are ongoing, especially as if they need further treatment, they may find themselves in the same situation again.”*⁵⁰

In addition to the ‘hard border’ faced by visa nationals there are also provisions in Irish law and policy whereby non EU citizens crossing the border are required to notify their presence in the State. It is not clear to the extent these provisions are applied in practice, and there is little awareness of them.

Official guidance states there is a *notification* requirement for “non-EU, non-EEA and non-Swiss nationals” across the land border. The official Irish Immigration website states: “If you arrive via the border with Northern Ireland, you must report to an Immigration Officer at Burgh Quay, Registration Office, Dublin or your local Immigration Office at a Garda Síochána (Irish Police) station as soon as possible.”⁵¹

Lawyers working in border areas have indicated that this requirement is applied in a very vague manner. In practice it is not clear how often this happens. Notably the guidance does not exclude British citizens, who in theory if following the guidance are to report to immigration or Garda officers on entering the State, including over the land border, this would capture many of the broad NI population, but is clearly not enforced.

The application of the letter of this guidance to short local journeys would create rather complex scenarios (i.e. a person resident in Strabane driving a few hundred metres over the river into Lifford, then returning to Strabane the same day, who in theory could be required to first go to the nearest Garda station with an immigration facility – which appears to be many miles away in Letterkenny).

The legal basis for notification requirements appears to be set out in the Immigration Act 2004, which provide exemptions for short-term visits with other provisions for those arriving to engage in employment.⁵² This appears at odds with the above official guidance that does not qualify reporting requirements when crossing the land border in this way.

⁵⁰ [NWMMF and CAJ, 'CTA and Freedom of Movement in the Island of Ireland, Policy Brief' 2022](#)

⁵¹ [Department of Justice Guidance, 'Entry for non-EU, non-EEA and non-Swiss nationals'](#)

⁵² [S9 of the Immigration Act 2004](#) sets out the obligations of non-nationals (in this instance defined as non-Irish/British citizens) to register. It however also qualifies the obligation to section 2(2) of the 2004 act which subordinates the application of the requirements under the Act to EU obligations. The registration obligations which are quite onerous (e.g. notifying each change of residence) do not apply to under 16s, non nationals

As alluded to above there are express provisions in Irish immigration law that provide for extra-territorial enforcement of UK immigration control. Notably among the express reasons an Irish Immigration Officer can refuse entry into the State is when they consider a non-national would travel on to Northern Ireland or Britain and would not qualify to enter the UK.⁵³ We have heard testimony whereby, for example Garda immigration officers have boarded NI bound busses in Dublin airport to run passport checks on persons who would have already passed through immigration control on arrival.

1.2 Freedom of movement on the island of Ireland – law and reality

1.2.1 Freedom of movement in international law

The global definition of the right of freedom of movement is contained in Article 12 of the International Covenant on Civil and Political Rights (ICCPR)⁵⁴ which reads:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

born in Ireland, docked seafarers, and most significantly “a non-national not resident in the State who has been in the State for a period of not more than 3 months since the date of his or her last arrival in the State”. This would indicate that notification requirements do not apply to non-nationals resident in NI who visit the State – contrary to what is stated on the official guidance. [S5\(4\) of the Immigration Act 2004](#) applies to certain non-nationals (albeit again qualified by EU obligations) who specifically are arriving in the State to engage in employment, business or a profession in the State. It requires persons to whom it applies to report in person to a registration officer within 7 days of entry in the area in which the person intends to reside and present a passport or equivalent document and other information reasonably requested by the officer on the purpose of arrival in the state. A limit of one month is placed on remaining in the State unless written permission is granted for longer. To add to the confusion there are also registration provisions in earlier Aliens Acts. [s11 of Aliens order 1946](#) appears also has a registration provision which predates and is largely reflective of the 2004 act, including disapplying provisions to those in the State for less than three months. S11 does not appear to have been repealed and has been amended as recently as 2014 to (in contrast to the 2004 Act) apply the requirements to under 16s. (Art. 11(6)(a) revoked [26/2014](#), ss. [1\(5\)](#), [36\(b\)](#) https://www.irishstatutebook.ie/eli/isbc/si1946_351-395.html) We are also not clear how the notification provisions under the 1946 are disappplied to EEA nationals.

⁵³ [Section 4\(3\) Immigration Act 2004](#), Subject to section 2(2)[which qualifies the provision to EU treaty rights] , an immigration officer may, on behalf of the Minister, refuse to give a permission to a person referred to in subsection (2) if the officer is satisfied— (h) that the non-national— (i) intends to travel (whether immediately or not) to Great Britain or Northern Ireland, and (ii) would not qualify for admission to Great Britain or Northern Ireland if he or she arrived there from a place other than the State;

⁵⁴ [UN International Covenant on Civil and Political Rights](#)

The UK is party to the ICCPR. There is also ECHR Protocol 4, which contains a free movement right expressed in similar terms. The UK is not party to this Protocol, but was advised by the NI Human Rights Commission to incorporate it into the NI Bill of Rights.⁵⁵

It can be seen that the legal right consists of two elements, first, liberty of physical movement and the ability to choose one's residence within a State and, second, the freedom to leave any country. There is no general right of international travel or to cross national borders and no general right to move one's residence from one country to another. Arguments have been made for free international migration⁵⁶ but there is no immediate prospect of international agreement on that. There are, however, examples of bi-lateral and multi-lateral agreements between states guaranteeing various levels of freedom of movement between them.⁵⁷

Within the European Union, residents are guaranteed the right to move freely within the EU's internal borders by the Treaty on the Functioning of the European Union and the European Parliament and Council Directive 2004/38/EC of 29 April 2004.⁵⁸ Neither the UK and Ireland have been party to the EU Schengen Area which limits internal borders in a more structured manner than the CTA, including mutual visas.⁵⁹ EU freedom of movement has, of course, been lost as regards Northern Ireland with the withdrawal of the UK from the European Union, save for those who have retained qualified EU free movement rights under the Withdrawal Agreement (see chapter on Settlement Scheme).

It is also the case that the Irish land border sits in a particular circumstance, not least due to the CTA but also due to the complex constitutional context of Northern Ireland.

The border has historical, political and practical significance. A useful synopsis of this significance is found in the introduction to the 2017 Report of the NI Affairs Committee of the House of Commons on "The Land Border between Ireland and Northern Ireland."⁶⁰ In paragraphs 5-10 it details the geographical nature of the border (310 miles long with some 400 crossings), the volume of traffic (110 million person/crossings a year) and the symbolic and practical significance of its current effective invisibility.

The border, created 100 years ago this year, partitioned a hitherto united territory and became a symbol of division and conflict. There have been few years in the last century free of politically motivated violence and extraordinarily wide-ranging repressive legislation. The thirty years between 1968 and 1998 saw a deeply damaging violent political conflict during which many atrocities and human rights violations occurred. The Good Friday Agreement of

⁵⁵ See NIHRC Advice on the Bill of Rights for Northern Ireland, 2010, page 93.

⁵⁶ See: [Open Borders, 'Migrating From the Womb and Across Borders to Security and Personal Agency'](#) 29/05/22

⁵⁷ E.g. Trans-Tasman Travel Arrangement between Australia and New Zealand

⁵⁸ This does not amount to complete freedom of movement and residence. There are no conditions on movement to another member state for visits under three months – over that and, unless working, residents must show they have sufficient means not to become a burden on the host state. The right of permanent residence is acquired by an EU citizen after five years' legal residence and this also applies to third country spouses of citizens. The right of freedom of movement to work is facilitated by the abolition of discrimination on the grounds of nationality (within the EU) in employment. [Europarl Factsheet, 'Free movement of persons'](#)

⁵⁹ [European Commission Guide, 'The Schengen visa'](#)

⁶⁰ [NI Affairs Committee, 'The land border between Northern Ireland and Ireland' 16/03/18](#)

1998 and subsequent reform brought that conflict largely to an end, but political tensions remain and illegal armed groups continue in existence.

It is widely accepted that border controls of any kind – or to put it another way – restrictions on the freedom of movement, would be highly disruptive and would conflict with the arrangements developed further to the peace process. That is why, following Brexit, the avoidance of a “hard” land border has been a priority.

In addition to the express provisions on the dismantlement of border infrastructure the GFA contains specific ‘east-west’ and ‘north-south’ dimensions for Northern Ireland as a polity. Whilst international human rights standards generally permit border controls at the boundaries of a state, human rights are engaged where there is racial discrimination or internal border controls impacting on freedom of movement within a state. The complex constitutional context of Northern Ireland in light of the CTA and the mutual recognition rights regarding Irish or British citizenship, as well as the north-south and east-west arrangements under the Agreement, provide a context whereby the right to freedom of movement should be considered as applying across the CTA. This issue is also contextualised by the preferential arrangements Irish citizens have historically had in relation to the UK (and vice versa), which has led to Irish citizens having rights to work, settle and vote in the UK, and British citizens having a similar status in Ireland.

Official UK Brexit Position Papers consider that any restriction on freedom of movement within the CTA would engage compliance with the GFA. The NI/Ireland Position Paper stated:

*“Although it precedes the Belfast (‘Good Friday’) Agreement, the principle of free movement between the UK and Ireland carries symbolic significance in implementing the Agreement’s commitment to the continued respect of the civil, political, social and cultural rights of the communities in Northern Ireland. It is a tangible example of East-West cooperation between the UK and Ireland... including its significance in the context of the Agreement.”*⁶¹

NIO Minister Lord Duncan speaking during the passage of the European Union (Withdrawal) Bill speaking for the Government at Report Stage also emphasised that the CTA is “an integral element—not a symbolic but an integral element—of the Belfast/Good Friday agreement. That should not be underestimated.”⁶²

Concerns regarding racial profiling on ‘non routine’ passport checks in the CTA were picked up by Tendayi Achiume, the UN Special Rapporteur on Contemporary Forms of Racism on an official visit in 2018 during the Brexit negotiations in which she recommended that the UK adopt immigration policies both now and after BREXIT that protect migrants from racial discrimination. Her end of mission statement highlighted that:

“Even in parts of the UK such as the devolved nations and in areas where immigrants remain fundamental to the economic prosperity and success of British communities, the groups with which I consulted reported high levels of anxiety among immigrants regarding their status following the UK’s departure from the EU. In Northern Ireland,

⁶¹ [HM Government: Northern Ireland and Ireland Position Paper, 2017, paragraph 20.](#)

⁶² [https://hansard.parliament.uk/Lords/2018-04-25/debates/EuropeanUnion\(Withdrawal\)Bill](https://hansard.parliament.uk/Lords/2018-04-25/debates/EuropeanUnion(Withdrawal)Bill)

*groups expressed concerns that even a policy that committed to no routine passport checks in the Common Travel Area might result in non-routine checks that in the hostile immigration environment would lead to racial profiling of transiting minorities. I recommend that the UK adopt immigration policies in advance of and following its exit from the EU that shield EU and non-EU migrants from the threat of racial and ethnic discrimination.”*⁶³

As alluded to above the Protocol on Ireland/Northern Ireland, agreed between the UK and the EU as part of the Withdrawal Agreement, specifically contained provisions regarding avoidance of a hard border. The Preamble reads:⁶⁴

“RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls,”

“UNDERLINING their firm commitment to no customs and regulatory checks or controls and related physical infrastructure at the border between Ireland and Northern Ireland,”

In addition, the substantive text of the Protocol itself contains, in Article 1, the following statement of its objectives: “This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.” Whilst the avoidance of a hard border in relation to trade is dealt with by a number of provisions in the Protocol, Article 3 on the CTA, is the sole provision dealing expressly with the freedom of movement of people. As alluded to above the rights to non-diminution in certain GFA rights under Article 2 of the Protocol are also relevant.

The UK Government’s Explainer to the “no diminution of rights” aspect of the Protocol⁶⁵ states:

“The commitment to no diminution of rights, safeguards and equality of opportunity applies to Northern Ireland. This means that everyone who is subject to Northern Ireland law - irrespective of whether such law has been passed by the Northern Ireland legislature or Westminster - will be covered.”

“Everyone who is subject to Northern Ireland law” applies to all those within the jurisdiction, whatever their status. We would therefore argue that all the rights and freedoms, including freedom of movement, should apply to all those within the territory.”

⁶³ [End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland](#), paragraph 63, emphasis in original.

⁶⁴ [European Commission Guidance, 'Protocol on Ireland and Northern Ireland'](#)

⁶⁵ [Northern Ireland Office, 'Explainer: UK Government commitment to no diminution of rights, safeguards and equality of opportunity in Northern Ireland' 07/08/20](#)

1.2.2 Reciprocal rights and the Common Travel Area

As discussed above, since the Brexit referendum the UK Government has regularly talked up the ‘associated rights’ of the CTA as providing a remedy for Irish citizens to continue to live in the UK after Brexit, setting out six core areas that are ‘included’ among reciprocal CTA rights, which amount to more extensive elements of a right to free movement:

- The right to enter and reside in each other’s state without being subject to a requirement to obtain permission;
- The right to work without being subject to a requirement to obtain permission;
- The right to study;
- Access to social welfare entitlements and benefits;
- Access to health services; and
- The right to vote in local and parliamentary elections ⁶⁶

The UK and Irish governments presented CTA rights as already provided for in law and an adequate replacement for EU rights.⁶⁷ As discussed previously, this was simply not the case.

For both States the concept of reciprocal CTA rights admittedly provides a solution for continued entry and residence of Irish citizens into Britain and British Citizens into the Republic of Ireland respectively once EU law (the legal basis for such free movement for almost the past half century) ceases to have effect. However EU free movement law has to date has been the legislative underpinning for compliance with the core GFA principle of equality of treatment for British and Irish citizens in NI across a broad range of provision. The far more limited (in terms of scope and legal force) ‘reciprocal rights’ of the CTA fall well short of replacing this in many areas leaving significant gaps.

CTA progress has been welcome but limited: progress has included the 2019 (non-binding) bilateral Memorandum of Understanding and a convention on social security coordination.⁶⁸ There are however many gaps, e.g. there is no provision for cross-border health care, reciprocal voting rights exclude referendums, and rights to be joined by family members are not covered. Ongoing bilateral discussions and the CTA Forum have largely met in secret and provided heavily redacted documents when information was requested through FOI.

Official statements that claim that the ‘CTA’ has afforded a right to work “without any requirement to obtain Permission” are somewhat misleading. Not only has this issue been dealt with as a matter of how each state has treated each others citizens rather than the CTA, in Northern Ireland the old Stormont Parliament operated its own work permit system requiring ‘prior permission’ before work in the jurisdiction, based on residency, required permission from British and Irish citizens, and was only phased out due to shared EEC

⁶⁶ [HM Government: Northern Ireland and Ireland Position Paper, 2017](#)

⁶⁷ [GOV.uk guidance, 'Common Travel Area'](#)

⁶⁸ [Memorandum of Understanding between the Government of the United Kingdom and the Government of Ireland concerning the Common Travel Area and Associated Rights and Privileges 08/05/19](#)
[Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland 01/02/19](#)

membership, with vestiges of it continuing, under transitional arrangements, until the 1980s.⁶⁹

The present CTA provision falls well short of an overarching treaty recommended by the Human Rights Commissions. It appears Government is instead minded to take forward CTA rights as a series of bespoke amendments to legislation and administrative agreements to roughly reflect the above framework. This could be therefore changed at any time, this does not make CTA rights, enforceable rights at all- in contrast to the EU Settlement Scheme under the Part II of draft Withdrawal Agreement.

The issues of what the CTA will cover and how it will be enshrined, if at all, as a 'right' is particularly relevant to Governments position that, due to the CTA, Irish citizens did not need to apply under the EU settled status scheme can apply, if they choose to.⁷⁰ However it was not possible for an Irish citizen to make an informed choice to avail of the retained EU rights and benefits under the Settled status scheme or in the alternative rely on the CTA, if it is not known what is actually provided for under the CTA and how secure it is in the future.

1.3 Frontline Insight and Experience

1.3.1 Cross-border life and frontier workers

The roundtables which were held in early 2020 were located in border areas and the general impact of Brexit on cross border life was raised consistently. It was felt by attendees that policy makers have ignored or failed to grasp the complexity of cross border life and the impact that Brexit will have on people here. It is complex, it impacts services, education, family rights, cultural rights, healthcare and workers' rights. This complexity has been veiled because both jurisdictions have been in the EU, and people have become used to being able to live between both without any major barriers. It was felt that across the board, both the UK and Irish governments had failed to properly examine this issue.

Advice services felt that many people contacting them have issues relating to cross border living, including Frontier Workers.⁷¹ Advice services expressed frustration at the lack of information and guidance from the UK government. They are unable to answer people's questions and are left in the dark. Their concern is that people will be allowed to slip out of rights protections or left without access to services, and the governments will not act on these issues until many people are impacted.

Businesses and employers who attended the roundtables expressed the same frustration and described practical advice as 'gold dust'. The Frontier Worker scheme was particularly highlighted as something which border services and businesses needed urgent information on, but there was nothing available. They stated that the impact of all this uncertainty is that they were losing staff and services have increasing gaps in available workers.

⁶⁹ For details see employment section of: [CAJ, 'Can Stormont Rollback the Home Office Hostile Environment?' Dec 21](#)

⁷⁰ [GOV.UK Guidance, 'Apply to the EU Settlement Scheme \(settled and pre-settled status\)'](#)

⁷¹ At the time the roundtable meetings were held, no information on the Frontier Workers scheme had been published. The UK government subsequently published details of the Frontier Worker scheme in late 2020 and the scheme was opened for applications in December 2020. The scheme remains open for persons who can meet the requirements. [GOV.UK Guidance, 'Frontier Worker Permit'](#)

Attendees had already encountered people being refused services and healthcare in alternate jurisdictions due to lack of clarity and confusion over the rules. They felt that this would become worse once the Brexit transition concluded and the UK was entirely outside of the EU. Attendees found that generally people do not understand their rights and rules are being applied in an ad hoc way by services providers and employers.

Healthcare was raised as a particularly urgent issue, due to the immediate impacts if people find themselves unable to access it. Attendees confirmed that it is very common for people to access healthcare across the border, and it seemed that the provisions after Brexit would be lesser. Concerns were raised about the impact on existing good practice like children in NI accessing specialist cardiac care in Dublin.

Research by STEP (South Tyrone Empowerment Programme) stated that Brexit did not create the problems of Cross-border travel for immigrants and migrant workers, but it has increased number of people to whom the Common Travel Area will not apply. They have recorded racial profiling in places of employment, related to the ability to work where employers worked on a cross-border basis. Prior to Brexit the problem was mainly confined to 'third country nationals' and EU citizens from black and minority ethnic backgrounds who would be wrongly challenged on their right to work. Post Brexit they have recorded similar incidents happening to those who tried to obtain work in the Republic of Ireland.

The research done by Migrant Centre NI (MCNI) showed that frontier workers seemed to be one of the groups most forgotten about and with least clarity as to their status post Brexit. At the time of the original research there was no clear guidance for non-British/Irish frontier workers who wanted to continue cross border work after the end of the transition period..

MCNI research showed that considering the fact that clients who reside in Northern Ireland but work in the Republic can be unaware of the fact that they should submit tax returns in the UK and declare foreign income in self-assessment statements, the issue of needing immigration documentation might become a much more difficult one to overcome. In terms of proving their residency for EU Settlement Scheme, those workers are asked to provide evidence of residency in the UK because there is no record against their national insurance numbers in the HMRC or DWP databases.

MCNI felt that unfortunately, even less clarity can be provided to clients who are frontier workers and whose family members are third country nationals. Up until now travelling between the two States was possible thanks to EU treaty rights. It was considered, in 2020, uncertain as to how this was going to change.

MCNI research found that frontier workers often encounter barriers including racial profiling or broader discrimination or wrongful querying of entitlements when accessing essential public services – including health, social protection, housing and education. They also often experience passport or other immigration checks on journeys within the Common Travel Area at the land border, NI ports and airports and bus and train stations. Most people being targeted appear to be picked out due to skin colour and hence racial profiling.

Two case studies from Migrant Centre NI demonstrate some particular problems:

- An EU national living in ROI and working in NI was unable to register with a GP. As the client spent most of the working week in NI, the client was unable to attend appointments in the Republic of Ireland and decided to choose a registration with a

GP in NI. The client has tried three separate practices but with no luck, despite being entitled to be registered. The client then turned to the MCNI for help in getting the registration.

- An EU national who has always lived in Republic of Ireland but worked in Northern Ireland presented. She was worried about her status after Brexit due to lack of clear guidance. She was considering temporarily moving to the UK to apply for pre-settled status to make sure she is not affected by any negative changes. Unfortunately, at the time of this report there was very little information available to advise this client in practical terms.

1.3.2 Border checks and racial profiling

Experience of border checks based on apparent racial profiling are a common experience. Migrants' Centre NI reports that random checks by Garda close to the border between NI and RoI are done often and include cars being stopped but also officers entering public transport.

Passengers from minority ethnic backgrounds are often asked to produce photographic documents, especially if they are easily identified (skin colour, types of clothes, different language/accent). MCNI clients often report that at points of exit and entry into the port they are easily identified and are often asked for identity documents when white people are not.

MCNI produced some representative case Studies:

- One client was stopped travelling from Dublin to NI. They were asked to provide an ID with photo. They were asked where they were travelling from, where to, what was the purpose of the journey. There were several police officers on the road stopping cars on the Irish side of the road, but only cars with number plates issued in Northern Ireland were stopped on both sides.
- A black client travelling regularly for work on the ferry between NI and England observed that only him and a handful of other passengers were asked to produce identity documents at each journey.

Frontline organisations attending the roundtables confirmed that there were frequent immigration checks reported to them. Organisations felt that most of these contain an obvious element of racial profiling. Feedback from attendees suggested that the majority of checks were happening on Belfast-Dublin bus routes. One organisation also raised incidents of cars being stopped around border areas in PSNI checks and people being asked about their immigration status. There was one incident of a person being challenged by UK immigration officials on a Derry to Dublin flight. One organisation assisted an EU national who was stopped and questioned on a bus in Co Tyrone, she was the only person questioned and she was the only black person on the bus. Another organisation had reports of people who were subjected to checks because of their accent. A reporting tool created by End Deportations NI also receives a large number of reports of similar incidents on Belfast-Dublin bus services, this evidence base confirms the concerns raised by roundtable attendees.

Organisations working with asylum seekers feel that these incidents have created particular fear for that group, who may need to travel from northern counties of the Irish State to Dublin to report as part of the requirements of their asylum claim. This often necessitates travel through Northern Ireland. For example, it is very difficult to travel from Donegal to Dublin without using cross border bus services. They reported that there was a culture of fear around being checked and accidentally falling foul of immigration enforcement on these journeys and there does not seem to have been any collaborative work between UK and Irish governments on how to permit asylum seekers in this position to travel safely.

The role of public services in permitting immigration checks was raised by attendees as a concern. The fact that Translink permits checks to occur on their buses was raised. However, Translink claim that they have no policy on this and have not equality impact assessed their practice of facilitating such checks. The justification from Translink was that they must comply with law enforcement. This however does not preclude Translink from checking the legality of such checks and monitoring their use for racial profiling. CAJ supported a directly affected individual to progress a complaint to the Equality Commission for Northern Ireland, alleging that Translink had breached their Equality Scheme commitments by not equality impact assessing the policy through 'equality screening' methodology (as is required by their scheme). Translink contended that they did not have a policy and therefore did not have to equality screen. The complaint was submitted to ECNI in October 2019. In July 2020, ECNI declined to investigate, citing confidential legal advice which stated that Translink was not performing a 'function' in NI. CAJ submitted an appeal which was ultimately declined, due to the narrow grounds available for appeal. Later, we discovered that through FoI ECNI had at first recommend an investigation based on initial legal advice which determined that Translink was performing a function. A second legal opinion was produced which ultimately led to the decision not to investigate.⁷²

The PSNI role in conducting immigration checks was raised and queried by attendees. In general the PSNI do not have an immigration role, which is instead invested in Home Office Border Force and Immigration Enforcement Officers. The PSNI have stated to organisations that they do not undertake an immigration enforcement role and do not intend to. However, reports suggest that PSNI officers were trained on how to check immigration status and the conduct of operations like Operation Nexus and Operation Gull call into question their actual role in immigration.⁷³ It seems that as a matter of policy the PSNI do not conduct immigration checks, but as a matter of practice they do. Attendees felt strongly that the PSNI should not undertake an immigration role.

