

**Template letter – trans discrimination / mismatch between EUSS digital status and identity**

**This template letter was drafted by the Scottish Just Law Centre at JustRight Scotland as an aid to trans people whose EUSS digital status does not match their identity, because the application process rigidly insists on basing it on a passport from their country of origin, where gender reassignment is not legal recognised. It is for people living in Scotland who have already been issued with permanent residence documentation by the UK Home Office that matches their identity. It is not intended as a form of individual legal advice. It is designed for you to copy and paste the content below the line into a letter or email from you to the Home Office.**

The Litigation Unit

Home Office

Festival Court

200 Brand Street

Glasgow

G51 1DH

By email to: snijrteam@homeoffice.gsi.gov.uk

(insert date)

To whom it may concern

(insert your name, date of birth, country of origin and EUSS reference number as a heading, underlined)

This is a pre-proceedings letter written in accordance with the **Court of Session Practice Note No. 3 of 2017**, advising you of my intention to raise proceedings for Judicial Review of the Secretary of State for the Home Department’s decision in relation to my application for settled status under the European Union Settlement Scheme (EUSS).

The matter relates to a mismatch between my EUSS digital status and my transgender identity.

Background

I am a (insert your nationality) national. I was formerly known as (insert your previous name), before changing my name to (insert your post-transition name), when I transitioned gender in (insert the approximate month and year).

Unlike in the UK, there is no process for a (insert your nationality) individual to change their name or gender marker in their passport if they transition gender. My passport is therefore still in my former name and gender.

Having resided in the UK in accordance with the **Immigration (EEA) Regulations 2016** continuously for five years, I acquired a permanent right of residence in the UK on (insert the date on your permanent residence documentation), under **Regulation 15** of those Regulations.

In accordance with **Regulation 19**, this was endorsed in my passport shortly afterwards, by way of Residence Documentation reference: (insert the reference number). A photograph of me is incorporated into this documentation. My name thereon is (insert your post-transition name), confirming the Home Office was satisfied that is my identity. It is important to note that this is consistent with all my other official documentation, such as my (insert the other documentation that is in your post-transition name, e.g. council tax bill, tenancy agreement, UK driving licence, utility bills etc.)

In due course, I applied to the EU Settlement Scheme (EUSS). I was notified by the Home Office’s UKVI European Casework team on (insert the date) that I had been granted EUSS “settled status”, and thereby “indefinite leave to remain” in the UK.

However, as the automated online EUSS application process requires the applicant’s passport or national identity card as proof of their identity, this notification is addressed to (insert your former / pre-transition name), meaning my immigration digital status does not match my identity.

Now that the UK has exited the EU, there are numerous circumstances in which I will need to prove my identity and my immigration status, such as if I need to move to a new tenancy, or to change job or GP, or to register to vote. It is therefore essential that the two match.

The effect of them not matching is that I am faced, repeatedly, with disclosure of my private gender history – I will need to keep “outing” myself as transgender. This is a cause of significant stress for me.

Given that the three-month judicial review deadline runs from (insert the date you were notified of the EUSS decision), when I was notified of the outcome of my EUSS application, I will have no option but to consider issuing judicial review proceedings against the Secretary of State for the Home Department if it fails to amend my digital immigration status to match my identity by (insert a date at least a week before the above date, and not more than two weeks after the date of this letter).

This can readily be achieved by using my permanent residence documentation as the identity basis for my indefinite leave to remain, as opposed to my (insert your nationality) passport.

Judicial Review Grounds

1. *Failure to consider whether to exercise discretion*

Under **paragraph EU2 of Immigration Rules Appendix EU**, an applicant is granted indefinite leave to remain where:

• A valid application has been made in accordance with **paragraph EU9**;

• The applicant meets the eligibility requirements at **paragraphs EU11 or EU12**; and

• The application is not refused on grounds of suitability.

**Paragraph EU11** confirms the eligibility requirements are met where the Secretary of State is satisfied the applicant meets one of seven conditions.

I meet the first, as I am a relevant EEA citizen with a documented right of permanent residence.

**Paragraph EU9** confirms an application is valid where:

• It has been made using the required application process;

• The required proof of identity and nationality has been provided; and

• The required biometrics have been provided.

