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Dear David,

I am writing to you in response to your call for evidence on the EU Settlement Scheme (EUSS) to provide feedback on how the EUSS is working in practice for victims and survivors of modern slavery and human trafficking (MSHT). This has been informed by discussion and engagement with key stakeholders including lawyers and non-governmental organisations (NGOs) within the anti-slavery sector over recent months.

My response is structured under 4 main headings: general feedback on the EUSS; feedback on use of the online application system; feedback on eligibility criteria and feedback on the guidance that is given to applicants for the scheme.

General feedback on the system

- **Flexibility within the system** – I am aware that there are some positive examples where flexibility has been applied within the system to accommodate the needs of victims of MSHT, however, this is perceived to be reliant on advocacy.
- **Internal co-ordination within the Home Office** – I understand that there have been cases where it has been difficult to gather and transfer information between Home Office departments in support of an EUSS application. For example, I have been told of a case where an advocate had to request information from the Home Office Single Competent Authority to confirm an individual's date of entry into the UK, which then had to be sent by a legal representative to those within the Home Office dealing with EUSS applications. Again, the role of the advocate in this case was significant and I am concerned about how this would operate in practice for those victims without advocacy.
- **Potential conflict between Discretionary Leave to Remain (DLR) and the EUSS** - [EUSS Caseworker Guidance](#) states *"If an applicant has an application pending under the scheme and then makes a subsequent application for indefinite leave or limited leave under another part of the Immigration Rules, the original application will be varied by the second application and must no longer be considered"*. Despite the EUSS being mandatory for those who want to remain in the UK post-Brexit, I am aware that there are concerns about the impact that an application to the EUSS will have on a DLR application and vice versa.

A case study has been provided to me regarding a survivor who was trafficked to the UK in 2017 and subsequently received a positive Conclusive Grounds decision through the National Referral Mechanism (NRM). He is unable to return home due to threats that have been made against him. In May 2019 he was subsequently referred for legal advice where an

advisor made an application under the EUSS for pre-settled status and another advisor made an application to extend his DLR. He was granted pre-settled status with neither legal advisor aware of the potential risks of making both applications. The survivor failed his genuine prospect of work test and as such, his welfare ceased, although his DLR application was made in time. A reconsideration request was submitted, but the Home Office advised DWP that he had pre-settled status and therefore did not consider his DLR. He has now been referred for further advice on a welfare appeal and is being supported with accommodation and food by wider agencies. In March 2020 the victim was granted an extension to his DLR, but support is ongoing to establish how his affects his wider status.

Stakeholders have recommended that victims must be able to apply for both EUSS and DLR as a victim of MSHT and that this should be reflected both in policy and in practice.

Feedback on the online application system

- **Victims without national ID documents** – Stakeholders have highlighted how the current online application system prevents individuals from applying if they do not have a biometric document or it is invalid/expired. There is currently no option to tick that you do not have valid documents and need to ask the government to use flexibility. To enable survivors to be able to use the online system, stakeholders believe that incorporating this option would assist.
- **Email address verification** – I am aware that the current system requires applicants to provide an email address for verification. Stakeholders have expressed concern over this, as some survivors may experience difficulties in using email or may not be set up with an email account. A one-step a one-step telephone verification has been proposed to me as a solution for those unable to use email.
- **Reference numbers** – I understand that those who do not have a valid biometric document have to create a reference number for their identity document in order to progress through the online system, however there appear to be some practice issues with this. I have been made aware of a case of twin children of an EU national who have both been granted settled status, but one cannot access their online verification as they both have the same reference number and date of birth. Progress was eventually made on this, but the case has still not been entirely resolved.

Feedback on eligibility criteria

- **Those who have not been in the UK for 5 years before 30.06.2021** – discussion with stakeholders has identified concerns that EU victims of trafficking already in the UK who will not achieve 5 years of residence before 30.06.2021 will be unable to obtain settled status or indefinite leave to remain, which would allow access to work and benefits. I understand that the government have not yet provided clarity if individuals with pre-settled status will be able to access public funds after 31.12.20 when the transitional period for leaving the EU ends. If survivors of MSHT can only apply for pre-settled status and are not able to work due to mental or physical health issues, or are unable to access public funds, I am concerned that they will be at risk of destitution, a deterioration in their physical and mental health and potentially re-trafficking.
- **Lack of evidence documenting time spent in the UK** – It is recognised that many survivors will not have the full evidence and documentation required to apply for settled status due to their exploitation. I have been told of examples of where solicitors are able to provide

information explaining this gap and extenuating circumstances have been taken into account therefore granting a person settled status. I am concerned however that in speaking to stakeholders, this often relies on extensive advocacy to gather documentation and specialist legal advice to make an application which is not always possible in practice due to difficulties in accessing legal aid and a lack of awareness that survivors are entitled to free legal advice on applications for leave to remain.

Feedback on guidance and legal advice

- **Legal/Immigration advice for victims** – I am aware that the Home Office have allocated funding to several programmes to provide legal advice for EUSS applications, however I understand that some of these agencies are only accredited to OISC level 1 (the lowest level of accreditation required), instead of OISC level 2/3 and/or qualified solicitors. MSHT cases are often highly complex and involve wide ranging interaction with addition rights and welfare claims, therefore it is essential that those providing legal advice in this space have the specialist knowledge and experience. I have been told of cases where survivors have been given incorrect advice, largely by those who are not accredited to do so.
- [EU Settled Status Scheme Caseworkers Guidance](#) – Feedback from stakeholders suggests that the current Caseworker Guidance should be updated to include further detail that goes beyond identification and safeguarding.

I hope that the information above is useful to inform your inspection of how the EUSS is working for vulnerable groups, specifically for victims and survivors of modern slavery and human trafficking.

Should you require any further information, please contact the Victims and Partnership lead within my office at April.McCoig@iasc.independent.gov.uk.

Yours sincerely,



Independent Anti-Slavery Commissioner