Solicitors at the Children's Law Centre confirmed that they have encountered children who were checked when travelling within the Common Travel Area. It was felt that the checks did occur on the basis of racial profiling and were very intimidating and distressing for the

⁷² See CAJ's forthcoming Equality Duty Enforcement Project Report for full narrative

⁷³ 'Operation Gull' is a joint exercise between the UK and the Republic of Ireland which targets migrants crossing the land border and the 'sea border' between the UK and the Republic of Ireland. Police and immigration officers board buses, search trains, stop private cars, and question passengers on ferries and planes. Operation Nexus is a joint operation between the Home Office and police forces which targets migrants for deportation and establishes immigration checks for anyone encountered by police and information sharing between police and the Home Office.

children involved. The checks encountered occurred on Northern Ireland to Dublin travel routes.

Concerns were raised that the rules around travel within the Common Travel Area and particularly over the land border were complex and that children risked accidentally breaching the rules due to not understanding them. It was felt that it is not fair to expect young people to understand and think in complex legal terms and jurisdictional and geographical boundaries. Children's Law Centre produced a leaflet specifically addressing this for children granted asylum and warning them that even with a UK Refugee Travel document they require a visa to travel into the Republic of Ireland. Solicitors felt it is easy to see how all migrants, but particularly children, are at risk of making a mistake and falling into illegality.

Solicitors outlined how this complexity is likely to increase once you are dealing with Northern Ireland being outside the EU and the Republic of Ireland remaining an EU country as it creates further diversions. It was not clear how EU nationals would be treated if for example they exited Northern Ireland without applying to the EUSS, but then re-entered; would they be granted the 28 period to make a late application or be treated as someone who entered the UK unlawfully? There has been a lack of guidance and clarity on cross border travel.

A case study showed that one solicitor witnessed a young person being asked for I.D documents on a bus travelling from Belfast to Dublin. They asked for documents from everyone on the bus it was very clear they focused on the young person more than others as they were not white. The solicitor attempted to intervene and to assist the young person who was 17. He stated that he was just travelling to Dublin to meet a friend. The young person was removed from the bus and the solicitor was informed by the Gardaí that it was a routine check.

Research from STEP shows that because of the rural nature of Mid Ulster which runs to the border with County Monaghan the experiences of people crossing the border, and the reasons for doing so are often different to those living in Belfast but also from the cities of Derry and Newry sitting on the border, Nonetheless the challenges are the same. STEP records show that they dealt with very few direct reports / complaints of racial profiling on public transport when crossing the border. That is not to say such incidents did not exist and could be impacted by the nature of rural border crossings and pattern of public transport use in rural areas. STEP raised concerns about the practice of cross border checks, stating that to randomly select black and minority ethnic people on the basis that 'most Europeans are white' is racial profiling. Their research shows that statistically the largest number of 'illegal immigrants' each year in both jurisdictions are young white 'overstayers' whose visas have expired, and the top countries of origin remain Australia and the United States of America. This is what is an example of 'White privilege' which is facilitated by racial profiling.

STEP also noted that members of the Roma community are particularly vulnerable to racial profiling on both sides of the border on the overtly racist basis of 'sending them back' to the other side. This has been reported by community organisations supporting Roma communities in Counties Armagh, Tyrone, Derry, and Down.

STEP's research found that the simple solution would be to extend Common Travel Area rights to all persons 'lawfully present' on the island Ireland, in either jurisdiction – A 'protocol' for the free movement of people.

1.2.3 Immigration Enforcement

Evidence from attendees at the roundtables showed that many people ended up subject to immigration enforcement and were sometimes placed in immigration detention in Northern Ireland due to crossing the land border without the correct visa for the UK, often without knowing they had crossed into another jurisdiction. In many cases there seemed to be an element of racial profiling in these checks, as they predominantly impacted non-white people. The checks predominantly occurred on public transport, but roundtable attendees also confirmed there are reports of cars being stopped. One attendee also had reports of services like Chinese medical providers being targeted for checks. It was felt that people were being penalised for lack of understanding of complex border politics and many migrants did not even realise there was a border and were not intentionally breaking any rules.

Organisations had reports of people being detained in UK immigration detention in Northern Ireland after crossing the land border mistakenly. Once detained they entered the UK immigration detention system and they are then sent to detention centres in England or Scotland as the facility in NI only provides temporary accommodation. This could result in huge delays before that person could return to Ireland and in some cases the UK government had attempted to return them to their country of origin, despite them having legal residence in Ireland. These incidents seemed likely to increase as the UK and Ireland further diverge on their immigration regimes. Attendees felt it was clear that more cooperation was needed to allow people who mistakenly cross the border to be safely and quickly returned to Ireland, or to the UK, without being subject to disproportionate immigration enforcement and detention.

Linked to the issue of checks on CTA journeys, concerns were raised by attendees about a general increase in immigration enforcement in Northern Ireland. The UK and Ireland's immigration regimes would diverge further after Brexit, as Ireland would remain in the EU. To allow for no checks on the land border, there was a concern among attendees that the UK would increase 'ad hoc' checks away from the border and increase the application of hostile environment policies in Northern Ireland, turning NI into 'one big border'. This would increase incidents of racial profiling and discrimination and conflict with the idea of a 'rights based society' in Northern Ireland. Unions were particularly opposed to their members being forced to conduct immigration checks.

The UK government focus on the land border as a 'back door' was raised as a key issue by roundtable attendees. Post Brexit, with the loss of mutual EU law, there would have to be work between the UK and Ireland around cross border security, criminal justice and terrorism. However, this would not have to be allowed to create a situation where immigration checks were carried out under the cover of 'security'. Already, CAJ has evidence that the Garda use the defence of targeting organised crime when questioned about checks

on cross border buses.⁷⁴ Roundtable attendees felt that checks conducted for the purposes of security or trafficking must be intelligence led and cannot become an excuse for blanket checks. This would have to be closely monitored to prevent discriminatory practices.

Organisations attending the roundtables felt that the Republic of Ireland's role in checking people onward travelling should be examined and clarity was needed. Organisations found there was resistance to providing information on this practice from both governments. Attendees had regular reports of people travelling through Dublin airport where Irish border officers stopped them if they thought they were travelling to the North. There are obvious complications here for EU nationals now as they can enter Ireland under Free Movement but may need permission to enter NI. It was not clear if Ireland could prevent them entering the state for the sake of preventing them entering Northern Ireland, because that would then infringe on EU free movement. Concerns were also raised that Irish border officials may not understand the UK immigration system as it rapidly changes. For example, some EU national family members could join their family in the UK after June 2021. What would be done to ensure Irish border force did not wrongly and arbitrarily apply UK immigration law? There were also reports that a new detention centre was being built at Dublin airport which would be of high concern, but there was very little information on what it would be designated for and how it would be used.⁷⁵

The Common Travel Area Forum is the body which develops policy between the UK and Ireland on reciprocal immigration checks and other areas concerning the CTA. CAJ requested the minutes of the Forum's meetings through FOI and received documents which were redacted to the point of being unreadable. It is concerning that such important work on the CTA is shrouded in secrecy. It was felt by roundtable attendees that a lack of transparency in this area indicates that both governments wish to avoid scrutiny of their actions.

1.3.4 Post-Brexit immigration changes

Concern was raised by roundtable attendees that the UK Government's post Brexit immigration regime did not seem to have been designed with the land border in mind and it was difficult to see how it could work practically in Northern Ireland. One issue that attendees were seeing frequently was that there were now differing rights protections for different categories of EU nationals. However, Ireland remained in the EU and therefore open to free movement. How will checks be conducted to differentiate between EU nationals and their rights if they are travelling fluidly across the border? Could EU nationals who enter Ireland under free movement fall foul of immigration enforcement if they cross the border without realising the different regimes? How can you tell a Frontier Worker apart from a new arrival? It was felt there were no clear answers to these questions and many others and organisations were being left to advise people on the ground without the necessary information.

⁷⁴ [The Journal.ie, 'Number of people stopped at the Northern Ireland land border and removed from the State is rising' 26/09/19](#)

⁷⁵ The legal basis for Ireland conducting UK immigration checks at the Irish border is unclear. However a 2011 Memorandum of Understanding between Ireland and the UK agreed cooperation on immigration controls within the CTA, including data sharing between UK and Ireland; [Joint Statement between the UK and Ireland regarding Co-operation on measures to secure the external common travel area border](#)

The government proposals for an Electronic Travel Authorisation were raised as a cause for concern.⁷⁶ This proposed system will impose a requirement for visitors and transit passengers who do not currently need a visa to come to the UK to obtain an Electronic Travel Authorisation (ETA). The system seems to be modelled on existing systems in other countries such as the United States ESTA scheme. However, there was no information on how this scheme would work for people living in border regions who undertake frequent local journeys across the border. There are concerns people could fall foul of UK immigration enforcement by failing to obtain pre-entry clearance for local journeys.⁷⁷

The Frontier Workers scheme developed as a consequence of Brexit was also an area of concern raised by attendees. At the time of the roundtables the UK government had not yet provided any information on how the scheme would work in practice. Advice services and organisations working in border regions felt there was a high number of people who would need to apply to the scheme to continue working in the UK, but that awareness was very low and they were unable to provide advice as the UK government had not yet published any information about the scheme. It was felt that the Frontier Worker scheme was a good example of the impacts of the new immigration regime in NI being overlooked. The government were not prioritising it because from an England-centric point of view there were not many people impacted. However, in NI there was a huge impact which is being ignored.⁷⁸

Business representatives who attended were particularly frustrated at the lack of information and lack of engagement from the Home Office on the new immigration system, worker visas and schemes like the Frontier Worker scheme. Employers in border areas confirmed that they were very reliant on EU workers and it was felt they had not been helped enough to prepare for the changes coming. Businesses in the border regions would be the worst impacted and NI businesses felt that they were now competing with business in Ireland because employees could simply move half an hour down the road and stay working and living in the EU without worrying about their future security and applying to schemes. Business representatives described border businesses as ‘on their knees’.

Roundtable attendees felt the UK and Irish governments were not providing enough support or guidance and there was a total lack of clarity about the future immigration systems and how they would apply in NI and particularly in border regions where it becomes more complex. Advice services felt they were particularly impacted as they could not tell people what to do or what their rights were without clarity.

1.3.5 Reciprocal rights and the Common Travel Area

Attendees at the roundtables felt that both the UK and Irish governments were over emphasising the idea of the Common Travel Area and it had become a buzz word since Brexit. Concerns were raised by attendees about the fact that the Common Travel Area was

⁷⁶HM Government, 'The UK's future skills based immigration system' December 2018

⁷⁷ At the time of publication the UK government has enacted legislation providing for 'Electronic Travel Authorisation' in the [Nationality and Borders Act 2022](#). Details of the scheme are outlined in paragraph 3.1.1 above

⁷⁸ Ibid 71

being presented as a magic 'fix all' but that this was not the reality. Organisations felt there was no real clarity on rights and how they were protected.

A concern raised by organisations was that Irish citizens were being advised not to apply to the EU Settlement Scheme as they could rely on CTA rights. It was felt this advice did not reflect that the EUSS was a secure, codified status but CTA rights were not. Some attendees had already seen this advice cause issues where Irish citizens with non-EU family members did not realise that their family members could not rely on the EUSS and were not going to apply. It was felt the advice did not reflect the reality. CAJ and UNISON asked MPs to table an amendment to the Immigration and Social Security Bill which would have required the governments to clearly set out the differing rights protections of the CTA versus EUSS in order to allow people to make informed choices. This amendment was opposed by the government and defeated and there remained no clear way for an Irish citizen to compare and contrast the EUSS with the CTA.⁷⁹

Advice organisations felt it was very difficult to answer questions on CTA rights because the concept was vague and they could not give any guarantees about them. Previously with EU law there was a clear track to follow in order to work out a person's rights, but with CTA rights that did not exist and they were also dealing with different groups of people with differing access to the CTA. The Memorandum of Understanding on the Common Travel Area had helped but as it was not legally binding organisations advisers felt they were still reluctant to rely on it. One attendee referred to it as a 'jigsaw that doesn't fit'. It was felt that it was easier to encourage people to apply to the EUSS because the government had set its provisions out clearly and it was secure, but that was not appropriate or possible for everyone.

The experience of organisations was that the Irish Government was more engaged than the UK Government in providing answers to CTA related questions. However, they were only answering questions once raised and there did not seem to be any work being carried out to proactively put guidance and information out there. It was felt that the governments were aiming to keep the CTA fluid and adaptable, but in doing so failing to recognise the need for legal clarity and security for people on the ground relying on it.

Concerns were also raised by attendees that the rhetoric around CTA rights was being used to cover up non-compliance with the Good Friday Agreement. So, for example the issue of NI born Irish citizens being unable to access the EUSS was often being answered with assurances that they could rely on the CTA. This fails to address the central issue of treating NI born Irish citizens as British citizens.

Research by STEP also noted that issues around taxes and benefit entitlements post- Brexit concern many people who live on one side of the border and work on the other. Cross-border Health services can also be problematic for those who do not enjoy eligibility within the Common Travel Area and those who are perceived to be outside its remit.

⁷⁹ See Amendment NC27 [House of Commons, Notices of Amendments, 09/06/20](#)

1.4 Policy Recommendations arising from the above analysis and evidence

The following are a series of policy recommendations both for the Irish and UK authorities. While in certain respects devolved and excepted competencies can overlap, most of the issues raised in the above section of this report relate to the immigration system which in NI are the responsibility of the UK Government and, from a legislative point of view the UK Parliament, rather than the Stormont Executive.⁸⁰

1.4.1 Issues for Irish law and policy

The following are a number of initiatives that could be taken forward unilaterally by the Irish authorities to mitigate against the above problems:

- Non-UK/EEA citizens who have *residency* in NI (permanent or fixed term) but would normally require visas to enter the Irish State could be granted a form of deemed leave to enter the State as visitors when travelling across the land border. This would prevent a 'hard border' for such persons who along with non-visa nationals could also be relieved of any routine reporting requirements.
- The relevant provisions of the Immigration Act 2004 could be amended to remove the 'exception to the exception' that requires only certain 'non-nationals' to carry and produce passports on local journeys across the land border, and such routine checks discontinued. This would address the increasing problem of racial discrimination.
- Irish citizenship law could be amended to provide that long term residency on the Island of Ireland (rather than just the Irish State as is presently the case) be a basis for naturalisation as an Irish citizen. This is already the case for marriage to an Irish citizen and residency on the Island of Ireland.
- An assessment could be made and changes made to ensure essential cross-border services in the Irish State open to residents in NI are not restricted to British and Irish/ other EU citizens.
- Specific safeguards should be introduced, in accordance with international best practice, to prevent racial profiling across the public and private sectors, including by the Gardaí.

⁸⁰ Paragraph 8 of Schedule 2 of the Northern Ireland Act 1998 lists various relevant topics which are "excepted" and so subject only to the legislative competence of the Crown in Parliament at Westminster. These are: "Nationality, immigration, including asylum and the status and capacity of persons in the United Kingdom of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents". Relevant public services by contrast, in areas of health, housing, education etc are the responsibility of the devolved institutions. For further information on the boundaries between Stormont and Westminster powers in this area see [CAJ, 'Can Stormont Rollback the Home Office Hostile Environment?' Dec 21](#)

1.4.2 Issues for UK law and policy

The following are initiatives that could be taken by the UK and Stormont authorities:

- The UK could provide that persons with legal residence in the Irish Republic are granted deemed leave to enter NI as visitors without any prior requirements – including through specific exemptions to obtain electronic pre-clearance. This is already presently the case with non-visa nationals – but should be extended to visa nationals resident in the Republic. The UK could also not roll out ETA requirements on the land border, and in particular ensure there is an exemption for those resident in the Irish State.
- Maintain the CTA as a passport control free zone and in particular end selective passport controls that lead to racial discrimination.
- The Stormont Executive should independently review, augment and upgrade its Racial Equality Strategy and incorporate measures to combat racial profiling in public service access and rollback the hostile environment as recommended in the CAJ report. The UK should also desist from ‘intensification’ and the roll out of ‘hostile environment’ measures.
- Stormont could also, as part of racial equality work, ensure essential cross-border services in NI open to residents of the Republic of Ireland and are not restricted to British and Irish citizens (or persons with retained EU rights).
- Border Force and Home Office immigration enforcement teams insofar as they exercise functions in NI should be made fully accountable to the law enforcement oversight architecture put in place by the Patten Commission. Safeguards should also ensure that broader counter terrorism, crime or border security powers are not misused for the collateral purpose of routine immigration control.

1.4.3 Issues for both states

- The UK and Ireland should initiate a process to codify and legally underpin the CTA both in relation to free movement and reciprocal associated rights. This should include a treaty with a clear dispute resolution mechanism, and be enshrined in domestic law including through the NI Bill of Rights. The codification of what are now termed ‘CTA rights’ should ensure that as a minimum it reflects reciprocal rights currently provided under EU provisions; and should not be restricted to British and Irish citizens or otherwise prejudice or preclude existing entitlements for other persons with residence in particular in border areas where public services may be used on alternate sides of the border.

Chapter 2 – EU Resettlement Scheme and Future Rights of EU Citizens

2.1 EU and Irish Citizens in the UK

2.1.1. EU citizens in the UK-the law

The Treaty on the Functioning of the European Union and the European Parliament and Council Directive 2004/38/EC of the 29th April 2004 allow EU citizens and their family members to move and reside freely within member states.⁸¹ In the UK, prior to Brexit, this was enforced domestically through the Immigration (European Economic Area) Regulations 2016.⁸² While EU nationals did have to meet certain requirements under these regulations to reside in the UK for longer than three months, such as proving employment in the UK or proving self-sufficiency, those requirements were generally viewed to be broader and more accessible than standard UK immigration law.

Following the UK exiting the European Union, at the end of the transition period on the 31st December 2020, EU law ceased to apply and free movement ended in the UK. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 repealed the Immigration (European Economic Area) Regulations 2016.⁸³ Aspects of the EEA Regulations were retained through statutory instruments including the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.⁸⁴

The Withdrawal Agreement was agreed by the UK and the EU to establish the terms of the UK exiting the European Union.⁸⁵ Part 2 of the Withdrawal Agreement concerns citizens' rights and protect the rights of EU citizens residing in the UK before the 31st December 2020 and their family members (the Citizens Rights provisions).⁸⁶ The Withdrawal Agreement allows EU citizens and their family members protected by it to continue to live, work, study and access public services and benefits in the UK. The UK also reached citizen's rights agreements with the other European Economic Area (EEA) countries and Switzerland.⁸⁷

Those agreements have effect in domestic UK legislation through the European Union (Withdrawal Agreement) Act 2020. The Citizens Rights provisions were implemented in the UK through the EU Settlement Scheme (EUSS), which is examined in more detail below.

From the 1st January 2021, EU citizens who are not protected by the Citizens' Rights provisions of the Withdrawal Agreement who wish to come to the UK to work, study or settle require immigration permission to do so under the standard UK immigration rules.

⁸¹ [Europarl Guidance, 'Free movement of persons'](#)

⁸² [The Immigration \(European Economic Area\) Regulations 2016](#)

⁸³ [Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020](#)

⁸⁴ [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#)
[The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#)

⁸⁵ [The EU-UK Withdrawal Agreement](#)

⁸⁶ [Part Two of the EU-UK Withdrawal Agreement](#)

⁸⁷ [GOV.UK News, 'UK agreements with the EEA EFTA states and Switzerland'](#)

EEA citizens who wish to enter as a visitor can enter for up to six months without a visa.⁸⁸ However, there are strict rules on permitted activities while in the UK as a visitor.

2.1.2 The EU Settlement Scheme (EUSS)

The EU Settlement Scheme provides UK immigration status to EEA citizens and their family members, who were resident in the UK before the end of the transition period (31st December 2020). This process was in line with the UK's commitments under the Citizens Rights provisions of the Withdrawal Agreement.⁸⁹ Those agreements have effect in domestic UK legislation through the European Union (Withdrawal Agreement) Act 2020.⁹⁰ The scheme was also open to non-EU family members of 'people of Northern Ireland' in August 2020.⁹¹

The detailed rules of the EUSS are found in Appendix EU of the Immigration Rules.⁹² Detailed information on the application of the scheme can be found in Home Office caseworker guidance, *'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members'*.⁹³

Status granted through the EUSS was required for EEA citizens and their non-EEA family members to continue living in the UK after the 30th June 2021. A successful application to the EUSS results in either indefinite leave to remain (settled status), or five years limited leave to remain (pre-settled status). Settled status is a permanent form of leave to remain which does not expire. Pre-settled status expires after five years and anyone with pre-settled status can apply to change this to settled status once they can evidence five years residence in the UK, or they must renew their pre-settled status before it expires. The Home Office position is currently that a person who fails to do this will lose their right to reside in the UK on expiry of their pre settled status. However, this is currently the subject of judicial review by the Independent Monitoring Authority.⁹⁴

The EUSS also allows certain family members of EEA citizens and people of Northern Ireland to travel to and enter the UK in order to join their family. This is provided for through EU Settlement Scheme Family Permits. The detailed rules of this can be found in Appendix EU FM of the Immigration Rules.⁹⁵

An online application process was created for the EUSS and it could be completed from a smartphone or laptop. Apps were created to assist with the application process. Paper applications were available for certain types of application. An EU Settlement Scheme Resolution Centre was set up to assist people with application queries and the Home Office funded organisations to provide specialist EUSS advice. The application is free of charge.

⁸⁸ [GOV.UK Guidance, 'Visiting the UK as an EU, EEA or Swiss citizen'](#)

⁸⁹ [Part Two of the EU-UK Withdrawal Agreement](#)

⁹⁰ [European Union \(Withdrawal Agreement\) Act 2020](#)

⁹¹ [Paragraph 7.2, Explanatory Memorandum to the Statement of Changes in Immigration Rules presented to Parliament on 14th May 2020](#)

⁹² [UK Immigration Rules, Appendix EU](#)

⁹³ [Home Office Guidance, 'EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members'](#)

⁹⁴ [Independent Monitoring Authority, 'Judicial Review Claim Issued by IMA' 14/12/21](#)

⁹⁵ [UK Immigration Rules, Appendix FM, Family Members](#)

There are three basic eligibility checks during an application to the EUSS: identity, residency in the UK and suitability. A digital identity check scanned identity documents and faces to confirm identity. Identity documents could also be posted to the Home Office where required. The government automatically used National Insurance Records where available to check HMRC and Department of Work and Pensions records to assist with proving residence. Alternative documents could also be provided to evidence residence in the UK. Non-EEA family members were also required to evidence their relationship with their EEA sponsor. Applicants were required to declare any previous criminal convictions as part of the process.

Concerns were raised about the risks of requiring an application with evidential requirements for EEA citizens and there were calls for a declaratory scheme instead. In response, the Home Office provided assurances that the EUSS scheme would be an accessible and flexible process:

“The Home Office will work with applicants to help them avoid any errors or omissions that may impact on the application decision. Caseworkers will have scope to engage with applicants and give them a reasonable opportunity to submit supplementary evidence or remedy any deficiencies where it appears a simple omission has taken place. A principle of evidential flexibility will apply, enabling caseworkers to exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens. User-friendly guidance will be available online to guide applicants through each stage of the application process.”⁹⁶

The EUSS had a deadline of the 30th June 2021 and EEA citizens and their family members who failed to apply by this date were left without UK immigration status. The Home Office has provided for late applications to be made if the applicant can show reasonable grounds for applying late to the scheme. Some examples of reasonable grounds include; children where parents or guardians failed to apply on their behalf, adults with mental capacity or support needs, serious medical conditions and persons prevented from applying due to being a victim of modern slavery.⁹⁷ However, EEA citizens and their family members who have not applied to the scheme will lose their rights and entitlements in the UK and may be subject to hostile environment measures.