**Annex 1 to Appendix EU** outlines various definitions used within that Appendix.

“Required application process” is defined therein as an online application, unless GOV.UK states a paper application is required. GOV.UK confirms:

“You cannot use the online service to apply to the scheme if you’re applying as:

• the family member of a British citizen you lived with in Switzerland or an EU or EEA country;

• the family member of a British citizen who also has EU, EEA or Swiss citizenship and who lived in the UK as an EU, EEA or Swiss citizen before getting British citizenship;

• the primary carer of a British, EU, EEA or Swiss citizen; or

• the child of an EU, EEA or Swiss citizen who used to live and work in the UK, and you’re in education - or you’re the child’s primary carer”.

I am not in one of these exceptional groups, and they were therefore required to make an online application.

When I began doing so, it was evident there was no field for explaining my circumstances regarding my name on my passport not matching my identity. I therefore called the EU Settlement Scheme call centre to query this. I was told to complete an online application, and that I would receive a call from the call centre to be given that opportunity. However, I did not receive such a call.]

“Required proof of identity and nationality” is defined within **Annex 1** as:

“a valid passport or national identity card…… unless the Secretary of State agrees to accept alternative evidence of identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control, or to compelling practical or compassionate reasons”.

The Secretary of State therefore has a discretion to accept a document other than the applicant’s passport or national identity card as proof of their identity.

The Secretary of State did not, however, consider whether to exercise this discretion in my case. I submit it would have been reasonable to do so, given that I have a compelling practical reason why I cannot produce a valid (insert your nationality) passport that proves my identity: there is no gender reassignment process in (insert your country of origin), and therefore no process for having transgender names endorsed on passports. It is therefore not possible for me to produce a (insert your nationality) passport in my post-transition name of (insert your post-transition name).

The Secretary of State has already verified my identity as (insert your post-transition name) on my permanent residence documentation. As it is this status that made me eligible for indefinite leave to remain, it is reasonable to expect it to be accepted as poof of identity, in lieu of a passport in the name of (insert your post-transition name).

2. *Violation of Article 8 of the Human Rights Act 1998*

I have the fundamental human right to respect for my private life. The European Court of Human Rights has found EEA countries such as my country of origin, that do not have a gender reassignment process whereby their citizens can change their passport to reflect their identity, to be in breach of that human right.

The Secretary of State’s rigid insistence upon a passport as proof of identity, particularly when this has already been accepted as proved when my permanent residence documentation was issued, compounds that breach.

My gender history is private. It is a disproportionate interference with my right to respect for private life that I be forced to reveal it each time I move, change job, or register with a new GP, or to vote in a new local authority area, which I will be if my immigration status and identity continue to not match.

***Relevant human rights case law***

The European Court of Human Rights held in **B v France (13343/87)** that a failure to amend the civil register to reflect a transgender woman’s post-transition identity violated her right to respect for private and family life under Article 8 of the European Convention on Human Rights, as it led to a discrepancy between her identity on various official documents, such as social security documents and payslips. This meant she had to keep revealing her gender history, which placed her “in a daily situation that was not compatible with the respect due to her private life”.

In **S.V. v Italy (55216/08)**, it held that a failure to allow transgender woman to change her male forename violated her Article 8 right to privacy, as it led to a discrepancy between her name on her civil status records and her appearance, which unlawfully revealed her gender history.

It went on to hold in **Rana v Hungary (40888/17)** that the Hungarian authorities’ refusal to change a transgender man’s name and gender marker on his refugee identity documents because he was Iranian and couldn’t therefore apply to amend a Hungarian birth certificate violated his Article 8 right to privacy, as it meant his gender history was revealed whenever his immigration status was, as it did not match his appearance and other official documentation.

3. *Indirect discrimination*

I submit the fact that all EUSS applications have to be made online via the automated system, unless the applicant is in one of the above limited exceptional groups, leads to indirect discrimination on the basis of the protected characteristic of gender reassignment, contrary to **Section 19 of the Equality Act 2010**.

This is because the online system’s rigid reliance upon passports or national identity cards as proof of identity does not allow for use of the Secretary of State’s discretion to accept alternative proof of identity, which results in a mismatch between identity and digital status when the individual is from an EEA country that does not have a process for changing these documents after gender reassignment.

Conclusion

By (insert the deadline date, as above), I ask that the Secretary of State:

i. Amends my immigration status to match my identity, on the basis of their Home Office permanent residence documentation; and

ii. Confirms the EUSS application process will be made more flexible (as a matter of urgency, given its limited further lifespan until 30 June 2021), so that paper applications can be made by transgender people who cannot change their passports or national identity cards, enabling use of the aforementioned discretion to accept alternative forms of proof of identity.

Yours faithfully

(print / sign your name)