



Defending the Rights of Homeless EU citizens in Brexit Britain

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The Public Interest Law Centre specialises in public law and actions against public authorities. We challenge the lawfulness of policies, decisions, actions and omissions of public bodies and authorities on our clients' behalf.

Long before Brexit, the UK welfare system had been on a trajectory aiming to restrict EU nationals' access to a safety net. It became normalised for EU nationals in need of support to be turned away or offered a ticket 'home', without looking at their individual circumstances. The situation of EU nationals who have slept rough provides a good illustration of how far this disposition has gone.

In 2009, a 'Reconnection' project was set up to help vulnerable rough sleepers from Central and Eastern Europe 'who have expressed a wish to return to their home country'¹. The veil of good intentions very quickly disappeared to make way for the sinister hand of state enforcement applied by the soft glove of state-funded NGOs. By 2012, Reconnection was not a project but a blanket policy for EU nationals who found themselves sleeping rough in London. Things continued to worsen when street outreach services developed regular joint shifts with Immigration Enforcement teams to deport those who did not exercise their treaty rights. By 2014, the pan-London outreach protocol advised street outreach workers to threaten people with enforced removal if they refused reconnection.² Weekly or monthly joint shifts with enforcement agencies had become a common feature of NGOs' engagement with EU nationals sleeping rough. In November 2015, a new operation bringing together St Mungo's, Immigration Enforcement and the City of Westminster Council targeted EU nationals because they were sleeping rough. Within two months, 127 people were detained and deported.

Against this backdrop of evolving enforcement-based practices and restrictions to a welfare safety net, **North East London Migrant Action** (NELMA) started a public campaign in support of EU nationals sleeping rough and to challenge enforcement practices by state agencies and facilitated by state-commissioned NGOs (Thames Reach, St Mungo's and CGL). The **Public Interest Law Centre** (PILC) set up a phone advice line and weekly legal clinics at a Sunday social centre delivered by committed volunteer lawyers. After much research into the practice and a number of cases acquired through the legal clinics, this initial project culminated in Judicial Review proceedings against the Home Office. In December 2017, the government's policy as well as its opera-

tions with NGOs were deemed unlawful. Although enforcement has stopped, reconnection as the default solution to EU nationals sleeping rough continues.

In January 2018, the Oak Foundation kindly agreed to fund PILC to widen the remit of the initial legal proceedings. PILC would now be able to defend the rights of EU nationals who are at risk of homelessness, vulnerably housed (e.g. squatting, in overcrowded spaces or moving from one place to another) and those who are sleeping rough. The focus of our work will continue to be public law, thus challenging unlawful decisions made by central or local government, unlawful policies and practices but would cover a much wider range of issues.

The intervention of legal professionals rather than personal advocates has become necessary in hostile Britain. Local and central government agencies systematically use 'gatekeeping', a tactic that consists of refusing someone access to services they are entitled to on the assumption they will not take legal action against the authorities. The migration sector is accustomed to these practices and has therefore established the sort of partnerships needed in the homelessness and poverty-relief sectors. It is not only EU citizens who encounter these problems but their advocates as well. Without legal back-up, it is extremely difficult to get someone the statutory help required in terms of housing or welfare benefits. Given the political and social context in which EU nationals find themselves, access to free legal representation has become extremely important.

BRINGING LAWYERS TO THE FRONTLINE

The project was officially launched in May 2018 by opening a phone advice and referral line, advertised through frontline organisations working in the homelessness and migration sectors across London. Flyers were printed in English, Polish, Romanian and Portuguese. Today, we deliver monthly legal clinics through 8 delivery partners spread around London where large numbers of EU homeless nationals use their support for housing, welfare benefits and access to employment. We have also undertaken street outreach with the **Roma Support Group** (RSG) as many Roma people had been affected by Immigration Enforcement operations over the years. Those we reached were precarious workers queuing outside DIY stores to pick up a day's work as well as rough sleepers. Access to health care was often discussed as well as employment and tax issues, including labour exploitation that many had experienced.

