<http://dx.doi.org/10.1080/09649069.2015.1121954>

**United Kingdom welfare benefit reforms in 2013-2014: Roma between the pillory, the precipice and the slippery slope**

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**Abstract**

The 2013-2014 welfare benefits reform, which continues to undergo changes post-the 2015 UK election, have led to a dramatic reduction in welfare rights for European Union citizens. A particularly vulnerable and often discriminated group of such migrants are Roma populations who have come to the UK since the 1980s, initially as asylum seekers and currently as economic migrants. This article presents preliminary findings from an on-going research study that investigates the impact these changes have had on UK-resident EU/EEA Roma migrants and their families, in particular focusing on Income-Based Jobseeker's Allowance and Housing Benefit. The findings indicate that claiming these welfare benefits can be a daunting process for this migrant group, and refusal of a claim may raise further investigations about their right to reside. This, we observe, is the result of an institutional anti-immigration agenda that trickles down from the political elite to administrative bodies assessing welfare benefits claims.

**Keywords**: welfare benefits reform; EU migration; European Union citizenship; Roma; discrimination

# Introduction

In a previous edition of this journal, Charlotte O’Brien argued that many of the measures introduced by the UK government in 2013-2014 limiting the access of EU citizens to welfare benefits are illegal under EU law as they affected all – not just economically inactive – EU migrants, and further, increased societal xenoscepticism. Accordingly, these policy changes have had a negative impact on the UK welfare state in general, representing ‘a pure form of an individualist ideology, potentially lowering our resistance to child poverty and destitution’ (O’Brien, 2015, p. 111). Building on her arguments, we present preliminary findings from an on-going pilot study that spotlights the experiences of EU/EEA Roma citizens and their families in claiming Income-Based Jobseeker's Allowance (IB-JSA) and Housing Benefit (HB), with the intent of identifying the impact of legal changes implemented in 2014.

To date there has been exceptionally limited research in respect of welfare benefit claims made by migrant Roma families who hold European citizenship (Cahn & Guild, 2010) although evidence exists of substantial over-representation of Roma in unemployment statistics in many Member States (FRA, 2012; Rat, 2005). Despite a lack of hard data on migrant Roma benefit claimants, substantial negative media reporting on Roma ‘benefits tourism’ exists at an international level and pertains in common public discourse (EurActiv, 2013; Sheldrick, 2014). However, to the best of

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our knowledge, other than a local level analysis of clients’ cases undertaken by a law centre in Govanhill Glasgow (Paterson, Simpson, Barrie, & Perinova, 2011), as yet no prior research on this topic has been undertaken in the UK. This lacuna in research exists despite the recognition in numerous EU policies that Roma are a particularly vulnerable migrant group, measured across diverse domains, including health (European Commission, 2014), education (FRA, 2014), employment (ERRC, 2007) and experiences of racism and discrimination (FRA, 2009). As such, access to adequate income and good quality accommodation – availability of which is overwhelmingly dependent on receipt of Housing Benefit in high-cost areas such as London and other major conurbations in which Roma migrants settle post-migration (Brown, Scullion, & Martin, 2013) – are critical to the health and wellbeing of this population, as well as impacting on speed of employment and social integration post- migration (Perry, 2012; Birch, 2015).

Indeed as is clear from research currently being undertaken by Greenfields and others into social workers’ contact with migrant Roma households, residence in poor quality, overcrowded private rented accommodation is significantly implicated in relation to statutory social care contact with such families, leading in some cases to public law interventions under the Children Act. Thus, ultimately, access to adequate welfare benefits at least during periods of post-migration stabilisation, pertain to social justice and community cohesion for members of such vulnerable migrant populations both in the UK and in the EU more generally (Clark, 2014; Power, Provan, Herden, & Serle, 2014).

# Methodology and Participant Demographics

The findings outlined below represent preliminary evidence from a pilot study which includes empirical qualitative data gathered from Roma migrants on experiences of accessing welfare benefits; interviews undertaken with support staff on their perceptions of particularly problematic rules which disproportionately impact on Roma claimants; (on-going) data collection from case files of partner agencies involved in the project; and an on-line survey of welfare benefits/legal advice agencies experience of delivering advice services to Roma clients.