2.1.3 Frontier Workers

A frontier worker is someone who is employed or self-employed in one country, but resides primarily in another. Within the EU a frontier worker is broadly defined as an EU national worker who is employed in one member state but who returns at least once a week to another country in which they reside.⁹⁸ Freedom of Movement in the EU meant that many people frontier worked with ease, but in the UK Brexit left frontier workers' rights in a precarious position.

⁹⁶ [Page 10, Home Office Guidance, 'EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members'](#)

⁹⁷ [Page 33-50: Home Office Guidance, 'EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members'](#)

⁹⁸ [Your Europe Guidance, 'Cross-border commuters'](#)

To address this issue, Article 24 and 25 of the Withdrawal Agreement made commitments to protect the rights of frontier workers who were pursuing an economic activity in the UK before the end of December 2020 and who continue to do so afterwards. Article 26 allows the UK to require frontier workers to apply for a document certifying that they hold these rights and Article 14 confirms that they will not be subject to exit visa, entry visa or equivalent formalities if they hold same.⁹⁹

Although Frontier Workers rights were dealt with within the Withdrawal Agreement, the UK government was slow to provide information on how this would be implemented. In response to parliamentary questions raised as late as 2020, the Home Office would only confirm that a frontier workers' scheme would be launched and details of the scheme published "*in due course*".¹⁰⁰

On the 3rd November 2020 the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 was enacted.¹⁰¹ The regulations established a frontier workers' permit scheme under which a protected frontier worker can apply for a permit certifying their rights under the Withdrawal Agreement. The scheme is open to EEA nationals who were frontier working in the UK by the 31 December 2020 and who remain a frontier worker after that date. In certain circumstances this will include those who are not working but who hold retained rights as a frontier worker.

The frontier worker permit scheme opened for applications on the 10th December 2020. The scheme bears many similarities to the EU Settlement Scheme process, it is a free application, completed online, and results in a digital status. The scheme does not have a deadline as it remains open for applications from those with retained frontier worker status. However, from the 1st July 2021 it was mandatory to hold this permit in order to enter the UK as a protected frontier worker.¹⁰² This left a large amount of frontier workers with only 6 months to apply for and obtain their permit.

Irish citizens are able to apply for a frontier worker permit if they wish, but they will not be required to hold one. UK government guidance states that this is because their rights are protected under the Common Travel Area.¹⁰³

Detailed information on the frontier worker permit scheme, eligibility and application process can be found in the Home Office caseworker guidance, '*Frontier Worker Permit Scheme Guidance*'.¹⁰⁴

There are frontier workers across the UK, however the scheme has a particularly significant impact in Northern Ireland. It is estimated that between 23,000 and 30,000 people in Northern Ireland and Ireland are cross-border workers, and that thousands of people cross the land border every day for work.¹⁰⁵ Despite this, businesses and employers in Northern Ireland were only provided with information on the functioning of the scheme,

⁹⁹ [Article 24, Article 25, Article 26 and Article 14 of the EU-UK Withdrawal Agreement](#)

¹⁰⁰ [Written questions, answers and statements - UK Parliament](#)

¹⁰¹ [The Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#)

¹⁰² [GOV.UK Guidance, 'Frontier Worker Permit'](#)

¹⁰³ [HM Government Leaflet, 'Frontier worker permit for EU Citizens'](#)

¹⁰⁴ [Home Office Guidance, 'Frontier worker permit scheme Guidance'](#)

¹⁰⁵ [Border People Briefing, 'The Referendum on UK Membership of the EU: Freedom of Movement of People' May 2016](#)

approximately 6 months before a permit became a mandatory requirement. The scheme was announced over a year after the EU Settlement Scheme had opened for applications. Despite the clear impacts the scheme will have, there was no public consultation or impact assessment carried out by the UK government. The explanatory memorandum to the legislation confirms that the government does not even have an accurate assessment of the number of people who may apply to the scheme.¹⁰⁶ It goes on to state the scheme has no, or no significant, impact on business, charities or voluntary bodies or on the public sector and that an impact assessment has not been prepared because no significant impact on businesses has been identified. Perhaps true in London, but certainly not reflective of the impact in Northern Ireland.

Another issue specific to Northern Ireland is that the frontier worker permit scheme does not grant any rights to family members of the EU national frontier worker, in the way the EUSS does. The UK government intention is that family members of frontier workers should use the EU Settlement Scheme process in order to protect their rights in the UK.¹⁰⁷ This does not work as a solution for family members of frontier workers residing in the Republic of Ireland. As detailed above, residency in the UK is required for an application to the EUSS, which family members of frontier workers living in the Republic of Ireland, cannot demonstrate. These family members could previously rely on being the family member of an EU national to enter the UK and access services in NI. It is not clear how these rights are protected post Brexit. In 2022 research published by the NI Human Rights Commission identified the loss of access to healthcare for non-EU family members of frontier workers, as a potential breach of Article 2 of the NI Protocol.¹⁰⁸

In October 2020 a joint letter was sent to the Secretary of State for the Home Department from organisations based in Northern Ireland and Ireland, expressing concerns about the impact of the scheme in Northern Ireland.¹⁰⁹ A response in December 2020 from the Minister for Future Borders and Immigration stating *“Ahead of applications for the frontier worker permit scheme opening on 10 December, the Government will ensure protected frontier workers and their UK employers are fully aware of their rights and obligations, and will encourage frontier workers to obtain the permit to certify their rights under the agreements.”*¹¹⁰

Despite this commitment, frontline evidence demonstrates that knowledge and awareness of the frontier worker in Northern Ireland scheme is very low. There has been seemingly no communications strategy for the frontier workers’ scheme and to date the Home Office has published limited information on it. This risks frontier workers falling into illegal working and losing access to rights and entitlements, and increases their vulnerability to exploitation.

¹⁰⁶ [The Citizens’ Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#)

¹⁰⁷ [GOV.UK Guidance, 'EU Settlement Scheme: apply as the family member of a frontier worker'](#)

¹⁰⁸ [NIHRC, 'Brexit, Health and its potential impact on Article 2 of the Ireland/Northern Ireland Protocol' May 2022](#)

¹⁰⁹ [Letter to Secretary of State for the Home Department 26/10/20](#)

¹¹⁰ Letter from the Minister for Future Borders and Immigration, Kevin Foster MP to CAJ, 03/12/20 (unpublished)

2.1.4 Irish citizens in the UK-the law

The UK government position is that Irish citizens enjoy a right of residence in the UK which pre-dates and is not reliant on the UK's membership of the EU.¹¹¹ Historically Ireland has not been treated as a foreign country under UK legislation and Irish nationals are not deemed to be aliens under UK immigration law.¹¹² In practice, this means that Irish citizens are treated as being settled in the UK from the date that they become ordinarily resident. They do not need to apply for permission to enter or remain in the UK.

The Immigration Act 1971 provided for the immigration status of Irish citizens in the UK, but only covered those who entered the UK from within the Common Travel Area.¹¹³ Instead, prior to the UK exiting the EU, Irish citizens' EU rights prevented them from being subject to the need to obtain leave to enter or remain when entering from out-side the Common Travel Area. From the end of the transition period Section 2 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, inserted a new section 3ZA into the Immigration Act 1971 to ensure that an Irish citizen does not require leave to enter or remain in the UK, including when they enter from outside the Common Travel Area.¹¹⁴

The rights of Irish citizens in the UK are provided for through a patchwork of legislation and bilateral agreements. In 2019 the British and Irish governments signed a Memorandum of Understanding concerning the 'Common Travel Area and associated Reciprocal Rights'. This is not a legally binding document.¹¹⁵ The UK and Ireland also agreed a Convention on Social Security in 2019.¹¹⁶ British and Irish citizens can travel and reside freely between the UK and the Republic of Ireland. The British and Irish governments' position is that the Common Travel Area also provides reciprocal rights for Irish and British citizens in each jurisdiction. These rights include the right to work, study, access benefits, voting rights and access to healthcare.

Irish citizens were permitted to apply to the EUSS in the UK if they wished to, but unlike other EU citizens they are not required to hold EUSS status. Non-EU family members of Irish citizens were permitted to apply and obtain status under the EU Settlement Scheme or hold an EUSS family permit. A non-EU family member of an Irish citizen was required to obtain status to remain in the UK, even if the Irish citizen chose not to apply to the EUSS.¹¹⁷ Irish citizens can also apply to the Frontier Worker permit scheme, but they are not required to hold this permit in order to carry on frontier work in the UK.¹¹⁸

Prior to 2012, Irish citizens born in Northern Ireland were permitted to sponsor family members to reside in the UK under EU law. Following the case of McCarthy before the ECJ,

¹¹¹ [Paragraph 12 Immigration and Social Security Coordination \(EU Withdrawal\) Bill Explanatory Notes](#)

¹¹² [Ireland Act 1949](#)

¹¹³ [Immigration Act 1971](#)

¹¹⁴ [Section 3ZA Immigration Act 1971](#)

¹¹⁵ [Memorandum of Understanding between the Government of the United Kingdom and the Government of Ireland concerning the Common Travel Area and Associated Rights and Privileges 8th May 2019](#)

¹¹⁶ [Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland 01/02/19](#)

¹¹⁷ [Page 20, Home Office Guidance, 'EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members'](#)

¹¹⁸ [Page 9 Home Office Guidance, 'Frontier Worker Permit Scheme Guidance'](#)

dual British and Irish citizens were excluded from exercising EU family reunion rights.¹¹⁹ The Home Office began treating all Irish citizens born in Northern Ireland as dual British and Irish in order to exclude them from exercising EU family reunion rights under this ruling. In the DeSouza case, the spouse of an Irish national born in Northern Ireland was refused residence under the EEA regulations on this basis.¹²⁰ This was challenged by the couple on the basis that the Good Friday Agreement protects the right of Irish citizens born in Northern Ireland to identify, and be accepted as Irish only.¹²¹ As an Irish and EU citizen, they should have the right to exercise EU free movement rights in the UK.

The New Decade New Approach deal which restored the Northern Ireland government in 2020 contained commitments to addressing the issues raised in DeSouza.¹²² This focused on bringing family reunion rights for people of NI in line with those granted to Irish citizens not born in NI.¹²³ Out of this commitment a specific route was created under the EU Settlement Scheme which also allowed non-EU family members of people of Northern Ireland to apply for and hold status under the EUSS or to hold an EUSS family permit.¹²⁴ However, the government position is that people of Northern Ireland remain British citizens regardless of the commitments of the Good Friday Agreement and so are not able to hold immigration status in the UK. This meant that unlike other Irish citizens, Irish citizens born in Northern Ireland did not have the option to apply to the EUSS.

2.1.5 Future Rights of EU Citizens

The EU position is that the Withdrawal Agreement protects all EEA citizens residing in the United Kingdom, and UK nationals residing in one of the 27 EU Member States at the end of the transition period, where their residence was in accordance with EU law. Their family members are also protected. There is some uncertainty as to whether EUSS status is required to confer rights under the Withdrawal Agreement and whether EUSS status always confers rights under the Withdrawal Agreement. There appears to be some misalignment between the Withdrawal Agreement and the EUSS.¹²⁵

The Withdrawal Agreement also confers some ongoing future rights, such as the right for certain family members to join their EEA citizen family members in the UK in the future.

Going forward, there will be multiple 'cohorts' of EEA citizens with varying rights protections residing in the UK. Just a few examples include; EEA citizens with pre-settled status, EEA citizens with settled status, EEA citizen frontier workers, EEA citizens who failed to apply to the EUSS left without status. In Northern Ireland the situation is further complicated by the open land border with the Republic of Ireland, which remains a part of the EU, and the high numbers of EEA citizens who regularly cross that border. The current situation is likely to become more complex as time progresses and the UK immigration system diverges further from EU free movement law. Research shows that EEA citizens and their family members

¹¹⁹ [Case C-434/09](#)

¹²⁰ [De Souza \(Good Friday Agreement: nationality\) \[2019\] UKUT 355 \(IAC\)](#)

¹²¹ [The Belfast/Good Friday Agreement](#)

¹²² [Free Movement, 'People born in Northern Ireland get improved family reunion rights' 21/05/20](#)

¹²³ [New Decade, New Approach January 2020](#)

¹²⁴ [Home Office Guidance, 'EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members'](#)

¹²⁵ [The European Affairs Committee, 'Citizens Rights' 23/07/21](#)

are already being wrongly denied access to rights, services and entitlements and this seems only likely to increase.

2.2 Frontline Insight and Experience

2.2.1 Difficulty in accessing and using the EU Settlement Scheme.

Frontline services reported that the EU Settlement Scheme has not been the advertised “transparent, smooth and streamlined” simple digital process for a large number of those that were required to apply.

At early stages STEP and Stronger Together members raised that the number of EU citizens in N. Ireland had been underestimated, as had the percentage of that number who would need support to evidence entitlement for the scheme. Data shows STEP and Stronger together supported 23,000 vulnerable individuals in completing their application and supported 39,000 applications in total.

Migrant Centre NI research shows that although their EUSS support project initially intended to focus on vulnerable EU citizens and their family members, quite quickly, it became obvious that all of the clients contacting the organisation were requiring help or support. Some needed an explanation of rules, others needed digital support and immigration advice and over 76% needed end-to-end support without which they would not have been able to successfully complete the applications.

The Children’s Law Centre thought it was particularly concerning that the commitment to an easy process had proven not to be true even for looked after children; one of the main vulnerable groups. The NI health and social care trusts and children themselves required extensive support from Children’s Law Centre solicitors in order to navigate the EUSS process. These complications occurred even though the Home Office knew about the potential impacts on vulnerable groups. The Home Affairs Committee back in 2019 raised concerns that EU nationals left out of the EU Settlement Scheme could face consequences similar to the Windrush generation. NI organisations assisting with EUSS applications felt that this concern still rings true.

STEP found that the level of overall awareness in NI EUSS scheme was itself very low and the Home Office understanding of the administrative functioning of NI was lacking. This affected the whole population of EU citizens but created additional challenges for people with precarious existence and highlighted problems that will continue to arise for some years in relation to eligibility and ‘opportunity to apply

STEP & Stronger Together and Migrant Centre NI found that many groups experienced difficulties in producing the required documents to evidence their residence in the UK. The most straightforward way to evidence residence was to pass the National Insurance checks carried out as part of the application. However, this was not possible for those who did not have continuous work records, and for those who had never worked in the UK. This particularly impacted women who were more likely to have breaks in employment due to maternity, and more likely not to have had long term employment due to childcare needs. Vulnerable EU citizens without continuous work records were also impacted.

The Home Office allowed for alternative documents to be provided by applicants. Examples of the types of documents accepted included evidence of tenancies, GP records, bills and

bank accounts. However STEP and Migrant Centre NI found that these documents could prove difficult to obtain for vulnerable EEA citizens. Again, women appeared to be particularly impacted as they were more likely to have their spouse or partner's name on documents such as tenancies or bills. EEA citizens subject to domestic violence also faced extra barriers due to being unable to contact partners to obtain documents or partners withholding evidence of their residence.

Migrant Centre NI highlighted that transgender people also face barriers when providing the required documents. Some EEA citizens from countries which do not allow or make it very difficult to legally change the name in a passport face issues as most of their UK documents are in a different name to the passport from the home country. Additionally, very little guidance was provided for clients who change their identity once the application for EUSS has been completed and status granted.

Solicitors from the Children's Law Centre found specific barriers, which prevented looked after children obtaining the required documents. Documents like identity documents and proof of nationality are essential for applying to the EU Settlement Scheme. The immigration team at Children's Law Centre estimated that over half of the children they assisted did not have the identity documents required to make the EUSS application. In many cases to obtain the evidence required, advisors had to work with embassies, request social work files out of storage, establish parental history or try to access historic court documents.

Concerns were also raised by Children's Law Centre about how media and political discourse which is anti EU or promoting British nationalism, influenced how some EU states assisted EEA national children resident in the UK. For example, some EU states stopped accepting UK court documents which they had previously accepted for the purposes of obtaining a passport for a child. It was felt that this went hand in hand with anti-EU statements from the UK government and media. Children's Law Centre solicitors felt more could have been done to put in place agreements between the UK and EU member states to ensure EU states assisted their citizens in the UK when applying to the EUSS. Mutual agreements could have protected vulnerable groups and ensured they were able to access the EUSS effectively.

An added difficulty raised by STEP, Migrant Centre NI and Children's Law Centre regarding accessing documentation is that there are very few consular facilities in Northern Ireland. Travel to consular facilities could be prohibitively expensive and Covid travel restrictions limited access further. This left EEA citizens unable to access consular assistance in obtaining essential documents and unable to renew existing documents such as passports.

Another issue that arose was that the evidence requirements were applied inconsistently by the Home Office. Advisors from Migrant Centre NI reported that often a document that is accepted in one application would be rejected in another, with no explanation.

Research by STEP noted that even for people who found the process straightforward, the outcome could often raise complexities. For example some people were offered and accepted pre-settled status when they were entitled to full settled status. They had not been offered an opportunity to provide additional supporting evidence.

Case studies and statements from STEP, Migrant Centre NI and Children's Law Centre highlight these problems:

- The Home office had originally 'guesstimated' that 20 % of those completing EUSS registration would need some level of assistance, and those needing significant help would be between 10-15% of the overall figure which itself was originally believed to be approx.3,000,000 residents. At the end of the first 12 months of registration, some 6,000,000 applications for registration had been completed across the UK, Just over 80,000 of these within N. Ireland. Stronger Together had identified and supported 39,000 of those applicants, 23,000 of which had significant advice and support falling within OISC regulations.
- It was not until the final four months of the EUSS Scheme that it was realised that N. Ireland had not been included in the EUSS 'national' advertising campaign on television Newspapers, billboards.
- Home Office officials failed to understand that local councils in NI did not have responsibility for social housing; social care until very late in the EUSS scheme.
- The application only worked smoothly for those whose passport was current; who had been in in regular PAYE employment; who had not moved home too often and who, when their tax record and / or addresses were checked they gave no rise to the need to ask for further information. People in this category usually spoke sufficient English; could get internet access; were sufficiently tech-savvy to negotiate the process including uploading appropriate biometric image and owned the right phone. Almost everyone else needed some degree of support.
- Victim of domestic violence who has not worked in NI and does not have their name registered on bills, bank accounts or tenancies. Also unable to obtain help or documentation from their ex-partner and prevented from renewing children's identity documents as ex-partner would not give permission. Help and support required to obtain up to date identity documents and to establish alternative evidence of residence in Northern Ireland.
- Family group with a parent who has not worked in NI and does not have their name registered on bills or tenancy. Risk of being granted pre-settled status despite residence in the UK for 5+ years. As the rest of the family could provide evidence of residency this risked different types of status being granted in one family unit. Landlord and GP refused to provide letters in support of residency. Help and support required to establish alternative evidence of residence in Northern Ireland.
- Elderly applicant who arrived in Northern Ireland via land. Lives with family and has no bills, no NI number and no bank account in their own name. Applicant only had their ticket from arriving in Northern Ireland as evidence of residence. MCNI assisted in obtaining alternative evidence and application granted.
- Client A has been in the UK for 15 years, she attached a letter from her landlady, stating the date of commencement and the info that it was ongoing. She was granted Settled Status. Client B has been here for 11 years, attached letter on a

headed paper from letting agency, stating the same details and he was asked for more evidence. Both clients lived at their addresses for more than 7 years.

- Timor Leste Embassy did not have the capacity to deal with the weight of demand for current passports required as a starting point to renew the Portuguese passport, which evidenced EU citizenship.
- Children with expired passports or no passports. When you ask a State for information, they request a letter from the parent. These are looked after children and the circumstances mean it is often not possible to contact any parents. States often refuse to issue a young person with any evidence that they are a national, unless you have confirmation from both parents. They will sometimes allow one parent to do it but even then they will require that parent to get court orders confirming that the consent of one parent can be dispensed with or ask for affidavits or codicils. Often there is no contact with the parents and none of this is possible.
- EU states frequently change their requirements and policy in issuing identity documents to children in the UK, sometimes seemingly in response to political changes. At one stage for example Poland stopped accepting UK court orders, which they had previously accepted, and said it was because of Brexit. There are bigger tensions over say trade agreements manifesting in these small administrative matters, but they have huge impacts on children's ability to get status under the scheme and risk delaying applications and leaving children without status.

Digital Isolation and lack of digital literacy also proved to be a barrier to successfully applying to the EU Settlement Scheme. The EUSS was promoted as a straightforward online process. However, it assumes the confident use of and access to at least a smartphone, apps and an email address. Migrant Centre NI reported that even clients who are confident with smartphone and mobile devices encountered difficulties when completing the application as tasks like uploading documents could be very complex. One common example was that many people accidentally did not fully complete the application as they would complete the EU Exit ID check app which is only part of the process and not understand that the application required further steps. This resulted in them believing they had applied to the EUSS when they had not. Use of the online application process proved particularly difficult for vulnerable EEA citizens including members of the Roma community, those impacted by homelessness and elderly people.

STEP research shows they noted early in the process that duplicate applications complicated matters. Some people who had not received any follow-up information, applied again. By the time, the second application was being processed, the first had been rejected, and the second rejected on the basis of the first rejection or they now had two incompatible outcomes.

Concerns were also raised about how vulnerable EU citizens and their family members could remain in contact with the Home Office during the EUSS application process. The same number and email as used in the initial application must be retained, which could be difficult for vulnerable applicants. STEP & Stronger Together stepped in to act as a safe holding centre for the contact details of vulnerable people who the Home Office may not be able to reach.

The impact of digital literacy remains an ongoing concern as the EU Settlement Scheme results in a digital status rather than physical status which is accessed through an email address online. Showing this online status will be essential for accessing many services and proving eligibility to employers, landlords, doctors etc. Many of those who struggled to apply to the scheme will be unable to access their digital proof of status.

Case studies and statements from STEP and Migrant Centre NI provide evidence of these issues:

- STEP and other centres had with the consent of a significant number of applicants become a 'safe holding' centre for the email address used and contact details of applicants who were homeless; in temporary accommodation, or whose mental health or other challenges meant they were unlikely to be reached by the Home Office with the outcome of their application. We understand this pattern was repeated in many such centres across the UK.
- Applicant struggling with technical issues after being locked out of their application and unable to complete or to create a new account. This caused unnecessary delays which had a knock on impact on access to required healthcare for the applicant. Intervention by MCNI required to ensure application could be progressed. Particularly difficult as there is no route to speak to UKVI/Sopra Steira who manage the online system and limited help and information was provided by the EUSS telephone resolution centre.
- Family believed they had applied to the EUSS. One of the family lost their job due to coronavirus crisis and due to a reduction in earnings applied for Universal Credit to help with housing costs. JBO officer asked for the EUSS code to speed up the verification. Applicant was unable to generate one as the system was not showing any active applications. It transpired that all the EUSS applications were started but none of them were completed correctly. MCNI assisted with ensuring the applications were completed.
- Applicant with a non-biometric ID card, illiterate, no access to emails or a smartphone. They did not understand the need to make the application or the formal requirements and became very agitated about I.D documents being posted to the Home Office. Applicant wanted to abandon the application completely but was persuaded with the help of MCNI advisor and the help of an interpreter who knew him personally.
- Elderly EEA citizen granted status under EUSS but there are concerns about ongoing access as without assistance the applicant will not be able to access emails, text messages or the proof of their status due to their advanced age and health issues.

EU citizens with experience of the criminal justice system also faced barriers in applying to the EU Settlement Scheme. The EU Settlement Scheme application requires a declaration of any criminal convictions. Migrant Centre NI found that some applicants felt compelled not to disclose their criminal convictions due to a fear of being refused. This puts their entire application at risk and can cause serious issues further down the line.

Migrant Centre NI also found that there were issues with the coordination between the PSNI record system and the National system. Applicants who had been subject to investigations which had concluded, found that they were still recorded as open cases on the National

System. There were also delays in obtaining criminal record checks back from EU member states when they have been requested via ACRO. These administrative delays result in delays in decision making, as the Home Office will not process the application without this evidence.