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1 <https://www.thamesreach.org.uk/news-and-views/news-archive/news-archive-2009/reconnection-project-for-eastern-european-rough-sleepers/>
2 https://www.london.gov.uk/sites/default/files/protocol_for_rough_sleeping_outreach_services.pdf (p.5)



As Brexit has unfolded, we have delivered workshops (through our delivery partners) to inform and support EU homeless citizens wishing to apply for Permanent Residence and more recently to help EU nationals prepare for the upcoming 'Settled Status', a scheme in which all EU nationals will have to register to secure their right of residence in the UK post-Brexit. Outreach is also being used to inform those who don't come to services, with info-sheets printed in various languages to support that work.

As part of setting up the project, we also ran 'problem-identifier' sessions with staff to get an initial understanding of what challenges they encountered most frequently. The consensus across the board is that EU nationals are often refused access to services and entitlements on the basis they are not 'eligible', the same banner under which gatekeeping operates. Whilst there are legal remedies to challenge those decisions, it inevitably leaves EU nationals destitute whilst state institutions use bureaucracy to further delay decisions and entitlements.

As the project moves into its second year, the focus will further shift to second-tier advice, capacity building, training and legal representation. This will ensure that frontline organisations have the most up-to-date knowledge and best tools at their disposal to quickly challenge wrongful decisions, whilst building bridges with lawyers, whether that is for housing, welfare, immigration or public law.

CHALLENGING UNLAWFUL DECISIONS, ENFORCING EU RIGHTS

Most of the EU nationals referred to PILC have been in the UK for more than 5 years. Many of our clients continue to be from Central and Eastern Europe followed by third-country nationals who acquired EU citizenship, particularly through Spain or Portugal. Romanians and Bulgarians, fully integrated into the UK's labour market in 2014, also feature amongst those in most need of legal representation. For the readers who would still have any doubt, most of the people we work with are amongst the poorest workers in the UK or Europe. As a result, they need access to housing and welfare support because the work they are doing is often extremely precarious, thanks to the UK's flexible labour laws, whilst living expenses are very high.

Much of our work centres around challenging 'eligibility'. What is meant by eligibility revolves around a 'right to reside' test based on the Free Movement Directive 2004/38/EC, though further conditionality applies in the UK. In order to gain housing or welfare assistance, one must be a 'worker' or have acquired a permanent right to reside. The worker category is wider than 'being in employment' to account for period of involuntary unemployment or sickness, yet decision makers often disregard these rules.

For some of the precarious workers we represent, proving periods of employment can be an issue if it has been done cash-in-hand or no payslips were issued. At other times, for fear of being a burden on the social system, some will not register with the state agency for unemployment, yet this might break up the retention of their 'worker' status. Unfortunately, those type of issues accumulate, and it can make it difficult to build the evidence or prove entitlements to permanent residence, even when EU nationals have been living and working in the UK more than 5 years. The issue of eligibility is further illustrated by access to health care, which should be free to EU nationals under almost any circumstances. Although a different residency test applies, PILC had to represent one individual who, despite having lived in the UK for 13 years, had been charged over £10,000 for a short stay in hospital following a broken leg.

There are issues for EU nationals who have committed criminal offences where they are increasingly served with deportation notices and orders. Whilst the threshold for deporting EU nationals is high, the lack of Legal Aid (state subsidy to ensure access to legal representation for the poorest) makes it very difficult for those targeted to defend themselves. We have been representing clients whose past convictions have caught up with them in this way, despite having turned their lives around in the meantime. Another case affects a young Roma woman who has lived in the UK since she was 8. Yet on her first offence she is being threatened with deportation without due regard to her circumstances. The case will be appealed and likely to be won by the young person, but without the support from PILC, she may have found herself in a country where she was born but separated from her family and hardly speaking the language.

Finally, we continue to represent people who were unlawfully detained and/or removed from the UK between 2015 and 2017. We currently represent a dozen people, for whom we have gained £150,000 in damages so far.

BEYOND BREXIT

It is still unclear whether or not the United Kingdom will leave the European Union in March 2019. However, there is no doubt that EU nationals will continue to need legal representation as a climate of hostility towards migrants and other foreign-born residents continues to grip the UK. That hostility is shown and expressed when coming into contact with state institutions or organisations acting on the state's behalf, at times when individuals and families are at their most vulnerable and require support. This has little to do with eligibility or entitlement and all to do with persistent scapegoating and institutional racism.