For the purpose of this article, we present a thematic analysis of findings from two focus groups undertaken with Roma migrants in Spring/Summer 2015 at two different locations: a major metropolitan area in the South East England and a smaller city in the Midlands. These findings are supplemented by data from a further group interview undertaken with specialist advice/support workers. Via the focus groups, we collected data from Roma participants on knowledge of welfare benefit entitlement pre and post migration, employment access strategies, experience of claiming welfare benefits (including Housing Benefit), complexities pertaining to relevant documentation, success rate in claims, appeals processes, and linguistic barriers pre and post the 2014 welfare benefit changes. The group interview with support workers focused on their knowledge of employment patterns and welfare claim experiences of client groups.

The focus groups with Roma migrants collected data on the personal experiences and subjective opinions of twenty participants, representing a typical spread of Roma migrants in terms of age (20s-40s), gender, marital status (single/married/separated/cohabiting), family status (with/without children) and residence in the UK (from 1 month to 19 years). Participants were all nationals of Slovakia or Poland. The majority of those interviewed were not competent English

speakers, with their preferred languages for communication being Romanes, Slovak, Polish or Russian; hence skilled bilingual interpreters were used to support the focus group. In contrast, support staff – who spoke at least one other 'community language’ – were all fluent in English and either had been resident in the UK for a minimum of 16 years or were British citizens. Table 1 below illustrates the demographics of the focus group participants:

*TABLE 1 Demographics of the focus group participants*

|  |  |
| --- | --- |
| **Age** |  |
| 20-34 | 7 |
| 35-65 | 7 |
| **Gender** |  |
| Male | 8 |
| Female | 7 |
| **Residence in the UK** |  |
| Up to 3 months | 2 |
| 3 months – 1 year | 2 |
| 1 year – 5 years | 1 |
| More than 5 years | 13 |
| **Nationality** |  |
| Polish | 12 |
| Slovak | 7 |
| **Family responsibilities** |  |
| With children | 12 |
| No children | 3 |

# Framing the debate: Roma migrants as an exemplar

In this article, we set out to explore some key findings to date, building on themes from the focus groups/interviews to highlight the concerns of welfare benefit claimants and mapping these against a critical analysis of the 2013-2014 welfare benefits reform identified by O’Brien. We commence by drawing out the major themes and drivers for EU/EEA Roma migration to the UK. This is followed by a brief outline of the reasons for focusing this research on Income-Based Jobseeker’s Allowance (IB-JSA) and Housing Benefit (HB), and a discussion on the impact of the Habitual Residence and the Right to Reside Tests on benefit claims, exemplified in this case study of EU/EEA Roma migrants.

Major themes which have emerged from the research so far are as follows: the lack of an accessible, precise list of documents required to support evidence required to meet the Habitual Residence Test; imposition of an impersonal, one-size- fits-all application of the Right to Reside Test; long, artificially-created delays in assessing welfare benefits applications; rejection of welfare benefits applications without administrators providing clear reasons for such decisions, which ultimately

(see below) may lead to commencement of removal of claimants from the UK; high burden of proof on the jobseekers to show ‘compelling evidence’ of meeting the genuine prospect of work test; the impact of the reduction in translation service at Jobcentre Plus offices; and insufficient, often contradictory, risk and impact assessments of the 2013-2014 welfare reform measures by the UK Government that indicate populist policy-making.

In our conclusion, we consider the implications that welfare benefits changes implemented in 2014 have had (and will continue to have) not only upon migrants seeking work in the UK, but also on UK nationals – and their families – who have previously exercised their right to free movement in the EU. In this way, the trajectory of neo-liberalisation of the UK welfare state that began in 1990s with the introduction of the Habitual Residence Test continues to move in the same direction (Roberts, 2004), seemingly (just) managing to stay (grudgingly) within the legislative boundaries of EU freedom of movement laws.

## Roma employment intentions pre-migration and access to work upon arrival

Overall, preliminary findings lead us to conclude that the Roma migrants we interviewed had remarkably limited knowledge of the benefits system prior to migration and received such information only after they were resident in the UK. Participants made a benefit claim only as a last resort, if, and when, family resources (which were typically pooled) had become inadequate to support an extended household. Advice workers confirmed that many of their clients had very unclear knowledge of welfare benefit entitlements and frequently came into contact with NGOs and advice agencies only after suffering near-destitution, or subsequent to having contacted statutory agencies or acquaintances who advised them that they might be entitled to make in-work or out-of-work benefit claims. From the above, we made three main observations.