Another issue raised by Migrant Centre NI with the accuracy of records is that some applicants with no criminal convictions found themselves mistakenly flagged as having committed an offence or being under an investigation. The Home Office then placed the onus on the applicant to prove that this was not correct, which is extremely difficult.

One of the key issues raised by both the Children's Law Centre and Migrant Centre NI was that criminality issues cause significant delays to applications, even leaving applicants who applied on time, with no decision after the deadline had passed. The Home Office suspends applications until the criminal matter is fully disposed of, even when the criminal matter concerns low level offending which should not impact the outcome of the EUSS application. The impact of this delay on vulnerable EU citizens, particularly children can be severe. Solicitors in the Children's Law Centre viewed the delays as entirely disproportionate.

STEP research raised the issue that EU citizens who had served prison sentences could not use the time spent in prison as a periods of residence, which seems a moral rather than a legal distinction, since adults spending time in other institutions e.g. hospitals, residential homes are not required to discount those periods of residence. In addition, although prisoners were permitted to apply from within prison, some prisoners were unable to do so because of the barriers placed in the way of access to advisors by individual Prison Authorities.

Case Studies and statements from MCNI and Children's Law Centre provide evidence of these issues:

- Applicant with a previous criminal conviction, was informed by the Home Office that his criminal case was an ongoing one. This, however, was not the case as it was closed in 2014. In the e-mail from Home Office the client was informed that the information would be checked on the system again after 6 months' time. The client was instructed to obtain a letter from the PSNI, which would state that his case was closed back in 2014. Applicant In the meantime, he got another e-mail from the Home Office informing him that he was granted Indefinite Leave to Remain.
- A looked after EU child who has resided in Northern Ireland for over ten years has had their application suspended for over a year due to a low level offence. The delay is causing extreme distress to the child, particularly as the deadline approaches. They are scared they will be removed from the UK and the delay has also prevented them from accessing services because they have been asked to prove status under the EU Settlement Scheme.

2.2.2 Access to EU Settlement Scheme for Irish citizens and their family members

Irish citizens were permitted to apply to the EU Settlement Scheme, though they are not required to. Their non-EEA family members were required to obtain status under the EUSS as the non-EU family member of an EEA citizen. However, advisors report that the messaging and guidance on this was very poor and many Irish citizens believed their entire family was not required to apply to the EUSS. They often did not understand that their non-EEA family

members, including non-British and Irish children were required to apply to the scheme. This risks them being left without status in the UK.

Another concern raised by organisations during Common Travel Area roundtables was that Irish citizens were advised not to apply to the EU Settlement Scheme on the basis that they can rely on Common Travel Area (CTA) rights to protect their rights and entitlements in the UK. It was felt this advice did not reflect that the EUSS is a secure, codified status but CTA rights are not. The Memorandum of Understanding on the Common Travel Area is not legally binding so organisations felt reluctant to advise Irish citizens to rely on it. It was felt that it was easier to encourage people to apply to the EUSS because the government had set its provisions out clearly and it is secure, but that is not appropriate or possible for everyone.

Concerns were also raised by attendees at the roundtables that the rhetoric around CTA rights was being used to cover up non-compliance with the Good Friday Agreement. So, for example the issue of NI born Irish citizens being unable to access the EUSS was often being answered with assurances that they could rely on the CTA. This fails to address the central issue of treating NI born Irish citizens as British citizens and failure to protect their rights as EEA citizens.

Case studies and statements from Migrant Centre NI and CAJ Common Travel Area Roundtables demonstrate these issues:

- Irish nationals who identified as Irish were often questioning the system that was not allowing them to bring family members to NI. Because of the complexity of the immigration regulations as well, clients were often misadvised either to apply under EU regulations where they had no basis for it or on the other hand those born in Ireland not to apply and follow the UK immigration system.
- A concern raised by organisations was that Irish citizens were being advised not to apply to the EU Settlement Scheme as they can rely on Common Travel Area rights. It was felt this advice did not reflect that the EUSS is a secure, codified status but Common Travel Area rights are not. Some attendees had already seen this advice cause issues where Irish citizens with non-EU family members did not realise that their family members couldn't rely on the EUSS and weren't going to apply.
- Advice organisations felt it was very difficult to answer questions on Common Travel Area rights because they can't make any guarantees about them. Previously with EU law there was a clear track to follow in order to work out a person's rights, but without EU law that doesn't exist and they are also dealing with different groups of people with differing access to the Common Travel Area. The Memorandum of Understanding on the Common Travel Area has helped but as it isn't legally binding organisations felt they were still reluctant to rely on it. One attendee referred to it as a 'jigsaw that doesn't fit'. It was felt that it was easier to encourage people to apply to the EUSS because the government has set its provisions out clearly and it is secure, but that is not appropriate or possible for everyone.

2.2.3 Barriers to accessing essential public services – including health, social protection, housing and education).

Concerns have been raised that post Brexit, EEA citizens will face barriers to accessing their rights and essential services. Organisations noted that even in the run up to the Brexit referendum there were already increased challenges to accessing public services. In the post Brexit Landscape this is exacerbated both due to the complexity of the new rules applying to EEA citizens and the risk of EEA citizens being left without status if they failed to apply to the EUSS. Due to EU free movement law, many EEA citizens have never faced obstacles to accessing healthcare, social welfare or education and have never had to complete onerous immigration applications to live in the UK. Now they are subject to a range of complex rules, requirements and hostile environment policies.

Public bodies and services have also had very little time to ensure staff are trained and up to date on the significant changes to the rights and entitlements of EEA citizens. This has led to incidents of wrongful refusal or misinformation being provided. For example, EEA citizens have been informed they require a National Insurance number to access services, wrongly charged for healthcare or misinformed on the requirements they need to meet in order to marry.

EEA citizens with limited English language skills often face additional barriers in accessing rights and services. Services such as National Insurance number appointments and Universal Credit offices rely heavily on phone and online applications provided in English. Although interpreting services are available, they are not always used and if they are, only during in person meetings.

Concerns have been raised that the UK and Ireland's immigration regimes will diverge further after Brexit, not least because Ireland will remain in the EU. To allow for no checks on the land border, the UK could increase 'ad hoc' checks away from the border and increase the application of hostile environment policies in Northern Ireland; turning NI into 'one big border'. This could increase the level of checks occurring by service providers and in turn increase incidents of racial profiling and discrimination. Unions have expressed that they are particularly opposed to their members being forced to conduct immigration checks. Advice providers expressed concern that many people will be allowed to slip out of rights protections or left without access to services, and that governments will not act on these issues until large numbers of people are impacted. One concern was that even where rights are protected on paper, if the barriers raised mean they cannot be accessed without the intervention and assistance of a lawyer or advisor, then they are not accessible and not truly rights.

Case Studies and statements from Migrant Centre NI, STEP and Children's Law Centre provide evidence of these issues:

- We recorded increasingly narrow interpretation of 'habitual residence' tests and wider interpretation of 'public funds' to which recourse might be withheld as we moved closer to the Brexit referendum. Most of these appeared either as arbitrary decisions or 'policy updates' conjured up at a desk or managerial level well below the legislative authority required to make them valid changes in the public duty.

- We routinely experienced increases in the right to social housing being challenged; private landlords evict tenants by simply setting their possessions on the street and changing the locks when the occupants were at work; benefit claims being delayed while proof of 'habitual residence' was being regularly redefined. Without exception, these were successfully challenged without resort to threat of legal challenge.
- A family living in NI for over five years, parents working and children attending school. The family left NI temporarily to care for an ill relative abroad. They arranged the payment of rent and informed the children's schools of their absence. The family were delayed in returning. On return to NI they discovered that their tenancy had been terminated without proper procedure and other people were living in their home. This was based on the assumption that the family had left 'in case Brexit happened'. One of the parents who required healthcare had been removed from the GP records. This followed a practice policy of writing to all migrant patients who had not attended in six months, to confirm their residence in NI. The children had also been removed from the school without the parents being contacted. The school stated that they had assumed 'with Brexit and everything they had decided not to come back'. When social services were contacted to urgently support the family, they informed advisors that the family would have to return 'home' despite their home being in N.Ireland. The situation required the intervention of STEP NI in order to be resolved. This family were exercising their EU Treaty rights, and the common thread across each agency was that without any supporting evidence or attempt to secure any, someone concluded the family had permanently left the jurisdiction. On the basis of that assumption, they also believed it unnecessary to initiate any formal process before removing the family from their service, and /or the family's entitlement to public services. The mind-set was: Brexit has changed everything. They have gone 'home.'
- An EU national was trying to set up an appointment to obtain a National Insurance Number (NINo) at one of the local Jobs and Benefits Offices. Their first attempt failed and at second attempt they requested support from MCNI. The client was unable to get registered with a GP, get a bank account or even start their planned self-employment without the NINo. Each time they tried to apply for something they were told they needed an NINo which they could not get without invoices and proof that they were already working. In the end the client decided to leave the UK.
- One client went into an A&E department and before any details regarding their health were taken the registration nurses made sure they were eligible for NHS services. Client was a dual national and a British passport holder but was checked because they had a "foreign sounding surname".
- A non-EU family member of an EU national was wrongly issued with an invoice for nearly £30k for maternity services. It has taken over six months with MCNI support to make sure the Business Services Organisation was no longer pursuing the client for the invoice issued clearly in error.
- An EU national who upon losing employment applied for Universal Credit. During the verification phase they were asked for EUSS which they have not yet applied for. Client was advised to either ask for Mandatory Reconsideration or re-apply and should

further issues arise contact the MCNI. Client decided to re-apply and the answer was the same. With support they were granted Universal Credit support after 8 weeks.

- Jobs and Benefits stopped client's Universal Credit and asked them to prove their status. They were still awaiting the EUSS decision, so they were unable to provide it. The client appealed the decision and was told that they did not pass the habitual residence test, despite residing in NI for 10+ years. They were informed that their UC will not be paid, until they are able to provide their EUSS Status. MCNI obtained confirmation from the Department for Communities that UC officers should only ask for EUSS where this would speed up the process and that it should not be a basis for refusal as it is recognised that the status can only be requested from 2021.
- A looked after young person with severe healthcare needs had huge difficulty in registering with a GP because she couldn't show that she had status under the EU Settlement Scheme. That is despite there being no requirement for checks at this stage. It required the intervention of a Children's Law Centre solicitor to ensure she could access healthcare.

2.3 Future Issues arising from the EU Settlement Scheme

The EU Settlement Scheme deadline passed in June 2021 but the effects of the scheme on EEA citizens and their family members will be ongoing.

At the last moment, the Home Office permitted late applications to the EU Settlement Scheme for those who missed the June 2021 deadline. The applicant must be able to show 'reasonable grounds' for making the application late. EEA citizens who make late applications have rights protections while they await the outcome of their application.¹²⁶ Although organisations welcomed this concession, concerns have been raised about the lack of clarity on how long the Home Office will continue to accept late applications, and how long their flexible approach towards late applicants will last. Organisations raised examples of EEA citizens who may realise they failed to apply years after the deadline and have reasonable grounds for failing to do so, for example where parents failed to apply for a child and they may not realise until they reach adulthood. It is not clear how someone in that position will be treated. With the potential impact so severe, clarity is needed on how long late applications will be permitted. Concerns have also been raised that there is a lack of understanding of the rights entitlements of people who made late applications, who are still waiting on a decision. STEP research notes that at the time of writing there had been half a million late applications, indicating the scale of this issue.

A key concern raised by organisations is that pre-settled status is a temporary status. Any EEA citizen or family member granted pre-settled status is required to apply again for settled status once they can prove five years residence in the UK, or renew their pre-settled status. Many vulnerable EEA citizens were only able to obtain pre-settled status due to difficulties proving residence, which means they face a future deadline and further application. There is no indication that the Home Office will communicate with EEA citizens when their pre-settled status is expiring. Organisations felt it very likely that many people will not be aware of the need to re-apply. The current Home Office position is that if a

¹²⁶ [The 3Million, 'Citizens Rights have changed-Summary Table' 01/07/21](#)

person allows their pre-settled status to expire the person will automatically lose rights to work, access housing, education and claim benefits and could be liable to removal. This is currently the subject of a legal challenge by the Independent Monitoring Authority who considers that the Home Office's policy is therefore in breach of the Citizen's Rights Agreements.¹²⁷ STEP research notes that around 41% of applicants have been granted pre-settled status. This indicates the significant numbers who will be impacted by these issues.

As indicated by the issues above, despite the deadline for the EU Settlement Scheme being passed, there are ongoing needs for support and advice related to the scheme. The concern is that the Home Office intend to treat the EUSS as 'done and dusted' and will fail to provide the ongoing support needed for these issues. In contrast, organisations viewed the need for expert support and advice as more essential now, as many of the cases left are particularly complex and involve, for example, late applications or applications delayed due to criminality or lack of evidence.

The model of the EU Settlement Scheme was a new one for the Home Office, with a flexible, pragmatic approach taken to applications, dedicated EUSS teams created and advisors and caseworkers given access to specialist teams and an advice telephone line. Children's Law Centre and STEP both praised the teams who worked on the EUSS within the Home Office, the lines of communication created and their willingness to engage with advisors. This was viewed as a new way of working for the Home Office, which should be preserved for the future. However, concerns are already being raised that since the passing of the deadline, the Home Office has begun to wind down these support networks. Organisations believe that the Home Office has made operational changes, which have affected the speed of decisions. It appears that staff dedicated to EUSS work are beginning to be re-deployed, and so essential services such as the EUSS helpline are increasingly slow to access. When staff are moved advisors also lose key contacts, which can make it more difficult to get assistance with cases. This comes at a time when many of the applications outstanding are complex and require even more engagement and support from the Home Office.

Another positive element of the EU Settlement Scheme was the funding provided by the Home Office to ensure that free advice and support was available for people applying to the scheme. This allowed organisations to train staff and dedicate themselves to the EU Settlement Scheme work. It was also felt that it has been crucial that the government has been able to publicise and offer a free service to people who need to apply to the EU Settlement Scheme. Without that people would have been forced to pay for advice or rely on legal aid, which has varying provision across the UK. A specialist Office of the Immigration Services Coordinator (OISC) level (Level 1 EUSS) was also created to ensure advisors had access to the appropriate training on EUSS. Concerns have been raised that when this funding ends, advice organisations will no longer have the resources to provide EUSS related advice and support, despite their being ongoing need. Organisations also criticised the temporary nature of the funding, which is usually only for short periods, with further funding announced at short notice. This method of funding makes it difficult for organisations to retain staff and plan for long term projects. It is essential that long term funding is granted for the foreseeable future.

¹²⁷ [Independent Monitoring Authority, 'Judicial Review Claim Issued by IMA' 14/12/21](#)

Case studies and statements from STEP and Children's Law Centre demonstrate these issues:

- EU nationals who are circular migrants may face problems in the future, as they will find it difficult to legalise their stay in the UK, when their pre-settled statuses expire and they will need to provide evidence for settled status applications in five years' time...those who will fail to demonstrate their residence might potentially lose the right to reside come 2024/25 when then pre-settled (limited leave to remain) documents will start expiring.
- There is a lack of clarity over how late applications will work. For example it is not clear what protections if any are available for children who apply late in the period before their application is submitted. We would have preferred to see a declaratory scheme where a child could establish at any stage in the future that they are entitled simply by virtue of being in the UK before the 31st December 2020.
- Kevin Foster as the responsible minister announced within days of the deadline that late applications with reasonable grounds would be accepted but applicants would have no recourse to public funds until their EUSS status had been approved. At this stage there was a 3-6month backlog on confirming status. There appeared to be no comprehension of the impact of this decision when combined with new immigration rules. On behalf of the Stronger Together partnership STEP provided an emergency brief to key personnel within TEO, Health and Social Care Trusts; PHA, Education and TEO, setting out how quickly the domino effect would lead to loss of employment, as employers would be 'unlawfully employing' and vulnerable to financial penalties; loss of access to benefits, including free school meals applications already underway; access to accommodation and free health services, and asked simply asked what preparations were in place for the protection of children when this reality materialised progressively over coming weeks. Similar action was taken up in other regions, and we left it for those bodies to contact the Home Office. Within days, the position was reversed, and sanity prevailed on the basis of Government 'turning a blind eye' to its own directives.
- What did work well for STEP and those we worked with was the relationship with the EUSS project support team and the network facility they created to enable access to other grant holders which enabled shared experience of problems and solutions, and the liaison with 'EUSS TEAM' - a designated team leading and supporting the delivery of the vulnerable applicant support project which in N. Ireland funded Stronger together and Advice NI. Good working relationships were established here which allowed for problem resolution and a way of flagging up key issues in the project. The teams liaising with front-line were also supportive advocates re. policy & approaches that were simply not working and constructive ideas on what might help. The process of persuading the 'powers ' could be time consuming and frustrating but successes were chalked up, including extending the use of paper applications; being more open to alternative evidence of residence, and accepting the expertise of advisors in some areas of dispute on eligibility.
- It was a significant change to see the Home Office take a flexible and pragmatic approach to immigration applications. It has been particularly helpful to see the

Home Office take a broad approach to the interpretation of evidence and applying a reasonable threshold for allowing people to establish their rights. Solicitors with experience of making immigration applications outside of the EU Settlement Scheme said how they are used to jumping through hoops, having to submit huge amounts of evidence and dealing with poor Home Office communication and decision-making. The change in how the EU Settlement Scheme has been managed has been very welcome.

- The willingness of the Home Office to engage and to open up lines of communication with practitioners was viewed as a positive of the EU Settlement Scheme. Solicitors in the Children's Law Centre particularly highlighted the work of the Home Office Vulnerability team, who regularly engaged and genuinely listened on issues and problems applicants and practitioners were facing. This was seen as something very new in terms of ways of working with the Home Office and something which should be preserved.
- OISC temporarily created a competency level known as OISC1 (EUSS) which was required training for everybody other than those doing promotion and administrative tasks, and the Home Office created an EUSS team to work directly with those delivering the scheme. Both of these steps were already outside of the 'comfort zone of Home Office culture and practice in relation to immigration but without them they would have been unable to manage the mammoth task being undertaken.

2.4 Policy Recommendations arising from the above analysis and evidence

2.4.1 Issues for Irish Law and Policy

- The Irish government must continue to stand against the imposition of Electronic Travel Authorisation on the land border. The exemption raised in the House of Lords which would allow for local journeys over the land border to be exempt from the ETA requirement should be pursued.¹²⁸
- The Irish government should engage in a programme of awareness raising and support provision to ensure that people resident in the Republic of Ireland are aware of ETA requirements and supported in making applications.
- The Irish government should conduct a programme of outreach to ascertain the number of Frontier Workers resident in the Republic of Ireland who work in Northern Ireland, and to identify those who may not have applied to the Frontier Worker permit scheme. Support and advice should be provided to ensure those who are required to apply, are able to.
- The Irish government could provide clarity on checks carried out on EU citizens entering the Republic of Ireland who intend to travel onwards to the UK, and their right to enter the Republic of Ireland under Free Movement in these circumstances.

¹²⁸ As detailed in Lords Amendment 40, [HL Bill 138.fm \(parliament.uk\)](https://www.parliament.uk/bills/2020-21/hl-bill-138)

2.4.2 Issues for UK Law and Policy

- The UK government can utilise the power provide for in the Nationality and Borders Act 2022 to put in place an exemption to the Electronic Travel Authorisation Requirements for local journeys over the land border.
- The UK government could ensure that advice services are properly funded to continue supporting EU citizens who have applied or still need to apply to the EU Settlement Scheme.
- The UK government should ensure that experienced staff and advice lines remain assigned to the EU Settlement Scheme, in order to ensure continued support to EU citizens negotiating the EUSS process.
- The UK government should issue physical documents to all persons granted status under the EU Settlement Scheme
- The UK government should engage in a programme of outreach to ensure that EU citizens with pre-settled status are reminded of the expiry of said status, and supported to apply to transfer to settled status or to renew their pre-settled status.
- The UK government should amend their current policy which provides that EU citizens who fail to apply for settled status or to renew their pre-settled status before the expiry of their existing pre-settled status automatically lose their rights to work, housing, education and social welfare. This is currently subject to challenge by the Independent Monitoring Authority.¹²⁹
- The UK government should continue to accept late applications to the EUSS on reasonable grounds for an extended period of time and to treat applications with the same light touch approach which has been seen in the early stages of the EUSS.
- Stormont should take action to mitigate against the impacts of the Hostile Environment in Northern Ireland. Further regressions on the rights of migrants, including of EU citizens and their family members, should not be implemented in Northern Ireland where they fall within the legislative competence of the devolved assembly.
- The NI executive should not permit the roll out of the 'right to rent' scheme in Northern Ireland. Evidence has shown that already EU citizens and their family members face significant barriers to accessing housing, as do all members of the migrant and minority ethnic community. This will only be exacerbated by the imposition of this Hostile Environment measure in NI.
- The NI assembly should amend or repeal the legislation which leads to people losing the right to drive or obtain a driving licence based on their immigration status. This Hostile Environment measure leads to disproportionately harsh impacts, with people losing employment and access to essential services. This policy is likely to have significant impacts on EU citizens who have failed to apply to the EUSS, or fail to renew their status.

¹²⁹ [Independent Monitoring Authority, 'Judicial Review Claim Issued by IMA' 14/12/21](#)

- To limit the impact of No Recourse to Public Funds the devolved authorities could create new social welfare payments outside of the current Public Funds provisions in the UK immigration rules. This would allow for the provision of support to vulnerable migrants and their families, including EU citizens who will now be impacted by this policy.
- Stormont could undertake a programme of work to ensure accessible, up to date, NI specific information is available to the public. This should be augmented by a programme of work aimed at training and providing information on EEA citizen's rights to key public bodies and services providers, including frontline staff.
- Stormont should implement funding to ensure that advice services can continue to support EU citizens and their family members in Northern Ireland, even if Home Office funding is withdrawn.
- Stormont should continue to support calls for physical documents for EEA citizens. In lieu of physical documents, Stormont can also support calls to simplify the process of evidencing status through the digital system.¹³⁰

¹³⁰ [The 3million, 'A proposal for a safe and simple proof of rights for EU citizens living in the UK'](#)

Chapter 3 - The experiences of Asylum Seekers and Refugees

3.1 Asylum seekers and Refugees in International Law

The principle of states granting asylum to people fleeing their home countries is a very old one. However, it was not until the 20th Century that the idea of a right to asylum and duties on states came about, prompted by the experiences of those who had tried to flee Nazi persecution during World War II. Eventually, the right to asylum became formalised under international law. Today, asylum is a fundamental right and an international obligation for states. Article 14 of the Universal Declaration of human rights 1948, recognises the right to seek asylum from persecution in other countries.¹³¹ Today, the key international legal documents concerning asylum are the Refugee Convention 1951 and its 1967 Protocol (The Refugee Convention).¹³² These are the cornerstone of international refugee protection and inspired regional instruments such as the 1969 OAU Refugee Convention in Africa.¹³³

The Refugee Convention defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.¹³⁴ People who meet this definition of a refugee are entitled to the rights and bound to duties contained within the Refugee Convention.

The Refugee Convention is based on fundamental principles such as non-discrimination, non-penalisation and non-refoulement. On this basis, refugees cannot be returned to a territory where they may be exposed to persecution and they have protection against penalisation for offences such as illegal entry. The Refugee Convention also creates standards for the treatment of refugees, such as access to education, work, access to courts and provision of documents. These are minimum standards and it is open to states to grant more generous rights to refugees if they so wish. The convention also creates obligations for refugees such as being required to abide by the laws of the country of asylum.

A grant of refugee status is declaratory and person is a refugee within the meaning of the Refugee Convention as soon as they fulfil the definition contained within it. However, a person must be recognised as a refugee in order to benefit from the provisions of the Refugee Convention. A person who has applied to be recognised as a refugee but who has not yet received a decision is typically referred to as an asylum seeker. Asylum seekers do not benefit from the same rights as refugees under the Refugee Convention. However, they are protected by some principles such as non-penalisation for entering a country illegally.

Article 1 of the Universal Declaration of Human Rights states, “all human beings are born free and equal in dignity and rights”.¹³⁵ The universality of human rights has meant that the development of international human rights law has also underpinned refugee protection

¹³¹ [Article 14, Universal Declaration of Human Rights](#)

¹³² [1951 Convention and Protocol Relating to the Status of Refugees](#)

¹³³ [OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969](#)

¹³⁴ [Article 1, A \(2\) 1951 Convention and Protocol Relating to the Status of Refugees](#)

¹³⁵ [Universal Declaration of Human Rights](#)

principles. Human rights legislation is often essential in ensuring that states have obligations to protect the rights of refugees beyond those provided for within the refugee convention. For example, Article 3 of the European Convention of Human Rights protects against a person being subjected to torture or to inhuman or degrading treatment or punishment.¹³⁶ Although this was not designed with refugee protection in mind, this right can supplement existing rights, by helping to protect a person against return to a territory where they would be subject to torture or to inhuman or degrading treatment. Human Rights have been particularly important in addressing the gaps in rights protections for asylum seekers.

3.1.2 Common EU Asylum System

Within Europe, the Common European Asylum System sets out principles of cooperation and common minimum standards in the treatment of refugees, based on the full application of the Refugee Convention. This was developed through EU legislative instruments including the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation and the EURODAC Regulation.¹³⁷ This system ensures common minimum standards on issues such as access to housing and healthcare for asylum seekers, time limits on the processing of asylum applications and rules on which state is responsible for the processing of asylum claims.

In 2020, the European Commission proposed a new pact on migration and asylum to improve on and reform the existing system.¹³⁸

3.1.3 Asylum Seekers and Refugees in UK Law

The UK is signatory to the Refugee Convention.¹³⁹ The Refugee Convention does not create a standard procedure for determining whether a person meets the definition of refugee under the convention. Instead, it is left to individual states to establish their own processes. The UN High Commissioner for Refugees assists states with establishing fair and efficient procedures.

Prior to Brexit the UK had opted in to parts of the Common European Asylum system and transposed the relevant EU legislation into national law.¹⁴⁰ The UK was bound by the first phase legislation of the Common European Asylum system. These measures included minimum reception conditions, defining a refugee and beneficiary of international protection, and procedural rules. The UK also participated in the second phase Dublin Regulation which dealt with rules on which state was responsible for an asylum claim. The UK frequently used the Dublin Regulation in order to return asylum seekers to other EU states without considering their asylum application.¹⁴¹ Since the UK exited the EU, the EU directives are no longer binding on the UK. However, any requirements that have been

¹³⁶ [Article 3 European Convention on Human Rights](#)

¹³⁷ [European Commission Guidance, 'Common European Asylum System'](#)

¹³⁸ [European Commission News, 'New Pact on Migration and Asylum, setting out a fairer, more European approach' 23/09/20](#)

¹³⁹ [States parties, including reservations and declarations, to the 1951 Refugee Convention](#)

¹⁴⁰ The UK opted in to the first phase of the European Common Asylum system but opted out of all but the Dublin Regulation in the Second phase. It remained bound to the first phase regulations.

¹⁴¹ [House of Commons Library Research Briefing, 'Brexit: the end of the Dublin III Regulation in the UK' 21/12/20](#)

incorporated into UK legislation, for example within the Immigration Rules, will continue to apply until they are changed by the UK government.

Brexit does not have an impact on the UK's obligations under the Refugee Convention, to which it remains a signatory. Asylum and Refugee law in the UK is made up of a tapestry of legislation including (but not limited to); the Immigration and Asylum Act 1999, Nationality Immigration and Asylum Act 2002, Immigration, Asylum and Nationality Act 2006, the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, UK Borders Act 2007, the Asylum Support Regulations 2000 (as amended) and the Nationality and Borders Act 2022.

Part 11, 11B and Part 12 of Immigration Rules cover the detailed rules applying to asylum seekers and refugees within the UK. Detailed policy guidance is published by the Home Office on the rules and processes applying to asylum seekers and refugees in the UK.¹⁴²

The Home Office has responsibility for asylum and refugee policy in the UK and UK Visas and Immigration carry out asylum processes. Under Home Office policy, asylum seekers are expected to claim asylum at the earliest possible opportunity in the UK. A person claiming asylum in the UK goes through an individual assessment process to decide whether they meet the requirements of the refugee convention. This includes a screening interview, substantive interview and preliminary interview questionnaire. There is no strict time limit on how long a decision can take, although the Home Office claims most applications should take no longer than six months.¹⁴³ In 2021 the UK introduced 'inadmissibility rules' which means they can treat an asylum seeker as inadmissible to the UK asylum system if they have travelled through or have a connection to a 'safe third country'.¹⁴⁴ If inadmissible the Home Office will attempt to remove the asylum claimant to a safe third country, but they must process the asylum claim if removal cannot be effected within a reasonable time scale.¹⁴⁵ This system has been widely criticised as simply building in further delay to the UK asylum process.¹⁴⁶

There are no age restrictions on claiming asylum and there are different processes to note in asylum claims in the UK involving unaccompanied asylum-seeking children (UASC). An unaccompanied asylum seeking child is someone who is under 18, claiming asylum in their own right, separated from both parents and not being cared for by an adult who in law or by custom has responsibility to do so.¹⁴⁷ Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK.¹⁴⁸ UASC undergo a welfare interview rather than a screening interview. Their support is also provided through the Health and Social Care Trusts in Northern Ireland, under their duties in the Children (Northern Ireland) Order 1995. Part 11, paragraph 350-352 of the UK immigration rules set

¹⁴² [GOV.UK Guidance Collection, 'Asylum decision making guidance \(asylum instructions\)'](#)

¹⁴³ [GOV.UK Guidance, 'Claim asylum in the UK'](#)

¹⁴⁴ [Statement of changes to the Immigration Rules: HC 1043, 10/12/20](#)

¹⁴⁵ [Home Office Guidance, 'Inadmissibility: safe third country cases'](#)

¹⁴⁶ [Free Movement, '7,000 asylum cases delayed to weed out 48 inadmissible claims' 07/01/22](#)

¹⁴⁷ [Part 11, Paragraph 352ZD UK Immigration Rules](#)

¹⁴⁸ [Section 55, Borders, Citizenship and Immigration Act 2009](#)

out the detailed rules applying to asylum claims by UASC. Detailed policy guidance on children's asylum claims is published by the Home Office.¹⁴⁹

While a person is waiting for a decision on their asylum claim, the UK government provides them with National Asylum Support (NAS). This includes housing, education for children and access to healthcare. Initially an asylum seeker can apply to receive Section 98 support on a temporary basis, usually in the form of temporary accommodation without cash support.¹⁵⁰ Once a destitution assessment is complete, an asylum seeker can apply to access Section 95 support, which provides accommodation and £40.85 per week in cash support.¹⁵¹ Section 95 support should last for the duration of an asylum claim and 28 days after a grant of refugee status. National Asylum Support is not provided in all cases where a person is claiming asylum.

Asylum seekers are not permitted to work or claim public funds outside of their NAS support. An asylum seeker, who has been waiting on a decision for over twelve months, may apply to work, but they are limited to taking up roles on the Shortage Occupation List, which is very restricted. They cannot take up self-employment and their dependant family members are not permitted to work.¹⁵² Until 2002, asylum seekers were permitted to work in the UK if they had been waiting on a decision for over six months but that right has been restricted over the years. There have been widespread calls to reform the right to work for asylum seekers.¹⁵³

A person who has been accepted as a refugee in the UK is granted five years 'leave to remain'. They have the right to claim public funds and to work.¹⁵⁴ The UK permits refugees to apply for family reunion to bring qualifying family members to the UK.¹⁵⁵ The UK also issues Refugee Travel Documents.¹⁵⁶ After five years a refugee can apply for 'Indefinite Leave to Remain in the UK', if granted this is a path to naturalisation as a British citizen.¹⁵⁷

The UK may also grant Humanitarian Protection to those who do not meet the requirements of the Refugee Convention but who are in need of international protection.¹⁵⁸

If an asylum claim is refused, the decision can be appealed before the First Tier Tribunal (Immigration and Asylum chamber).¹⁵⁹ Decisions of the First Tier Tribunal may be appealed before the Upper Tier (Immigration and Asylum chamber) if there is an error in law.¹⁶⁰ In the period from 2004 to 2020, around three-quarters of applicants initially refused asylum lodged an appeal and almost one third of those appeals were successful.¹⁶¹

¹⁴⁹ [Home Office Guidance, 'Children's Asylum Claims'](#)

¹⁵⁰ [UKVI, 'Asylum Support: Policy Bulletins'](#)

¹⁵¹ [GOV.UK Guidance, 'Asylum Support'](#)

¹⁵² [GOV.UK Guidance, 'Permission to work and volunteering for asylum seekers'](#)

¹⁵³ [Page 7, House of Commons Library Research Briefing, 'Asylum seekers: the permission to work policy' 21/01/21](#)

¹⁵⁴ [Home Office Guidance, 'Refugee Leave'](#)

¹⁵⁵ [Family reunion: for refugees and those with humanitarian protection](#)

¹⁵⁶ [GOV.UK Guidance, 'Apply for a Home Office Travel Document'](#)

¹⁵⁷ [Home Office Guidance, 'Refugee Leave'](#)

¹⁵⁸ [Home Office Guidance, 'Humanitarian Protection'](#)

¹⁵⁹ [GOV.UK Guidance, 'Appeal against a visa or immigration decision'](#)

¹⁶⁰ [GOV.UK Guidance, 'Appeal a decision by the immigration and asylum tribunal'](#)

¹⁶¹ [House of Commons Library, 'Asylum Statistics' 02/03/22](#)

In some cases, the Home Office may certify an asylum claim as ‘clearly unfounded’ which restricts the right of appeal.¹⁶² If a claim is certified as clearly unfounded, the refusal can only be appealed from outside the UK.

Asylum seekers who have been refused asylum in the UK and finished the appeals process are sometimes referred to as ‘refused asylum seekers’ or ‘appeal rights exhausted’. An asylum seeker who has been refused may be able to make Further Submissions, if they can provide new evidence regarding their asylum claim, which was not available before.¹⁶³ Asylum seekers who are appeal rights exhausted may be detained and removed from the UK by the Home Office. Others may participate in the Home Office ‘voluntary returns’ process.¹⁶⁴

If an asylum claim is refused and an asylum seeker becomes ‘appeal rights exhausted’ Section 95 support stops within 21 days unless there are dependent children in the family.¹⁶⁵ An asylum seeker who is appeal rights exhausted could be eligible for support under Section 4 in the form of accommodation and a pre-paid card currently worth £40.85 per week.¹⁶⁶ To be eligible for Section 4 support a refused asylum seeker will have to prove that they are destitute or likely to become destitute and either; taking all reasonable steps to leave the UK, unable to leave the UK due to medical grounds or physical impediment, unable to leave the UK as there is no viable route of return, has ongoing judicial review proceedings or loss of support would breach their ECHR rights.¹⁶⁷ The Home Office defines destitution as not having adequate accommodation or any means of obtaining it or having adequate accommodation, or the means of obtaining it but being unable to meet other essential living needs.¹⁶⁸ In practice, obtaining Section 4 support can be a difficult and complex process.

If an asylum seeker who is appeal rights exhausted is not successful in obtaining Section 4 support, there is no alternative support available to them. They are not permitted to work or to claim public funds and they are at severe risk of homelessness and destitution. There are no clear numbers on the number of destitute asylum seekers in the UK, but the Red Cross 2020 review states that they supported 8,200 people in this position in 2020.¹⁶⁹

In May 2021 the UK government announced a ‘New Plan for Immigration’ which set out plans to overhaul the asylum system in the UK.¹⁷⁰ Human rights and refugee support organisations in the UK described the plans as taking a “*wrecking ball to the very principle of asylum*”.¹⁷¹ Despite widespread condemnation, legislation to take forward the vast majority of the proposals was introduced in 2021 and became law in 2022. The Nationality and Borders Act was enacted in April 2022.¹⁷² Much of the act will come into force on the 28th

¹⁶² [Section 94\(1\) of the Nationality, Immigration and Asylum Act](#)

¹⁶³ [GOV.UK Guidance, 'Submit new evidence to support your asylum claim'](#)

¹⁶⁴ [GOV.UK Guidance, 'Get help to return home if you're a migrant in the UK'](#)

¹⁶⁵ [UKVI, 'Asylum Support: Policy Bulletins '](#)

¹⁶⁶ [GOV.UK Guidance, 'Asylum Support'](#)

¹⁶⁷ [Home Office Guidance, 'Asylum support, section 4\(2\) policy and process'](#)

¹⁶⁸ [Section 95 \(3\) Immigration and Asylum Act 1999](#)

¹⁶⁹ [British Red Cross, 2020 Annual Review](#)

¹⁷⁰ [GOV.UK, 'New Plan for Immigration: policy statement'](#)

¹⁷¹ [GOV.UK, 'New Plan for Immigration, policy statement'](#)

¹⁷² [Nationality and Borders Act 2022](#)

June 2022 through the Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022.¹⁷³ The Nationality and Borders Act brings about significant changes in the UK asylum processing system as well as other areas of immigration. This includes creating a two-tier system of refugee status in the UK, with lesser rights based on the person's means of arrival in the UK. For example, 'Group 2 refugees' will not be permitted to claim public funds, apply for indefinite leave to remain or access family reunion. The act criminalises asylum seekers who arrive in the UK without a valid visa and allows for asylum seekers who have had their claims declared 'inadmissible' to be removed to Rwanda. The UN High Commissioner for Refugees publically criticised the bill when progressing through parliament, including through a legal opinion, stating that it is, *"fundamentally at odds with the Government's avowed commitment to upholding the United Kingdom's international obligations under the Refugee Convention."*¹⁷⁴ The Joint Committee on Human Rights found that the bill fails to meet the UK's human rights obligations and the bill was refused legislative consent by both the Scottish and Welsh devolved legislatures.¹⁷⁵ Despite this almost unanimous response, the bill is now law and will lead to significant changes in the UK asylum and refugee processes in the near future.

3.1.4 No Recourse to Public Funds

'No Recourse to Public Funds' (NRPF) is a visa condition often applied to leave to remain in the UK which is time limited. The concept is based on the idea that a person coming to live in the UK should be able to support and maintain themselves without relying on public funding.¹⁷⁶ A person who is 'subject to immigration control' under Section 115 of the Immigration and Asylum Act 1999 is prevented from accessing a range of public funds and welfare benefits.¹⁷⁷ This applies to a wide range of migrants living in the UK, including those on visas such as Spouse Visas and Student Visas. Paragraph 6 of the Immigration Rules sets out the list of support covered by the definition of public funds and includes housing support, disability allowance, universal credit, child benefit and discretionary welfare support payments.¹⁷⁸ Accessing public funds when subject to NRPF can be a criminal offence. NRPF came under particular scrutiny during the Covid19 pandemic due to it preventing vulnerable people from accessing essential support and safety nets.¹⁷⁹ NRPF has been linked to higher risk of destitution and homelessness.¹⁸⁰

A person who requires leave to remain in the UK, who does not have it, is also subject to NRPF. This includes appeal rights exhausted asylum seekers.

¹⁷³ [The Nationality and Borders Act 2022 \(Commencement No. 1, Transitional and Saving Provisions\) Regulations 2022](#)

¹⁷⁴ [UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022](#)

¹⁷⁵ [Joint Committee on Human Rights, Legislative Scrutiny: Nationality and Borders Bill](#)

¹⁷⁶ [Home Office Guidance, 'Public Funds. Migrant Access to Public Funds including social housing, homelessness assistance and social care'](#)

¹⁷⁷ [Section 115, Immigration and Asylum Act 1999](#)

¹⁷⁸ [UK Immigration Rules, Interpretation](#)

¹⁷⁹ [Joint Council on the Welfare of Immigrants, 'No Recourse To Public Funds is a public health risk and causes destitution'](#)

¹⁸⁰ [IPPR, '1.3 million people living in the UK with no access to social security are sign of 'broken system'' 03/09/21](#)

NRPF applies in Northern Ireland and NI specific public funds such as the Discretionary Welfare Payment are included on the UK government list of Public Funds, preventing them from being issued to people subject to NRPF. However, there have been unique responses in Northern Ireland to supporting people subject to NRPF. For example during the Covid 19 crisis a Memorandum of Understanding between the Housing Executive, Department for Communities and Department of Health allowed for accommodation to be provided to homeless migrants subject to NRPF.¹⁸¹ At the time of publication of the Homelessness Strategy 2022-27 the MOU remained in place as a temporary arrangement.

3.2 Frontline Insight and Experience

3.2.1 The Asylum Support System and Destitution

One of the key issues raised as affecting asylum seekers in Northern Ireland, is the impact of the policy of 'enforced destitution' and the lack of support provided to both asylum seekers and refused asylum seekers. The UK government refuses to permit asylum seekers the right to work and instead requires them to survive on the low financial support provided through National Asylum Support (NAS). For those who then lose NAS, they are left without any recourse to public funds or support and suffer extreme destitution as a result. For example, when refused asylum seekers are given a NRPF designation it means that they cannot be accepted into a homeless shelter, and so are forced to sleep rough. Frontline organisations consider this a deliberate policy of destitution, influenced by political rhetoric around benefits, welfare and employment being 'pull factors' to the UK.

In 2018 the Housing4All group supported by PPR conducted a survey of asylum seekers residing in Northern Ireland. The report 'A Prison without Walls' focused on both asylum seekers who were in receipt of asylum support, and those who were receiving no support. The findings demonstrate the impact of lack of adequate support and destitution.¹⁸²

Some key statistics presented in this report include:

- 7% of people stated they were not in receipt of any Home Office support at the time of the survey;
- 79% of people stated they could not afford food for themselves or their family. 57% were currently attending a food bank - of these, 70% attended at least once a month and almost 20% on a weekly basis;
- 88% of people with children stated they could not afford the basics and other child related costs;
- 21% of survey respondents said they had had a child since becoming an asylum seeker and 92% of them struggled to afford the cost of this;
- 77% felt their health had gotten worse since claiming asylum in the UK.

The Prison without Walls report highlights the impact of the current support system. People impacted by it find themselves forced into unsafe living conditions or homelessness. The policy exacerbates physical, mental and emotional trauma in an already vulnerable group. It

¹⁸¹ [Page 10, NIHE 'Ending Homelessness Together, Homelessness Strategy 2022-27'](#)

¹⁸² [Housing 4 All, 'A Prison Without Walls, Asylum, Migration and Human Rights' June 2019](#)

was noted that for refused asylum seekers it also makes it more difficult to take action to regularise their status, for example by making Further Submissions, due to the instability of their living conditions.

Food poverty is also highlighted as an issue caused by the current support system. The Home Office provides £40.85 per person to asylum seekers, per week.¹⁸³ The report by PPR highlights that this support is insufficient to provide for healthy and culturally appropriate meals. Many people rely on charities and food banks to supplement the support, which is not sustainable. Food poverty is dehumanising and has impacts on physical and mental health. Food is also an important part of culture and the report finds that being unable to choose culturally appropriate food contributes to feelings of displacement and loss of culture.

The particular impact of destitution on children is also raised as a key issue in the report. 38% of the asylum seeker population is made up of families. Parents surveyed overwhelmingly struggled with meeting the cost of their children's needs and struggled even with essentials such as school uniforms and bus tickets. Support such as school uniform grants and one off maternity payments provided to those in receipt of NAS, do not meet families' needs. The Home Office also relocates families in asylum housing without consideration of the impact on children who are then required to move school. As a result of these pressures 79% of parents surveyed had experienced anxiety, depression and isolation or felt they could not cope with daily activities.

One of the impacts of enforced destitution policies is on mental health and wellbeing. During the asylum process poverty, poor housing, barriers to education and employment and the complexity of legal processes are all further stressors which negatively impact mental health. These are created by deliberate Home Office hostile environment policies. Barriers to accessing healthcare were also highlighted, including fear of reporting to the Home Office, language barriers, discrimination from health professionals and stigma surrounding mental health in communities.

PPR staff interviewed felt that the impacts of the asylum support system and destitution highlighted in the Housing4All report remained relevant today and in fact, many had been exacerbated by the Coronavirus pandemic. Staff were concerned that many people had been 'hidden' for years due to lockdowns and had not accessed the normal support networks. When they finally did make contact with groups they had been living in extremely difficult situations without any support. Staff also expressed disappointment with the lack of action taken on many of the recommendations contained in the Housing4All report. It was felt that they had received positive engagement from politicians and policy makers but that it did not manifest in real action or meaningful change. Staff highlighted this as a key barrier to marginalised groups engaging with the political process and campaigning for change. One staff member explained; it is not fair to expect people to speak out about traumatic and difficult issues when it does not result in things getting better.

¹⁸³ [GOV.UK Guidance, 'Asylum Support'](#)

3.2.2 The Right to Work

The ban on asylum seekers working is highlighted by PPR as being intrinsically linked to the issues with the current support system and enforced destitution, and is another key issue that PPR has raised. PPR supports the Lift The Ban group which is a group of asylum seekers, refugees and supporters. This group is connected to the wider UK Lift the Ban coalition.¹⁸⁴ The group focuses on campaigning for asylum seekers to be given the right to work. This is currently not permitted under immigration legislation except in extremely limited circumstances.¹⁸⁵ Lift the Ban highlight this policy as an element of the Hostile Environment which leaves asylum seekers with approximately £5.41 a day to survive on and prevents them from providing for themselves and utilising their skills. This policy puts pressure on social services and charities and *“mistakenly believes that making Asylum seekers' lives miserable will deter others from following them.”*¹⁸⁶ A founding principle of the Lift the Ban campaign is that you cannot have a fair economy or society if people are excluded from taking part.

The Prison Without Walls report in 2019 highlighted the Right to Work as a solution to many of the issues faced by asylum seekers in Northern Ireland. The report made clear recommendations including permitting work for asylum seekers who have been in the UK for six months and for the executive and city councils to consider non-monetary ways to allow asylum seekers to exchange goods and services.

In January and February 2021 the Lift the Ban group carried out a survey of asylum seekers in Northern Ireland. The findings are referenced in PPR's evidence to the NIAC and included the following:

- Prior to being forced to leave their country, 98 people - over 4 out of 5 respondents - said they had been working.
- The most common sector that people had been working in before coming to NI was healthcare, including doctors, nurses and care workers. This was followed closely by IT, Education, Construction and Agriculture. The range of professions reported was very wide -- from pre-school teachers to graphic designers, actresses to farmers and civil engineers to bus drivers.¹⁸⁷
- Over 4 out of 5 people held academic qualifications and nearly 1/3 have a university degree or higher.

The Lift the Ban group have used innovative campaigning tools to push for change to the ban on asylum seekers working. This has included video campaigns where asylum seekers talk about the suffering caused by this policy.¹⁸⁸ They have also engaged with local business who have joined the campaign calling for the policy to be ended and highlighting how businesses in Northern Ireland are struggling to find employees whilst qualified individuals

¹⁸⁴ [Refugee Action, 'LIFT THE BAN: Why Giving People Seeking Asylum the Right to Work is Common Sense'](#)

¹⁸⁵ [GOV.UK Guidance, 'Permission to work and volunteering for asylum seekers'](#)

¹⁸⁶ <https://www.nlb.ie/blog/2021-12-lift-the-ban-allow-asylum-seekers-to-work-and-build-a-kinder-economy>

¹⁸⁷ [Participation and the Practice of Rights submission to the Northern Ireland Affairs Committee of the UK Parliament 21/05/21](#)

¹⁸⁸ [PPR Video, '#LiftTheBan - Allow Asylum Seekers in Northern Ireland the Right to Work'](#)

are excluded from working.¹⁸⁹ They identify key reasons why action must be taken on the right to work:

- The Right to Work would let talented people practice their skills to support the local economy and communities.
- The Right to Work allows people to live a dignified and more fulfilled life, relieves isolation and improves mental and physical health, easing stress on the NHS.
- The Right to Work reduces the risk faced by Asylum seekers of exploitation, trafficking, modern slavery and crime.
- In a post Covid economic recovery the Right to Work for Asylum seekers makes clear financial sense.¹⁹⁰

PPR staff highlighted the right to work campaign as one where activists were conducting high level campaigning and policy work but the subject matter can be very difficult and emotional for impacted persons. As the campaign gathers support it continues to engage with NI duty bearers, some of whom, for example, took part alongside civil society representatives in a recent (April 2022) #KindEconomy event where they listened to asylum seekers describe the challenges they face.

3.2.3 Housing

PPR supports Housing4All, a group of asylum seekers, refugees and supporters who campaign on enforced destitution of asylum seekers, as well as other issues including poverty, food poverty, substandard living conditions, and Lift the Ban.

The Prison Without Walls report drafted by Housing4All highlighted housing and its links with enforced destitution. The report found:

- 31% of survey respondents said their home was not safe, liveable or secure, their privacy was not protected, or they didn't have access to essential services and facilities including energy and heating;
- 63% of properties did not meet contractual standards and half of those properties required urgent or emergency repairs.

The report highlights the impact of poor housing a wide range of physical and mental health problems experienced by asylum seekers. The report made recommendations, which focused on actions to be taken by the asylum-housing provider Mears Group plc. These recommendations included regular inspections and reporting on properties and health assessments. This remains an ongoing issue and since January 2021 PPR have carried out regular online housing rights clinics, and is collating information and helping people submit complaints to Mears Group plc about the conditions and treatment they experience.

A separate housing issue examined by PPR looked at housing provided by the Housing Executive to families settled in Northern Ireland through refugee re-settlement programmes. A report published in 2018, 'We came here for Sanctuary,' outlines the experiences of substandard housing by refugee families who came to Northern Ireland

¹⁸⁹ [PPR Video, 'Lift The Ban - Belfast Hospitality in Action'](#)

¹⁹⁰ [PPR, 'Lift the Ban, Let Asylum Seekers to Work to Help Build a Kind Economy' 02/12/21](#)

through the Vulnerable Persons Relocation Scheme.¹⁹¹ The report highlighted failures by housing providers, public bodies and officials in supporting families and highlighted some key issues:

- Sub standard living conditions failing to meet the NI Department for Communities Decent Homes Standard;
- Failure by staff and authorities to respond to requests to get problems with homes resolved;
- The detrimental impact of substandard housing conditions on physical and mental health, including that of children;
- Exposure to racist abuse and attacks and insufficient response from housing association in response to these issues.

The report set out recommendations to the Housing executive, to the Home Office and the former Department for International Development, devolved departments such as Department for Communities and local bodies like the PSNI and PPS. PPR's submission to the NIAC in 2021 confirmed that some impacts were seen following the report, with affected refugee families moved out of the accommodation. However, many of the key issues remain unresolved. In 2020 PPR released a campaign video about overcrowding housing¹⁹² and since 2021 PPR has been carrying out periodic housing clinics to help people raise their rights-based housing concerns with the authorities. These have gathered evidence from numerous Syrian VPRS families in Belfast and Derry reporting similar situations and issues.¹⁹³

In April 2021 PPR submitted input to the Special Rapporteur on the Right to Adequate Housing to inform his upcoming reports on discrimination, segregation and the right to adequate housing. In their submission, PPR outlined concerns about the practice of placing vulnerable Syrian refugee families in areas of high housing need in Northern Ireland. As detailed in the NIAC submission data obtained through FOI requests confirmed that the Northern Ireland Housing Executive has placed a large percentage of Syrian families in areas of high demand, which already suffer from a shortage of social housing. The submission states that in 2019, over 100 households were concentrated in seven of Belfast's twenty Housing Needs Assessment areas -- including in the five with the largest residual need (shortfall) of social homes. PPR believes this policy places families under additional stress and potentially impedes their integration.

In 2021, the introduction of a policy not previously implemented in Northern Ireland led to newly arrived asylum seekers being accommodated in hotels in Northern Ireland. PPR obtained figures showing a rapid rise in the number of people being accommodated in hotels. By December 2021 over half of the people receiving Section 95 support in Northern Ireland, were being accommodated in hotels.¹⁹⁴ PPR has raised the fact that UK government

¹⁹¹ ['We Came Here for Sanctuary, Syrian Refugee families' experience of racism and substandard housing conditions in West Belfast' 30/07/18](#)

¹⁹² [PPR Video, 'Overcrowded Housing in Belfast'](#)

¹⁹³ [Participation and the Practice of Rights submission to the Northern Ireland Affairs Committee of the UK Parliament 21/05/21](#)

¹⁹⁴ [PPR, 'Accommodating Harm? The use of Hotels as 'Contingency Accommodation' Part One' 10/05/22](#)

policy states that hotels are not suitable accommodation, particularly for families. PPR has worked to highlight the detrimental impact of this practice on children, family life, mental health, privacy and integration.¹⁹⁵

PPR staff felt very strongly that insecurity in housing and the housing crisis forms the basis for many of the issues the campaigners they work with have identified, such as destitution, physical and mental ill health, racism and discrimination. Staff stated that there is a growing housing crisis in Northern Ireland, so there have been very few improvements in this area and they fear it will actually get worse. Staff are concerned that vulnerable groups like asylum seekers and refugees will, and already do, bear the brunt of the crisis. Concerns were raised about planning and development processes which have historically failed to address acute housing need, and which continue to fail to do so despite the fact that years on year housing stress and homelessness are rising, not just in Belfast but across NI.

Staff also raised concerns about the link between paramilitary activity and housing intimidation. People cannot be housed or are intimidated out of certain areas due to threats or attacks linked to paramilitary groups. These are often areas where there is available housing but because of these organised threats, people are housed or moved to other areas where there may be a housing shortage. It was felt that this is a root problem, which is not being tackled or even properly raised and called out by police, policy makers and politicians.

3.2.5 Lack of Mental Health provision for unaccompanied asylum seeking children

One of the biggest barriers identified in the Children's law centre's work with unaccompanied asylum seeking children was access to, or availability of services in relation to mental health. The children they are working with have complex and unique mental health needs, including some who have been victims of torture. When a mental health concern is raised the current provision comes through social workers who contact therapeutic support services. This service is aimed at instructing professionals in how to approach mental health issues. It is not a direct, client facing service and the burden then falls on the social worker to try to support children with complex mental health needs. This is not the direct intervention that most children need. The waiting list for face to face services can be up to twelve months in some areas. Often children wait so long that they turn eighteen and then have to be re-referred into the system by their GP. This is a reoccurring issue and one which has a significant impact on the children and on their recovery and future.

3.2.6 Impact of Immigration Law Reform

The immigration team at the Children's Law Centre felt that the rapid changes in the immigration regime were likely to lead to a regression in migrant children's rights. The changes could diminish rights to such a degree that lawyers could not even intervene meaningfully. There were particular concerns about the UK government's 'New Plan for Immigration' which had been recently released at the time of interview.¹⁹⁶ Solicitors from

¹⁹⁵ [PPR, 'Accommodating Harm? The use of Hotels as 'Contingency Accommodation' Part Two 11/05/22](#)

¹⁹⁶ N.B The New Plan for Immigration was largely replicated in the provisions of the [Nationality and Borders Act 2022](#)

the Children's Law Centre felt that changes coming through seem to ride roughshod over the Refugee Convention and remove nearly all rights protections for asylum seekers. Solicitors also felt in practice it would cause huge delays to the system and to the courts, in an area of law which was already beset with delays.

Solicitors at the Children's Law Centre felt that much of their work would be negatively affected if the reforms suggested went ahead as planned. The team felt that since they had started in their roles, they were seeing real change and real progression in the way children's asylum claims were being dealt with in NI. This would be set back by twenty years by the new proposals. For example, the team have built good working relationships with the criminal and policing sector and juvenile justice centres, to ensure that young people who enter the UK to claim asylum are not wrongly subjected to criminal sanctions, detention or police interviews. This has been a positive change coming out of the Children's Law Centre's work. However, they felt that this work relies on rights and protections which are in the process of being eroded, which could reverse the positive changes they have helped to create.

It was felt the proposals for post-Brexit immigration reform could have a significant impact on children which had been overlooked. The unique impacts in Northern Ireland had also not been properly examined. For example, the proposals on age assessment seemed to rely on questionable statistics and stereotypes about asylum seekers pretending to be under 18 which the Children's Law Centre team did not see borne out in their work in Northern Ireland. In Northern Ireland the Trusts have oversight of age assessments and the Children's Law Centre have conducted a lot of work to ensure the Trusts fully understand the rights, obligations and restrictions around these controversial assessments. The government proposals could undermine good practice like this. Solicitors in Children's Law Centre viewed this as an encroachment on devolved powers as age assessments are the responsibility of the Health and Social Care Trusts.

Concerns were raised generally about the rhetoric and tone of the government proposals which reinforced and promoted racist and negative stereotypes of migrants. This rhetoric from figures like the Home Secretary often did not reflect the law or policy but they still impact real life cases and practice. For example, the statements made on migrants and criminality, although not necessarily reflected in law or policy, were seen to have impacted the way that applications for children with criminality issues were treated.

So many children already require the intervention of a solicitor in order to access their rights. Ultimately it was felt by Solicitors at the Children's Law Centre that rights which cannot be accessed without the intervention and assistance of a lawyer are not truly rights. The government's proposals would remove even these thin protections.

3.3 Policy Recommendations arising from the above analysis and evidence

3.3.1 Issues for Irish Law and Policy

- As detailed in Chapter 1 of this report, steps could be taken by the Irish government to ensure that people with refugee status in Northern Ireland are permitted to enter the Republic of Ireland as temporary visitors, without the need for a visa application.

This would demonstrate a commitment by the Irish government to the inclusion of refugees from Northern Ireland in cross border life, and remove barriers to integration.

3.3.2 Issues for UK Law and Policy

The following are some of the initiatives that could be taken by the UK and Stormont authorities:

- The UK government could provide asylum seekers and their adult dependents with the right to work, unconstrained by the Shortage Occupation List, after they have waited six months for a decision on their initial asylum claim for Further Submissions. This is supported by the Lift the Ban campaign.¹⁹⁷
- The UK government could end the use of 'No Recourse to Public Funds' conditions, allowing all migrants to access essential support when needed.
- The UK government could increase the amount of support provided through National Asylum Support.
- The UK government should create family reunion routes to allow the family members of Unaccompanied Refugee children who are in the UK, to join them in the UK.
- The Stormont Executive could take a public stance against the changes brought about by the Nationality and Borders Act 2022, and ensure that any area of legislative change which encroaches on devolved powers, and results in a diminution of rights in Northern Ireland, is not permitted.
- The Stormont Executive could publically support the right to work for asylum seekers and their adult dependents and put pressure on the UK government to 'Lift the Ban'.
- The Department for the Economy could work with asylum seekers and immigration experts in Northern Ireland to explore non-monetary ways to permit asylum seekers to take part in the economy, contribute and develop their skills, within the limitations of the current UK legislation. This is set out in Lift the Ban's 'Kind Economy' campaign.¹⁹⁸
- The Department of Justice could seek to ensure that it fulfils its legal obligations, both statutory (under the 2015 legislation) and international (under the Council of Europe Trafficking Convention), to victims and potential victims of trafficking.
- The Northern Ireland Executive could take action to protect irregular migrant workers who have been exploited in the work force and are subsequently unable to enforce their rights under the current system of employment and civil litigation.
- The Department for Communities Northern Ireland could provide social welfare support outside of the current No Recourse to Public Funds restrictions, which would allow people subject to same to access essential support, including refused asylum seekers.
- The relevant authorities could act to ensure newly arrived asylum seekers have access to appropriate, community based housing and end the use of hotels as accommodation. Families and persons with disabilities should never be

¹⁹⁷ [Refugee Action, 'LIFT THE BAN: Why Giving People Seeking Asylum the Right to Work is Common Sense'](#)

¹⁹⁸ [PPR #LIFTTHEBAN](#)

accommodated in hotels and any hotel accommodation should be capped at three months.

- The Housing Executive, Department for Communities and Department of Health could extend the MOU permitting people subject to NRPF to access homelessness support.
- The Northern Ireland executive could provide ring fenced funding to allow people without immigration status and their dependants to apply to regularise their status. This funding could be accessed when a person can show that they are unable to afford the required application fees and have been refused a fee waiver by the Home Office.
- The Department for Health could review all data sharing policies and end data sharing with the Home Office.
- The Department for Health could provide funding for specialist mental health services aimed at asylum seeking children
- Department of Health could ensure that children's rights are protected through fully Merton-compliant age assessments carried out by qualified, trained social workers, rather than permitting assessments by the National Age Assessment Board which will be coordinated by UK Home Office officials.
- The Department for Education could provide support outside of the National Asylum Support system for asylum seeker families to allow them to purchase essentials such as school uniforms and participate in school activities such as sports.
- The Department for Justice could protect access to legal aid in Northern Ireland to ensure that asylum seekers and refugees can continue to access expert legal advice. The Department could review current legal aid rates for immigration work and reform same as recommended by the Law Society of Northern Ireland's Immigration Practitioner Group.
- The NI executive could ensure that the use of devolved powers to end hostile environment measures and protect the rights of asylum seekers and refugees in Northern Ireland is included as a key foundation of the upcoming Refugee Integration Strategy.

Chapter 4 - Racist Hate Crimes and Incidents

4.1 Introduction

Throughout the present century, racist crime in Northern Ireland has been increasingly noticed, had a significant profile, and at the same time a limited state response.

In 2004, the Guardian alluded to NI 'fast becoming the race-hate capital of Europe' and holding the 'UK record' for racist attacks, citing over 200 incidents reported to police in the previous nine months. The piece, which focused on loyalist paramilitary attacks on the Chinese community and other people of colour, referenced "spitting and stoning in the street, human excrement on doorsteps, swastikas on walls, pipe bombs, arson, the ransacking of houses with baseball bats and crow bars, and white supremacist leaflets nailed to front doors."¹⁹⁹ An anti-racism journal also provided analysis of attacks on Africans and Asians in an area of South Belfast around the same time.²⁰⁰

Well documented incidents and increased media focus (following an article on loyalist involvement in racist violence in German magazine *Der Spiegel* in 2005) led to Belfast being dubbed the 'race hate capital of Europe'.²⁰¹ Whilst there would sadly undoubtedly be stiff competition for such an accolade, there is no doubting the extent of the problem. The growing targeting of ethnic minorities led to a prominent commentator characterising the experience of people of colour and migrant workers as one of 'living the peace process in reverse.'²⁰²

In 2011, in a report to the UN ICERD anti-racism committee, the Northern Ireland Human Rights Commission referred to a Criminal Justice Inspection NI report from the previous year citing 'critical incidents' over a 12 month period of including intimidation of Polish and eastern European residents and the exodus of around 100 Roma back to Romania following orchestrated intimidation.²⁰³ Into 2016, there was the context of racist anti-migrant discourse as part of sections of the Brexit referendum campaign across the UK and its impact on racist violence and intimidation.²⁰⁴

¹⁹⁹ Chrisafis, Angelique. 2004. 'Racist war of the loyalist street gangs' *The Guardian* January 10, 2004

²⁰⁰ Bill Rolston 'Legacy of intolerance: racism and unionism in south Belfast' *Institute of Race Relations* (10 February 2004)

²⁰¹ For a narrative and critique of this and media perspectives at the time see: McVeigh, Robbie 'The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland' (NICEM, 2006)

²⁰² Robbie McVeigh, 'Living the peace process in reverse: racist violence and British nationalism in Northern Ireland' (2015) 56 *Race & Class* 3.

²⁰³ NIHRC, Submission to the Committee on the Elimination of Racial Discrimination, Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the ICERD (2011) paragraph 83 citing: Criminal Justice Inspection (2010) *Hate Crime: A Follow-up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland*, page 3 citing: "the intimidation of Polish and Eastern European residents in the 'Village' area of South Belfast following the behaviour of football supporters attending the Northern Ireland v Poland football match in Belfast; a sectarian murder in Coleraine; and the intimidation of Roma families in South Belfast and the exodus of some 100 Roma back to Romania."

²⁰⁴ See for example the concerns of the UN Committee on the Elimination of Racial Discrimination; "...the Committee is deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric, and that many politicians and prominent political figures not only failed to condemn such rhetoric, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visibly

The question of the impact of Brexit in NI on racism and xenophobia is analysed in a specific BrexitLawNI policy report (a partnership project involving CAJ and academics in the law schools in the NI universities).²⁰⁵ The direct impact in NI was notoriously highlighted in an incident where a member of the public was caught on a politician's left-on microphone stating 'get the ethnics out' in a response to a question on Brexit²⁰⁶, and in specific racist incidents in the aftermath of the referendum, including abuse of a dual-Palestinian-UK citizen nurse.²⁰⁷ The BrexitLawNI report argues it is difficult to ascertain whether there was a 'spike' in racist incidents in the aftermath of the referendum. This is not least as the referendum occurred shortly before July where there is generally a sharp increase in racist and sectarian incidents anyway (around 80% more than in the pre-summer months).

Nevertheless, whilst the PSNI did not initially record an increased spike, the trend appears to have subsequently shifted with the media reporting a significant increase in racist hate crime across the year following the referendum.²⁰⁸ In more recent years the problems of racist violence have continued, most notoriously with racist arson attacks on the Belfast Multicultural Association (BMCA) premises in Belfast at a time the group were engaged in a humanitarian response to the pandemic. Against the backdrop of broader racist intimidation, the burning of the building occurred first in early 2021 and again, it having been rebuilt including through a crowd funded response, in April 2022.²⁰⁹ BMCA and Amnesty International pointed to the low clear up rate of racist crimes at the time running up to the attack. Of the most common – assault and criminal damage – only around one in ten resulted in charges or summons, around half the clear up rate of other crimes.²¹⁰

different." UN CERD/C/GBR/CO/21-23 (Concluding Observations on UK) 2016, p 15. And the study by the London-based Institute of Race Relations stating "Whatever else Brexit means or does not mean, it certainly means racism. Born of fortuitous circumstances, lacking programme or policy, the government has had to find its 'mandate' in the twin Brexit themes: that immigration is unravelling of the nation, and anything foreign, except investment, is abhorrent to its ethos - thus giving a fillip to popular racism and elevating institutional racism to fully-fledged state racism." Jon Burnett 'Racial Violence and the Brexit State' Institute of Race Relations (IRR), April 2017, p 2.

²⁰⁵ [BrexitLawNI Policy Report: 'Brexit, Xenophobia and Racism in Northern Ireland' 14/09/18](#)

²⁰⁶ Cited in BrexitLawNI policy report on Brexit and xenophobia in NI: "In the run up to the referendum there was controversy when, still wearing a microphone as part of BBC filming, senior DUP MP Sammy Wilson responded 'you're absolutely right' to a member of the public who stated 'get the ethnics out too' in the context of a discussion on Brexit. The party distanced itself from the remarks and Mr Wilson subsequently maintained he was only agreeing with the member of the public on Brexit and not on that point. The footage is available at ['Sammy Wilson hits back over "ethnics out" comment', BBC News, 1 March 2016](#)

²⁰⁷ Cited in BrexitLawNI report "On Saturday night, a man I have never met before said to me: 'You from the EU? F**k off back to your country. Get the F**k out of our country' he said. At first I thought he was joking, but then he continued the abuse and started shaking his fists at me. At that point I decided it was better to leave rather than have the incident escalate." Palestinian nurse in Belfast suffers racist abuse after Brexit' Irish News (29 June 2016).

²⁰⁸ Page 14-18, [BrexitLawNI Policy Report: 'Brexit, Xenophobia and Racism in Northern Ireland' 14/09/18](#)

²⁰⁹ See [BBC, 'Belfast Multi-Cultural Association fire 'was deliberate hate crime' 15/01/21](#), [BBC, 'Belfast Multi-Cultural Association fire treated as hate crime' 08/04/22](#) and statements at <https://www.facebook.com/theBMCA/>

²¹⁰ [Amnesty International, 'Northern Ireland: 'A safe haven for racists' - six months on from race hate attack on multi-cultural centre' 14/07/21](#)

There have been a number of observations at the base number of reported racist incidents now *exceeding* sectarian incidents.²¹¹ This of course should be taken in the broader context that whilst sectarian incidents do not affect all persons in the two majority communities equally they are ‘spread’ across a large section of society whereas black and minority ethnic communities remain very much a small minority in Northern Ireland. Perhaps the most striking statistic to this end is highlighted in the independent review of Hate Crimes Law in Northern Ireland, undertaken by Judge Marrinan.²¹² Against the context of what is reported being the tip of the iceberg, Judge Marrinan’s review highlighted that the likelihood of a person being a victim of a reported sectarian incident here was approximately a one in 1777 chance, the corresponding figure for a victim of a reported racial incident was one in 31.²¹³

4.1.2 Independent reviews covering racist hate crime

Judge Marrinan’s Independent Hate Crimes Review contained a range of recommendations to strengthen NI legislation through an overarching hate crimes bill. This included strengthening the ‘stirring up’ hatred offences that deal with advocacy of and incitement to racist hatred.²¹⁴ Also recommended is the introduction of hate crimes legislation into Northern Ireland on an aggravated offences model. To date the model in NI from 2004 legislation has been one providing for an aggravated sentence when a crime is motivated by racist hostility.²¹⁵ There is a broad consensus this has not worked effectively.²¹⁶ The review also recommends a statutory duty on relevant public authorities to take reasonable steps to remove racist and other hate expression in public space.²¹⁷ The Department for Justice NI has broadly accepted the recommendations of the review, putting out some recommendations for further consultation and elaboration.²¹⁸ Into 2022, the Department conducted its first consultation exercise with a second to follow. The plan is for legislation to be introduced in 2023; this will of course depend on the functioning of the institutions.

There have been previous focused official and independent reports into racist crime. Back in 2013 the NI Human Rights Commission issued its own investigation report into racist hate crime.²¹⁹ In 2017 the NI Policing Board released its own Thematic Review into the policing of race hate crime.²²⁰

²¹¹ See for example [The Guardian, 'Racially motivated crimes now exceed sectarian ones in Northern Ireland' 12/11/17](#)

²¹² [Hate crime legislation independent review 01/12/20](#)

²¹³ [Paragraph 38, Hate Crime Legislation Independent Review 01/12/20](#)

²¹⁴ Presently under [part III of the Public Order NI Order 1987](#) for further discussion see [Equality Coalition 'Defining Public Duties to Tackle Incitement to Hatred whilst Respecting Freedom of Expression: Reviewing the Legal & Policy Framework – Report of Conference Held in October 2017' published 2019](#) [McVeigh, Dr Robbie 'Incitement to Hatred in Northern Ireland – Research Report' \(Equality Coalition, 2018\)](#)

²¹⁵ [The Criminal Justice \(No. 2\) \(Northern Ireland\) Order 2004](#) in addition to racial group, the provision also covers religion, sexual orientation and disability.

²¹⁶ For further details see the review itself [Hate crime legislation independent review 01/12/20](#) and the CAJ submission to its consultation: [CAJ, 'Submission to the Independent Review of Hate Crime Legislation in Northern Ireland' 28/04/20](#)

²¹⁷ Hate Crime Legislation in Northern Ireland Independent Review Recommendation 15

²¹⁸ [Review of Hate Crime Legislation NI - Departmental Response 27/07/21](#)

²¹⁹ [Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland' Northern Ireland Human Rights Commission, September 2013](#)

²²⁰ ['Thematic Review of Policing Race Hate Crime' NI Policing Board](#)

4.1.3 Paramilitary connections to racist violence in NI

The Policing Board Thematic review on race hate crime alluded to both the PSNI and Westminster Northern Ireland Affairs Committee having recognised significant loyalist paramilitary involvement in racist violence.²²¹

Not all racist violence, crime and incidents are paramilitary linked, nor do racist incidents only occur in areas of loyalist paramilitary control. There have been some attacks in mostly nationalist areas. Racist attitudes to varying degrees exist across the community as does proactive anti-racist work. Loyalism is also not a monolith. It is however, well documented that there is a particular problem in NI of the involvement of elements of loyalist paramilitarism in racist violence and intimidation, whether sanctioned by paramilitary organisations per se or involving persons with paramilitary connections. This includes the question of the extent of any paramilitary collaboration with British far right groups operating in NI (with the Irish far right not having gained any foothold in nationalist areas).

An alternative explanation is at times proffered for most racist attacks being in predominantly unionist areas, relating to more migrants living in such areas given the greater availability of housing stock. This hypothesis is however fundamentally flawed: black and migrant persons do not *bring* racism to an area by living in it. Racism is an ideology of contempt and supremacy on the basis of ethnicity, it is manifested in violence and intimidation by those who practice it.

The Thematic Review of the Policing Board, drawing on a PSNI map of racist ‘hot spots’ captures both the pattern of racist crime and the broad strategic failure to deal with it:

‘The PSNI has carried out research and has monitored hate crime across Northern Ireland to identify ‘hot spots’ and links with significant places and/or events. It is recognised that reported hate crime is concentrated in urban areas (but not necessarily in areas of high density of black and minority ethnic people) particularly where social deprivation levels are high and there are spikes at certain times of the year and around certain events. The [Policing Board] Committee believes that race hate crime will not be addressed unless and until all agencies are able and willing to acknowledge and discuss the issues including the reported threat from paramilitary groups targeting minority ethnic communities. The phenomenon of paramilitary groups targeting minority ethnic communities has been evidenced but no joint strategy appears to have been developed to tackle it. The PSNI in partnership with other criminal justice agencies must include paramilitary racist violence in any strategy to tackle hate crime.’²²²

The then umbrella Northern Ireland Council for Ethnic Minorities (NICEM) in a report to the UN identified the paramilitary component in racist hate crime as disturbing – citing police and Parliamentary acknowledgement of ‘significant loyalist paramilitary involvement in racist violence’.²²³ There have also been racist incidents whereby the PSNI, both at a senior level or from officers on the ground, have highlighted the paramilitary connections. In 2014

²²¹ [‘Thematic Review of Policing Race Hate Crime’ NI Policing Board](#) See FN37, p73.

²²² P124.

²²³ NICEM March 2016 submission to CERD paragraph 10.2

the PSNI went as far to describe Ulster Volunteer Force (UVF) involvement in racist attacks in south and east Belfast as constituting a ‘deeply unpleasant taste of a bit of ethnic cleansing’ and contributing to a 70% rise in hate crime in the city.²²⁴ In 2018, the then PSNI Chief Constable George Hamilton, alluding to involvement in broader organised crime, stated:

‘The irony here is that there are loyalist groups working with eastern European gangsters in the drugs trade, in prostitution and extortion. Yet these same loyalist groups are the ones behind burning out and intimidating people from places like Lithuania and Romania in areas they perceive as their own.’²²⁵

Official and PSNI acknowledgement of paramilitary involvement in racist crime is not however always so clear cut. As part of the outworking of the 2015 *Fresh Start Agreement* involving the UK and Irish Governments and parties in the Northern Ireland Executive, the two governments established an *Independent Reporting Commission* to report annually on progress towards ending continuing paramilitary activity in NI.²²⁶ Four annual reports have been issued to date, the second and third report make reference to representations “from a number of groups and individuals on their experiences of racism and hate crime and have received first-hand accounts of victims being intimidated out of their homes.” The Report whilst highlighting that victims consider some of these crimes as having a paramilitary dimension states however that the “PSNI does not have hard data on links to paramilitarism at present.”²²⁷ The IRC reiterated this position in its third report²²⁸ and stated it would continue to probe ‘whether there are links to paramilitarism’ and racist hate crime, essentially leaving the question open, in the absence of policing confirmation, but stating that the perceptions of victims “point to another dimension of the fear that these organisations continue to exert on communities.”²²⁹

A predecessor body with an express role to monitor paramilitary activity - the Independent Monitoring Commission (IMC) ran from 2004-2011. Its reports received criticism for downplaying paramilitary involvement in racist violence. A report published by NICEM in 2006, concluded:

‘It is astounding, for example, that reports by the Independent Monitoring Commission (IMC), which is intended to monitor violence by loyalist and republican groups, have almost completely ignored loyalist paramilitary involvement in racist

²²⁴ [Belfast Telegraph, ‘UVF ‘behind racist attacks in south and east Belfast’: Loyalist paramilitary group behind attacks says PSNI’ 03/04/14](#)

²²⁵ [The Guardian, ‘Police chief says “hard Brexit” Irish border would be paramilitary target’ 07/02/18](#)

²²⁶ [Northern Ireland Office, ‘A Fresh Start: The Stormont Agreement And Implementation Plan’, 17/11/15. Paragraph 5.1](#) provides “A four member international body including persons of international standing will be established by the UK and Irish Governments. The UK Government and the Irish Government will nominate one member each and the [Northern Ireland] Executive shall nominate two members. The body will: report annually on progress towards ending continuing paramilitary activity connected with NI (or on such further occasions as required); report on the implementation of the relevant measures of the three administrations; and consult the UK Government and relevant law enforcement agencies, the Irish Government and relevant law enforcement agencies and, in Northern Ireland, the Executive, PSNI, statutory agencies, local councils, communities and civic society organisations.”

²²⁷ [IRC Second Report, 04 November 2019, paragraph 1.56](#)

²²⁸ [IRC Third Report, 17 November 2020 paragraph 162](#)

²²⁹ [IRC Third Report, 17 November 2020 paragraph 162](#)

*violence. For example, their most recent Tenth Report (IMC 2006: 17-18, 36)) at least acknowledges an issue with the UDA and UVF "targeting ethnic minorities" but this is in a context in which racist violence perpetrated by loyalists has become routine. It follows a mountain of evidence Given that the IMC comment extensively on other aspects of loyalist and republican involvement in criminality, it is far from clear – and certainly unacceptable – that racist crime is almost totally ignored.*²³⁰

The Human Rights Commission, in a UN report at the end of the tenure of the IMC, raised the "context of the involvement of illegal paramilitary groups [in racist violence], with evidence having emerged that orchestrated racist attacks have involved elements of Loyalist paramilitarism." The Human Rights Commission makes reference to the IMC in its eighth report conceding that an "important step would be for loyalist paramilitaries, including the UDA [Ulster Defence Association], to stop targeting nationalists and members of ethnic minorities", but the Human Rights Commission concludes: "It is a matter of concern that this context is only intermittently referred to in official policy and strategy."²³¹

The pattern of strategic policy on paramilitarism not effectively dealing with racism has continued. The establishment of the IRG was preceded by a 2015 UK Government assessment of ongoing paramilitary activity by groups officially on ceasefire. Remarkably, despite the plethora of well documented incidents the report overlooks any reference to racism. The assessment lists a range of other areas of crime which are attributed to members, including some senior members, of the UDA as "*drugs dealing, robbery, extortion and the distribution of counterfeit and contraband goods.*" Reference is also made to *paramilitary-style assaults, street disorder and violent protests*. In relation to the UVF the assessment states that members, including senior members, are 'extensively involved' in organised crime including '*drug-dealing, extortion and smuggling*'. Despite these lists of other areas of crime there is no reference to racist violence anywhere in the assessment.²³²

The report was drafted with information from the PSNI and MI5. The omission in relation to racist activity was quickly picked up by the Policing Board. In response the PSNI stated that the report had made general reference to paramilitary violence and intimidation.²³³

²³⁰ McVeigh, Robbie 'The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland' (NICEM, 2006) Paragraph 4.11.

²³¹ NIHRC, Submission to the United Nations Committee on the Elimination of Racial Discrimination Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the International Convention on the Elimination of All Forms of Racial Discrimination (2011), paragraph 84. Citing paragraphs 3.32-5 of the IMC report.

²³² [Paragraphs 5 & 8, Northern Ireland Office 'Paramilitary Groups in Northern Ireland: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process' 2015](#)

²³³ NIPB [Questions to the Chief Constable, Roisin McGlone, Racist Attacks](#), November 2015, page 59. "Given previous police assessments linking loyalist paramilitaries to racist attacks including the assessment delivered to the Board in April 2014 of UVF involvement in orchestrating racist attacks in south and east Belfast that the [Assistant Chief Constable] considered constituted a 'deeply unpleasant taste of a bit of ethnic cleansing' and had contributed to a 70% rise in hate crime in the city, could the Chief Constable explain why the joint PSNI/MI5 drafted report 'Paramilitary Groups in Northern Ireland' of the 19 October 2015, whilst referencing other areas of alleged criminality, makes no reference or no assessment whatsoever as regards paramilitary involvement in racist violence and intimidation?"

The outworking of downplaying or overlooking the issues of racist violence is that the consequent strategic policy by the NI Executive into tackling paramilitary activity also did not name and single out tackling racist activity at all.²³⁴

There is of course a broader question of state failure to effectively deal with and ensure the demobilisation of loyalist paramilitary groups who still hold considerable influence over aspects of public policy in NI, in particular the areas further elaborated on below in relation to housing intimidation and paramilitary control of public space. In this sense, in addition to the downplaying of racist crime in assessments and hence strategic policy, there is a broader knock on effect in tackling ongoing loyalist activity that facilitates continued racist crime.

The following quote – from a senior figure within the policing and security sector interviewed- by BrexitLawNI, speaks both to the lack of strategic policy but also to the extent to which racist crime risks being collateral damage in the broader normalisation and non-intervention approaches to sectarianism:

*'I think the vast majority of ordinary cops are pretty good about race hate crime and sectarian hate crime, and they're appalled by it. But there seems to be a strategic decision to ignore it ... it's just too big ... everyone is doing it anyway ... The race hate stuff is a little bit easier for them to deal with because it tends to be more localised. But decisions about whether to remove a confederate flag are infected I think by their view about how they deal with sectarian hate crime. ... a confederate flag tends to be found in a loyalist area, ... [there is] a very clear link between race hate crime and loyalist paramilitaries in certain hotspots ... [but] even the attitude to EU and non EU people present on the island of Ireland is affected by the sectarian approach to sectarian hate crime... and they are also afraid to set an unhealthy precedent, that they will take down racist stuff but not take down sectarian stuff.'*²³⁵

These issues are now further explored specifically in relation to housing intimidation and racist expression in public space.

4.1.4 Housing and racist intimidation

Sectarian intimidation linked to paramilitaries and the threat of it is the major causal factor in housing segregation and related housing inequality in Northern Ireland, being the primary factor deterring and 'evicting' people from particular areas. Racist intimidation in areas of paramilitary control has also long formed part of this pattern.

It is no exaggeration to suggest that housing is an area of public policy in Northern Ireland that is still extensively shaped by paramilitary control and coercion. Yet there is limited attention and strategic intervention in relation to it. The public policy response has not moved much beyond assistance in moving victims of intimidation. There is a lack of transparency and public scrutiny in the handling of the issue. This includes a level of obfuscation of data as to which paramilitary groups are thought to be the source of threats.

Intimidation, including from housing, has long been a specific criminal offence in Northern Ireland.²³⁶ However, the 2015 assessment of ongoing paramilitary activity which lists areas

²³⁴ ['Tackling Paramilitary Activity, Criminality and Organised Crime' NI Executive Action Plan, July 2016.](#)

²³⁵ [Page 20 BrexitLawNI Policy Report: 'Brexit, Xenophobia and Racism in Northern Ireland' 14/09/18](#)

²³⁶ [Protection of the Person and Property Act \(Northern Ireland\) 1969](#)

of paramilitary-linked crime makes no reference to housing intimidation, let alone racist intimidation from housing.²³⁷ An outworking of this is that neither issue is mentioned in the Executive programme for tackling paramilitary activity or its associated Action Plan.²³⁸

A Ministerial Statement to the Northern Ireland Assembly from the Communities Minister in November 2020 set out that alternatives were being examined to the processes used to verify intimidation from housing with a view to adopting an alternative model.²³⁹ At worst the present model can be limited to an intermediary verifying that the threat is credible and then the public authority moving the victim and not taking further action against the suspected perpetrator.

Data has not been routinely published or desegregated in an accessible way but has been drawn out by media requests. In 2015 *The Detail* investigative journalism website obtained figures from the Northern Ireland Housing Executive (NIHE) documenting 1,842 cases of persons made homeless through intimidation over a three year period between 2012-2015, with over 70% of cases concerning paramilitary intimidation. There was an unclear separation in these NIHE figures of paramilitary incidents from racist, sectarian and homophobic incidents, that may also involve paramilitaries. Racism is listed as the cause in 122 cases. In close to 900 of the cases of paramilitary intimidation the NIHE confirmed the threshold of risk of death or serious injury was met. Yet despite such assessments being conducted the NIHE would not release statistical data on the paramilitary organisations suspected of being responsible. Rather *The Detail* was left to seek to triangulate general geographical location to reach conclusions, with the NIHE stating 'We cannot provide information regarding the origin of paramilitary threats as this is not recorded.'²⁴⁰

It is difficult to understand how a threat can be verified by NIHE or PSNI as coming from a source with the capability of inflicting death or serious injury, but no record is kept as to which organisation the source of threat is considered to be connected to. It would be expected that these agencies would want to map paramilitary activity to be able to counter it and inform broader strategic interventions.

Housing intimidation figures were also released by NIHE under Freedom of Information legislation following a request from the *Belfast Telegraph* for the period of 2015-2018 – recording over 2,000 cases of intimidation from housing, with 73% attributed to

²³⁷ [Northern Ireland Office 'Paramilitary Groups in Northern Ireland: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process' 2015](#)

²³⁸ ['Tackling Paramilitary Activity, Criminality and Organised Crime' NI Executive Action Plan, July 2016.](#)

²³⁹ "I do not intend to proceed with the proposal to remove intimidation points. People in danger in their own home need prioritisation under the selection scheme. The manner of that prioritisation needs to be tightly focussed on such people, including victims of domestic violence. But, consistent with this, the mechanisms for such prioritisation need to prevent abuse and provide robust verification. They need to ensure that the manner in which the scheme responds to cases of intimidation does not distort the list. Officials are investigating options for an alternative proposal, including consideration of a statutory body to independently manage this verification process. I will be able to update the Assembly further on this in due course." [Housing Statement from Communities Minister Carál Ní Chuilín 3 November 2020](#)

²⁴⁰ [The Detail, 'Paramilitaries in Northern Ireland forcing hundreds from their homes each year' 25/06/15](#)

paramilitaries (1,488). There are 80 incidents attributed to racist intimidation, but again the NIHE curiously separates these figures from those attributed to paramilitaries.²⁴¹

Further information about which paramilitaries are responsible is provided in a report by the Criminal Justice Inspection NI (CJINI) report into the work of BASE2 who provide “information from community sources to support the verification process provided by the PSNI and the work of the NIHE.” The CJINI puts into the public domain general statistics from 2012-2018 regarding threat verification assessments by BASE2, the vast majority of which are conducted on the basis of referrals from NIHE. This includes a table on the ‘alleged sources of threats’ at the time of such referrals reflecting the applicants’ classification of the nature of the threat. The figures for each year highlight that the majority of such threats come from ‘Loyalists’ (there is no further disaggregation). Numbers of threats from ‘Republican’ and ‘community’ are also recorded.²⁴² There is no breakdown in relation to racist incidents in this particular report, but this data is presumably gathered at some level.²⁴³

In relation to data from the PSNI, the Policing Board previously sought data on source of threat in 2016.²⁴⁴ The PSNI responded that the issue was a ‘complex’ matter and they would return to it; it is not clear if this occurred. The then Policing Board Annual Human Rights Report (running to 2015) cited PSNI statistics of 1,262 certificates issued by the PSNI Chief Constable in respect of persons intimidated from their homes between from the time of the GFA (April 1998) and 2015. This would equate to an average of 70 per year.²⁴⁵ These figures only refer to owner-occupiers and relate to certificates for the SPED (Special Purchase of Evacuated Dwellings) scheme. They therefore constitute a fraction of those intimidated from housing. Some annual SPED figures were given to the Policing Board in 2014, but despite conducting the assessment and issuing the certificates the PSNI was unable to give statistics on which paramilitary was suspected as having been responsible or connected to the threat.²⁴⁶ This was further probed by the Policing Board’s Performance Committee in February 2015, which noted the figures were not an accurate reflection of people having to leave homes, as they do not cover those who had left NIHE or private-rented property, those who had not applied for a SPED certificate or situations where one family member, such as a child, moves out due to threats. The Performance Committee sought information to be gathered by the PSNI to ‘more accurately reflect the extent of paramilitary intimidation’ in relation to housing. The PSNI responded that although there may be liaison between the PSNI and NIHE locally they did not collate statistics, and whilst they could gather more data the PSNI asserted that it was ‘not clear what policing purpose this would serve’.²⁴⁷

²⁴¹ [Belfast Telegraph, 'Exclusive: 2,000 households forced out of their homes- paramilitaries blamed for 73% of cases' 03/01/19](#)

²⁴² [Page 20 CJINI, 'An Inspection of the role Base 2 in threat verification' 11/03/20](#)

²⁴³ Reasons for threats in this section of the report are more generic including ‘neighbourhood’ a separate figure for some years is given, p21, for hate crimes referrals.

²⁴⁴ See Policing Board Questions to Chief Constable, Intimidation which results in people having to remove [sic] out of their home (Pat Sheehan), question published 3 March 2016

²⁴⁵ [Page 171, NIPB Human Rights Annual Report, 2015](#)

²⁴⁶ NIPB Questions to Chief Constable, Paramilitary Style Attacks (Performance Committee), December 2014, p29.

²⁴⁷ NIPB Questions to the Chief Constable, Extent of Paramilitary Intimidation, February 2015, p7-8.

Racist intimidation from housing therefore falls foul of a lack of a broader policing and strategic response to paramilitary intimidation from housing, to the extent that, on such a serious issue, basic data on source of threat is either not collated or at least not made public.

4.1.5 Racist hate expression in public space

Part of racist (including sectarian) intimidation from housing can be the use of hate expression in public space to deter persons from the targeted groups from remaining in or taking up housing. CAJ recently produced a research report into the broader questions of public authority practices in relation to removing hate expression from public space, including expression used for intimidation from housing.²⁴⁸

This has included include racist slogans in graffiti or banners ('locals only' '[x] out'), swastikas, the use of flags that are by their nature racist (in recent years examples include the Apartheid South Africa flag, the Nazi flag and Confederate flag) and used for intimidation. There are also examples of paramilitary and national flags being used for the purposes of racist intimidation. This can include individual incidents of intimidation (e.g. when a flag is solely placed outside the home of the only ethnic minority family in a street) or more generalised forms, where for example flags are placed at the entrance to new housing developments as a form of racist (and sectarian) intimidation to deter persons from taking up housing. A number of examples are included in the CAJ report.

The report is critical of practices of non-intervention by some relevant public authorities. Specifically, we are critical of the PSNI position being grounded in a public order lens only, rather than giving due weight to the harms of racist and other forms of hate expression. In this sense the PSNI will not remove hate expression if there would then be possible disorder and may even prevent the removal of paramilitary-approved expression as it is those individuals most likely to react with violence if it is removed. Whilst not dismissing public order as a legitimate concern we do raise worries that this approach provides an incentive to paramilitaries to create a threat to control the type of expression that is permitted in a particular area.²⁴⁹

We noted above that at times paramilitary involvement in racist crime has tended to be downplayed. There has been a similar reluctance to explicitly name paramilitary involvement with hate expression, and instead take refuge in codified general references to staff safety. This position is even less sustainable in this policy area: the reluctance to intervene and remove hate expression is precisely grounded in the context of there being paramilitary involvement.

The report recommends an alternative approach in line with Recommendation 15 of the Independent Review of Northern Ireland Hate Crime Legislation, led by Judge Desmond Marrinan and which issued its final report in late 2020, and recommended a statutory duty

²⁴⁸ [CAJ, 'Dealing with hate expression in public space in Northern Ireland' May 2022](#)

²⁴⁹ For further discussion and the PSNI response see: [The Detail, 'PSNI prioritisation of public order over hate expression criticised in report' 12/05/22](#)

on relevant public authorities to take reasonable steps to remove hate expression from their own property and, when engaging their functions, broader public space.²⁵⁰

4.2 Frontline insight and experience

4.2.1 Indirect impact of government policy and legislation on racist incidents and hate crimes

Frontline organisations consistently raised the impact of government policy and legislation on the prevalence of hate crimes and racism on the ground in Northern Ireland. When the government is utilising racist and anti-migrant rhetoric to back up changes to policy and legislation, it has a direct impact on how people behave in communities. One of the key examples of this was the impact of the Brexit campaign.

South Tyrone Empowerment Programme (STEP) noted in their research that ‘Brexit’ did not create racism, xenophobia, prejudice or ignorance but it provided an opportunity and impetus for all of these to increase and flourish. This was not least because of the wider rhetoric and anti-immigration narrative of the UK Government, which underpinned much of the Leave campaign in England, and which carried across into N. Ireland discourse at community level.

Against the background of the Brexit referendum, STEP noted that by the end of 2013, racist incidents had increased across N. Ireland with 750 racist incidents and 470 hate crimes reported to the PSNI. Racist incidents reported directly to STEP also increased in Mid Ulster and across Northern Ireland. STEP recorded a clear correlation between the number of racist incidents at local level and high profile public rhetoric around Brexit. STEP believe that both the ‘sovereignty’ narrative surrounding Brexit and the UK governments hostile environment policies influenced this.

Migrant Centre NI (MCNI) also reported increasing racist hate crimes in Northern Ireland. Over the 18-month period from 1st January 2019 to 31st August 2020 they provided advice and support in relation to over 5000 individual cases overall. Of these cases 31% were related to race hate crime issues including formal referrals of victims from the PSNI to the Hate Crime Advocacy Project who wished to receive advocacy support, internal referrals between projects, self-referrals and referrals from the wider community and voluntary sector including the BAME sector. The hate crimes support within MCNI was initially provided by three part-time advisers, which then was increased to 5 full time equivalent advice posts, going down again in April 2020 to 3 full time equivalent posts.

Victim Support NI staff believed that racist hate crimes were increasing and that what was shown through statistics and data was reflected in their work. They believed that long term unrest and instability was linked to this increase. The Brexit referendum was given as an example of something which caused instability in communities which has a knock on impact on things like racism and hate crimes. Staff noted that Northern Ireland has been

²⁵⁰ Recommendation 15: *There should be a clear and unambiguous statutory duty on relevant public authorities including Councils, the Department for Infrastructure and the Northern Ireland Housing Executive, to take all reasonable steps to remove hate expression from their own property and, where it engages their functions, broader public space.* [Hate Crime Legislation Independent Review, 01/12/20 para 10.76.](#)

particularly highly impacted by Brexit and that it is an ongoing issue, which may continue to have unexpected impacts. One example given was that the loss of EU law may impact protections against racist hate crimes in the long term. Another was that changes in work visas and immigration law increases instability and affects migrant communities. Staff believed that when the post-Brexit landscape was calmer, that may help reduce hate crimes and incidents.

Victim Support NI also raised the potential impact of the Nationality and Borders bill, which is grounded in anti-migrant rhetoric. They stated that although they didn't expect to see a sudden upswing in numbers, these kinds of hard line stances can incite people into action and give them justification for behaviour they otherwise wouldn't carry out.

Case Studies and statements from STEP and Victim Support NI provide evidence of these issues:

- EU residents using STEP services reported a significant rise in 'low-level' harassment e.g. abusive name-calling in the street; being told to 'go home' and being routinely asked: 'Are you people still here?'
- The confidence with which some people felt entitled to berate other people for holding private conversations in public places in a language other than English was quite staggering. This behaviour had largely subsided but once again appeared over the Brexit debate period, and we received multiple reports of people being pointed out to others, or interrupted in private conversations and told: 'Speak in English! ' 'We speak English here!', 'If you can't speak in English go back to where you came from.'
- We have seen people protesting in Carrickfergus recently, we have had two major attacks this year, one on BMCA and one on Lawrence street asylum seekers, as well as smaller individual cases. When the government takes that hard line, you have people stirring the pot and it will have a knock on impact like this.
- The lives of immigrants; migrant workers, refugees and asylum seekers continue to be lived and negotiated within an historically embedded culture of racism and 'white privilege' that is not consciously understood or acknowledged at any level within government or society in N. Ireland. While progress on legislation, strategies for racial equality; action plans and resources to enable implementation to continue to be put on the ever-lengthening figure, the protection of rights is daily weakened by external and internal political decisions and consequences. The impact is to the detriment of adults and children within immigrant, refugee and asylum-seeking communities, however defined. We need to start doing the right things to bring about systemic change to eradicate institutional racism. Brexit has made that more difficult, but that does excuse Government or civil society from the responsibility to protect the rights of National Minorities.

4.2.2 Paramilitary connections to racist hate crimes and incidents in Northern Ireland

Frontline organisations consistently expressed frustration about the impact of paramilitary activity on racist hate crimes and incidents in Northern Ireland. It was felt that paramilitary

activity has a significant link to racism and hate crimes in communities and that this is often overlooked or avoided because it is viewed as too difficult, or too sensitive a topic.

Victim Support agreed that paramilitary activity is frequently linked to racist hate crimes, particularly those of a severe nature such as arson. Staff expressed frustration with the paramilitary label, as they believe it can prevent cases being dealt with appropriately. For example, if it is not possible to corroborate a paramilitary threat then it does not meet the statutory requirements and there is limited support for the victim. One suggestion was that cases should be looked under the umbrella of 'criminality' rather than always looking to confirm paramilitary behaviour. This would allow more threats to be dealt with and take in the broad spectrum of criminality which is often linked to hate crimes, such as drug dealing, harassment and serious assault.

The Migrant Centre NI have also raised the link between paramilitary activity and racist hate crimes in their work. In their submission to the NI Affairs Committee MCNI confirmed that they saw their Hate Crime caseload increase in 2019-2020 and that the involvement of paramilitary organisations in racist hate crimes remains a key issue in Northern Ireland. The submission states that MCNI feels no substantial gains will be made against racist hate crimes in Northern Ireland if paramilitaries are not addressed as "a systematic root issue".²⁵¹

Case studies and statements from Migrant Centre NI, PPR and Victim Support NI provide evidence of these issues:

- In areas which are paramilitary controlled, especially South and East of the city it is obvious there are organised assaults on people who are placed in those areas. But no one seems willing to stand up to those people and for those people who are entitled to those homes. Why is it allowed to continue to happen?
- Our client had struggled for months with daily harassment and racial abuse coming from a neighbour and did not want to report as they were scared of repercussions. Finally, it was reported to PSNI and when they arrived PSNI officers told her there is not much they can do as it is their word against his and no evidence available, although she thought there are witnesses. The fact that the alleged perpetrators might be of paramilitary background was seen by the client as a reason for PSNI's reluctance to pursue the matter.
- Usually windows put in or arson has a paramilitary element. Most of the time its paramilitary orientated or its young people acting out. It can also be a combination of the influence of paramilitary culture, so the instigator is not in a paramilitary group but their behaviour is shaped by that culture. I think nearly every time there is a paramilitary element- even if it's not specific, it's under the influence of it.
- We are housing people in areas of extreme chronic housing stress, because we can't house them in areas where houses are available because nobody is willing to tackle the problem of organised crime and paramilitary organisation against people being moved into those areas. There is cowardice in police force and with political reps in

²⁵¹ [Migrant Centre NI, 'Submission to the UK Parliament Northern Ireland Affairs Committee's Call for Evidence on 'The Experience of Migrant and Minority Ethnic People in Northern Ireland''](#)

terms of calling this out and saying what it is. How long can you go on like that? How long can you have no go areas in a city?

4.2.3 Housing intimidation

One of the main issues raised by organisations, which is linked closely with paramilitary activity, was the impact of racist intimidation on access to housing for migrant and minority ethnic communities.

Migrant Centre NI raised the issue of housing intimidation, noting that large amounts of cases they dealt with through their hate crimes work included a link to housing or the person's home. In many cases the victims of these incidents are families with children. MCNI raised concerns about the current system, which they believe focuses on moving victims away from the instigator, rather than dealing with the root problems.

PPR campaigns widely on the housing crisis and as part of this recognises that the migrant community are some of the worst impacted by housing inequality. PPR has consistently raised the impact of racist hate crimes and racist intimidation on this issue. PPR's 2018 report 'We came here for Sanctuary' which outlines the experiences of substandard housing by families who came to Northern Ireland through the Vulnerable Persons Relocation Scheme, highlighted this. The report noted that the most vulnerable members of the group, women living alone with children, found themselves subject to racist attacks in and around their homes.²⁵²

PPR works alongside asylum seekers, refugees and minority ethnic communities who have been subject to racist attacks and assaults which appear to be organised with the intention of intimidating people from their homes.

PPR staff raised concerns that people who were entitled to housing, were being intimidated out of certain areas during a housing crisis in Northern Ireland. They pointed out that many members of the migrant community reside in the areas of greatest housing need, because they are subject to housing intimidation out of other areas. This placed additional stress on areas of higher need and can increase incidents of racism and hate crimes because of the pressures on communities. Freedom of Information requests submitted by PPR showed that the Housing Executive did not disperse Syrian Refugees evenly across the Housing Need Assessment Areas. Instead, the Housing Executive placed a large percentage of the families in areas of high housing demand, with a shortage of social housing. PPR raised concerns that this was effectively creating 'no go areas' for refugees.²⁵³

PPR staff were working with people residing in B&B hotels and hostels and felt there was a lack of foresight and sustainable planning by councils and statutory bodies in order to tackle the housing crisis.

Victim Support NI manage the hate crimes advocacy scheme, with Migrant Centre NI as their partner on racist hate crimes. Part of their service includes supporting victims of hate crimes and intimidation in relocating to another home. Victim Support NI staff identified

²⁵² ['We Came Here for Sanctuary, Syrian Refugee families' experience of racism and substandard housing conditions in West Belfast' 30/07/18](#)

²⁵³ [PPR, 'A Place to Call Home? - Refugees in Belfast's Housing System. Freedom of Information Archive' 04/02/22](#)

rehousing as a significant focus of their work, which demonstrates the frequent link between housing and racist hate crimes and incidents. Staff confirmed that a lot of hate crimes are linked to the home, across all strands and that they believed this had become worse during the Covid 19 lockdowns, as people were confined to their homes for lengthy periods and tensions were heightened. Staff also felt that the growing housing crisis was contributing to hate crimes linked to housing.

Case studies and statements from Migrant Centre NI, Victim Support NI, STEP and PPR provide evidence of these issues:

- When there's hard evidence I do think hate crimes are addressed but that's rare. When there's no hard evidence, and it doesn't reach PSNI threshold, it won't reach housing executive threshold. So the only option becomes to move the victim away. It comes down to lack of evidence and word against word.
- A family moved into a property and were verbally abused, harassed and intimidated on numerous occasions. Police and NIHE were involved throughout the time. Client was offered to move, however, they had spent their savings decorating the property and liked the area. The client could not understand why instead of dealing with the perpetrators they were just asked to move. Warning letters were issued by NIHE to the perpetrator, but they seemed to do very little in terms of stopping the abuse. Client had safety concerns and impacts on wellbeing safety, but was also worried that by pursuing prosecution things would escalate. In the end after mediation proved unsuccessful, the perpetrator got a final warning letter from NIHE and to date the client has not reported any further incidents.
- Family with small children were being regularly harassed including stones put through their windows as well as verbal and racial abuse. MCNI advocated on their behalf and put in a transfer application to NIHE to get them moved within weeks to different area to feel safe again.
- A family with young children was living in private accommodation. The family was harassed by people knocking and banging at their front door. MCNI intervened and after making reports, the Police increased patrolling in the area and the harassment stopped.
- A family had problems with their neighbours, ever since they moved there. Children were unable to play in the back garden as the neighbours would verbally abuse them. The neighbours claimed that the family should not be living in the property and it should have been allocated to someone else. The MCNI support worker contacted the NIHE and the issue was resolved by relocating the family to another property.
- A family had youths throwing stones and eggs at their property. Although the police were aware and started patrolling the area more frequently, the young people would observe and harass the family as soon as the police car was away. Working with PSNI and NIHE, the family got CCTV installed in the property, but the harassment continued. The family was relocated after eight months.

- People entitled to housing are ending up back in hostels from areas where housing is available. Stats show in terms of asylum/settlement/refugees the majority live in the areas of highest housing need which causes additional stresses to those areas which in turn is linked to rising hate crimes within those areas. There is a root problem there, which is obvious which is causing a lot of harm and it seems no one wants to call it out or plan for it or address it.

4.2.4 Lack of confidence in the police and judicial system

A common thread in the insights provided by frontline organisations, is that there is a lack of trust in the police by victims of racist hate crimes and incidents, and within impacted communities. This has also been affected by responses to high profile incidents such as the policing of the Black Lives Matters protest, and the response to the arson attack on Belfast Multi Cultural Centre. Beyond the perception of the police, organisations also found that administrative and procedural barriers prevented many victims of hate crimes and hate incidents from trusting in the policing and judicial system.

STEP supports victims of racist hate crimes in reporting criminal behaviour to the PSNI, but their research shows that less than 30% of people they assisted were willing to take their complaints further. STEP provided a range of responses to the question 'Why have you decided not to make a formal complaint about this incident'. These responses indicate that unless reporting an incident or making a complaint can clearly reduce the chances of it happening again, people tend to absorb the experience and avoid a repeat occurrence by changing their own behaviour.

Comments from those responding are recorded below and have been translated from the speakers' mother tongue:

- I don't think it helps. A lot of people here have not been anywhere. They do not know how to behave with other people. I try to avoid such people.
- I complained to the shop owner (about a shop assistant who wouldn't take money from the Black person's hand). He just took the money himself and gave me the change. He said nothing to her(shop assistant)... Maybe, if it happened again.... I don't know. I didn't go back to the shop.
- I do not want to cause trouble. I like this country. Most people try to be helpful.
- The police came and took a statement, but I didn't hear anything after that.
- Everyone listens and takes notes, but it stays the same. '

STEP also raised concerns that when the police respond to racist incidents or hate crimes, they routinely classify incidents as 'anti-social' rather than acknowledging the racially motivated behaviour.

PPR raised the policing response to hate crimes as key issue in their submission to the NI Affairs Committee. They raised concerns about the fact that a hate crime in Northern Ireland is determined by the victim's perception. They stated that there is evidence that

even repeat incidents are treated as anti-social behaviour.²⁵⁴ In 2020 PPR acted in response to a number of reported incidents of hate crimes against refugees, asylum seekers and other migrants in their homes, by submitting FOIs to the PSNI regarding their response to these issues.²⁵⁵ PPR highlighted the practical barriers to effective policing of racist hate crimes in response to the second arson attack on Belfast Multi-Cultural Centre, stating, *“When the law is consistently failing the people most in need of its protection, textual legislative changes aren’t enough. The thornier issue is to identify the practical blockages, the failures in implementation and practice on the ground, that prevent the law from working.”*²⁵⁶

PPR staff felt that police fail to take hate crimes seriously and identified the lack of prosecution as a key barrier to reporting. One staff member stated that the emphasis is always on the need for victims to report to help police tackle hate crimes, but they work with families who can show multiple reports where nothing was done and the issues haven’t been resolved. People stop reporting because they feel it achieves nothing and that feeling spreads within the community and builds a lack of trust. Staff also felt more cultural awareness is needed, particularly for vulnerable persons such as victims of domestic violence. Empathy and respect is needed for victim perception and awareness that what may appear low level incident to a police officer, may be a terrifying event to a vulnerable person and requires a thorough response. PPR staff recommended that on top of engagement and working with communities, they wanted to see genuine change within the police such as hiring interpreters, increasing diversity in the police force, transparent training of officers and publishing documents in multiple languages.

Victim Support NI work in direct partnership with the PSNI to provide their hate crime advocacy service. They acknowledged that a very low level of hate crimes make it to Public Prosecution Service in Northern Ireland. Victim Support staff felt that there were issues with relying on the victim to identify an incident as being racially motivated. There can be language or cultural barriers and many countries don’t have a legal concept of a hate crime. These barriers can get in the way and need follow up with the victim to ensure the racial element is properly recorded. Victim Support NI aim to ensure that all referrals they receive are dealt with from the perception of the victim.

Victim Support NI staff also raised that the line between anti-social behaviour and hate crimes can become blurred by officers on the ground, who may fail to recognise how behaviours have a unique impact on people from a specific background or community. This can result in incidents not being recorded as hate crimes which has knock on impacts.

Migrant Centre NI, who partner with Victim Support, highlighted how lack of understanding of the policing and judicial system creates barriers. People on the ground rarely understand the criminal system or police jargon. MCNI felt that statutory organisations had a lack of resources, which prevents them from communicate effectively with communities. One

²⁵⁴ [PPR, 'Submission to the Northern Ireland Affairs Committee of the UK Parliament Call for Evidence: he experience of minority ethnic and migrant people in Northern Ireland' 21/05/21](#)

²⁵⁵ [PPR, 'Hate Crime Against Migrants, How the Police Service of Northern Ireland should Investigate Hate Crime Incidents' 07/10/20](#)

²⁵⁶ [PPR, 'Another Arson Attack Reported against the Belfast Multicultural Association' 08/04/22](#)

example was that interpreting is inconsistently provided, which can lead to victims misunderstanding what is happening with their case.

Case studies and statements from PPR, STEP and Migrant Centre NI provide evidence of these issues:

- The windows of a family home were broken, and paint thrown against the wall also damaging family property adjacent to the wall. The incident was initially recorded as anti-social rather than racist, despite the family's clear statement that they were the victims of a racist attack. The record was amended when STEP supported the family in insisting that the record accurately reflect their experience. The police officer's view was based on the fact that there 'was nothing' (i.e.no explicit graffiti) to evidence the motive, so he was, in his own words 'keeping an open mind'. Pending further information. At some point, the officer may have independently come to the same view of the family but acknowledging the racist nature of the attack is not an optional extra to be considered at some later point, when the victim is in no doubt about what happened to them.
- In September 2013, a local resident, was successfully prosecuted and found guilty of 'violent conduct, terrorising innocent people on the basis of their race' having felt confident enough to have painted racist graffiti and damaged cars and other property of several Lithuanian residents living in the same estate as himself. He lived locally and had a history of racist violence going back to 2004 when he threw 'a burning device' into a group of East Timorese people in the Market Square in Dungannon. It took another seven years before this well-known and violent racist was successfully prosecuted for his 'career' in intimidating his neighbours. The following year (2014/15) the number of incidents in Mid Ulster reported to PSNI rose from 40 to 70. The successful prosecution of a well-known offender may have contributed to a higher level of reporting to the police, accounting potentially for some of the significant increase; the continued encouragement to report or an increase in racist activity. We are unable to definitively determine the key factor but the statistic of 70 incidents reported remains significant in itself.
- If someone goes to the police because someone has put a firework through the letterbox and it's taken seriously and investigated and people accommodated to move house if they want to. Then their friend who has something similar happen will do the same thing and report. But that's not what is happening. That has a lot to do with why there is diminishing trust in the police force here.
- In a few cases victims were actually unaware that their cases were being submitted to the PPS, although PSNI's investigating officers had spoken to them personally, but again just assumed they understood the message. Even in cases where sufficient evidence was found injured parties generally, do not comprehend what it means when their case is being submitted to PPS.
- There are too many tickbox exercises from police and not real actions. We need to seem them employ interpreters, improve representation in the force, translate materials, train officers.

4.3 Policy Recommendations arising from the above analysis and evidence

- Official interventions and strategic policy to monitor and tackle paramilitarism should include specific work on tackling paramilitary involvement in racist crime and incidents, including intimidation and violence.
- The Department of Justice to progress the recommendations of the hate crimes review relevant to racism, including strengthening 'stirring up' hatred offences legislation; the introduction of an aggravated offences model; and Recommendation 15 on tackling hate expression in public space.
- In the interim before any implementation of Recommendation 15 in a hate crimes bill, we urge relevant public authorities to amend and formally adopt as a matter of policy a commitment to taking reasonable steps to remove items when they constitute racist and other forms of hate expression, in line with recommendations in the CAJ report.
- The NI Executive should review and 'upgrade' the racial equality strategy, particularly in light of the changed context brought about by the pandemic, Brexit, the hate crimes review, and the Black Lives Matter (BLM) movement, and include measures to combat racist incidents and crime.
- The PSNI, Department for Communities and Housing Executive review and improve practices in relation to dealing with racist (etc) housing intimidation, including proper documenting and monitoring of the source of threats to inform interventions.
- The PSNI should undertake a review of practices regarding the use of victim perception in the recording of hate crimes and incidents and commit to a programme of training for officers to ensure that victim perception is acknowledged and recorded appropriately and that victims are supported to provide their perception.
- The UK Government should legislate for the Bill of Rights for Northern Ireland inclusive of provisions on rights to be free from all violence and harassment – including racist motivated violence and harassment as recommended by the Human Rights Commission.

Research partners

CAJ wishes to thank our research partners and participants for their valuable contribution to this report.

Migrant Centre NI (MCNI)

MCNI is a registered Charity (no.105750) and a limited company (no.611585). The organisation was initially established as the Belfast Migrant Centre in 2010 and officially recognised as a charity in March 2012. In 2014, to reflect the work of the organisation the name was changed to the current Migrant Centre NI. MCNI was established to protect the rights of migrant workers in NI, tackle racism, eliminate barriers against migrant workers, advance education and raise public awareness about their rights. MCNI has 3 offices across Northern Ireland, in Belfast, Lurgan, and Derry/Londonderry. Their current services include hate crime victim advocacy support, advice and support for applicants enrolling in the EU settlement scheme, financial health and wellbeing advice services, and the administration and management of the Comic Relief and National Emergencies Trust BAME COVID-19 Recovery Grant Scheme for Northern Ireland. The research provided by MCNI seeks to capture the patterns of experiences of migrants in NI who were accessing MCNI advice services in the post-Brexit referendum context. This research took the primary form of a research report provided to CAJ by MCNI. This is the source referred to throughout this publication when research, insight or issues raised by MCNI are referenced.

CAJ roundtables attendees

In 2020 CAJ facilitated two North-South roundtable discussions on the Common Travel Area.

These roundtables brought together leading experts from across the island of Ireland to discuss the reality of the Common Travel Area and the issues that may arise post-Brexit. The discussions focused on two core themes: freedom of movement and the Common Travel Area; and reciprocal rights and the Common Travel Area. The evidence gathered at these roundtables provides a clear snapshot of the main issues and concerns around the Common Travel Area in 2020, as Northern Ireland faced into the impact of the UK exiting the European Union. The evidence referenced in this report was gathered from statements and discussions occurring during two roundtable discussions. These have not been attributed to any particular organisation or individual for the purposes of privacy and data protection.

The attendees at these roundtables included:

- Northern Ireland Human Rights Commission
- Unison
- Centre for Cross Border Studies
- Border People
- Stronger Together
- Professor Colin Harvey
- Migrant Centre NI
- Irish Council for Civil Liberties
- Women's Centre Derry
- Japanese Cultural Group
- Law Centre NI
- Migrant Rights Centre Ireland
- Larne Visitors Group
- Dr Lucy Michael
- Dr Neil Graffin
- Northern Ireland Rural Womens Network
- Newry and Mourne Enterprise Agency

- St Columb's House
- Emma DeSouza
- End Deportations NI
- Pat Finucane Centre
- Granite Legal Services
- Performing Identities
- Derry Council
- Newry and Mourne District Council

The Children's Law Centre

The Children's Law Centre is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination, and where every child can achieve their full potential. The Children's Law Centre is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

The immigration department at Children's Law Centre was formally established between 2019-2022. The Children's Law Centre's immigration solicitors provided advice in relation to looked after children who were in the care of social services and whose immigration status was insecure. They also advised and represented the vast majority of unaccompanied asylum-seeking children (UASCs) in Northern Ireland, working with the Health and Social Care Board, all five Health and Social Care Trusts in Northern Ireland and Barnardo's Independent Guardian Service. The team within the Children's Law Centre held extensive experience in representing unaccompanied asylum-seeking children who have been subject to the asylum application, National Referral Mechanism and other immigration application processes. The team also specialised in EU Settlement Scheme applications for looked after children. CAJ's research with Children's Law Centre aimed to capture patterns and experiences highlighted by children accessing their immigration services. This research took the primary form of interviews with the Children's Law Centre's immigration solicitors.

Participation and the Practice of Rights (PPR)

PPR is a human rights NGO founded in 2006, working to turn international human rights standards into grassroots tools for economic, social and environmental change. Originally active in Belfast and Dublin, PPR now works with a growing network of communities across Ireland, Scotland and South Africa. PPR organises alongside communities who have been marginalised by laws, policies, public authorities or private interests and supports them to engage with power to campaign for change. PPR in general prefers not to speak on behalf of directly impacted groups, but instead creates a space in which groups can advocate for themselves.

The Housing4All campaign was formed in 2016 to ensure that all people seeking asylum are given the opportunity to lead dignified and secure lives, including through access to adequate housing and services. The Lift the Ban group is connected to the wider UK initiative for the right to work for everyone. BuildHomesNow supports homeless families from a wide range of backgrounds to campaign for more social housing, particularly on sites

of vacant public land such as the Mackies site in West Belfast. All PPR's campaigns are inclusive spaces for directly impacted people, including asylum seekers, refugees and people who identify as belonging to minority ethnic groups.

CAJ's research partnership with PPR took the primary form of interviewing staff and gathering data from PPR publications, submissions and reports.

Victim Support NI

Victim Support NI is an independent charity which helps people affected by crime. The Hate Crime Advocacy Service (HCAS) provided by Victim Support NI offers a safe and confidential space to support to victims of hate and signal crimes across the different protected characteristics. They provide support to victims whether or not they have reported the crime to the police. The HCAS provides advocates for victims and supports them through the criminal justice process. Advocates assist victims in reporting incidents and attaining updates on their case from police and other criminal justice organisations. Victims are signposted to other specialist agencies in line with their needs, and referrals made where consent is given. Victim Support NI accepts referrals from all agencies and self-referrals. The Hate Crime Advocacy Service is jointly funded by the Police Service of Northern Ireland (PSNI) and the Department of Justice (DOJ). The Racist Hate Crime Advocacy Service is delivered through partnership with Migrant Centre NI. CAJ's research partnership with Victim Support NI predominantly took the form of interviewing HCAS staff.

South Tyrone Empowerment Programme (STEP)

STEP is a community-based human rights and social justice organisation based in Dungannon whose area of practice is primarily within the Mid-Ulster Council Area. STEP (South Tyrone Empowerment programme) originated in 1997 as a local community network of urban neighbourhood and rural community organisations in Dungannon & South Tyrone Borough Council. The network was founded by a cross-community 'coalition of the willing' committed to peacebuilding, on the model of the UN Agenda for Peace, in an area that suffered significantly in the preceding years of open conflict. The original aims and objectives have stood the test of time and remain the STEP bedrock "To contribute to the development of a peaceful, prosperous and participative society based on the shared principles of Human Rights, Equality and Justice, and which celebrates diversity, respects difference and consistently protects the rights of the most vulnerable and marginalized individuals and groups. To assist the most marginalised, disadvantaged, excluded and vulnerable in our community to enjoy equal access to information, expertise, and skills which will allow them to identify and address their own needs, vindicate their rights and participate fully in the decision-making processes that affect their lives individually and collectively." It is within this context that the rights of migrant workers and other immigrants; asylum seekers and refugees have become an integral part of STEP's work. CAJ's research partnership with STEP took the form of a report compiled by STEP titled, *Impact of Brexit on Immigrant and migrant worker experience in N. Ireland (2016–2021)*. This is the source referred to throughout this publication when research, insight or issues raised by STEP are referenced.

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