Firstly, EU/EEA Roma migration – which, even though similar, has some distinct differences from wider Eastern European migration (Markova & Black, 2007)

– followed the strong family-based networks of Roma households (Matras, Leggio, Constantin, Tanase, & Sutac, 2014). This meant that individuals were able to rely on at least a basic level of intra-community familial support whilst settling in the UK, with respondents unanimously reporting that family and friends supported them with accommodation, food and basic travel expenses for a period of some weeks or months, until they were able to access employment. Following, we found that Roma interviewees who had been in the UK for less than 5 years (especially those from Slovakia) initially relied on family and community support groups/NGOs for information about life in the UK (including access to health care, housing advice etc.) and finding work, or advice on seeking welfare benefits (including in-work benefits) when necessary.

Secondly, the overwhelming majority of focus group participants (65%) indicated that they had come to the UK to obtain work, and not because they were attracted by welfare benefits: respondents did not provide any indication that the intent to apply for IB-JSA, or other available welfare benefits, was a driver in their migration plan. Indeed, general levels of knowledge pertaining to any hurdles to accessing employment opportunities (for example obtaining an NI number) or administrative requirements was found to be low, with only two respondents reporting any clear intention of seeking a particular form of employment prior to migration, and even fewer respondents (one) being familiar with welfare benefits

regimes entitlements or restrictions which might pertain. One participant in a focus group (Slovak Roma who migrated one month prior to interview), when being asked about whether he had an intent to claim Jobseekers Allowance, was completely unfamiliar with this terminology, asking ‘who [what] is jobseeker?’. The above observations are in direct opposition to media representations of the stereotypical ‘Roma welfare scrounger’ seeking to enter the UK to make a welfare claim (EurActiv, 2013; Sheldrick, 2014).

Thirdly, even though English language skills were low or non-existent, EU/EEA Roma migrants were prepared to use all possible means to find work and were ready to do any kind of work to support themselves and their families. In common with many other low skilled EU/EEA migrants (Markova & Black, 2007), Roma participants indicated that access to work was typically negotiated through family connections who speak English, or through searching for a job via newspaper advertisements, or attending Jobcentre Plus. We found no indications that our Roma respondents had any fixed idea on their preferred type of employment. On the contrary, several participants indicated that they would do any form of paid work: ‘anything to bring money into the family’. The support staff interviewed or who translated in focus groups confirmed both that their clients appeared willing to undertake any form of low paid employment and also the precariousness and harsh working conditions experienced by focus group participants: ‘they all [are] working 12 hour shifts in one of the four or five major factories that are around, [e.g.] in plastics [industry] … flour factory, rice factory, chicken factory’ (NGO advice worker). In common with recent studies (Portes, 2015; Dustmann & Frattini, 2013), respondents predominantly indicated that their work is low-skilled and poorly paid, typically involving ‘picking’, ‘driving’ or ‘packing’. Family responsibilities, for example child care or support for elderly or disabled relatives, may also impact on job choice, exacerbating low qualification and limited English language skills. One respondent noted she worked as a ‘packer’, which was undertaken from home, and she was paid per production unit.

## Jobseeker’s Allowance and Housing Benefit in focus

There are two main reasons why our research focuses on IB-JSA and HB. Firstly, EU/EEA Roma migration to the UK is underpinned by employment intentions. Firstly, as extant evidence (Portes, 2015, p. 5) and our focus group evidence shows, the primary aim of EU Roma migration to the UK is to avoid discrimination and marginalisation common in their countries of origin (Brown et al., 2013; Matras et al., 2014) and to access employment opportunities denied to them in their ‘home’ member states (FRA, 2009). In this way, IB-JSA facilitates access to the UK employment market.

Secondly, the young age and the pooling of family resources upon arrival means that there may be a need for housing support for EU/EEA Roma migrants and their families while they are looking for employment. The average age of most recently arrived EU/EEA Roma participants in our focus groups was 35 years, mirroring the general statistical evidence that ‘the UK’s immigrant population has been consistently younger than the native population’ (Dustmann & Frattini, 2013, p. 18), normally between 16-64 years (DWP, 2014a). This factor, coupled with an apparent determination and cultural expectation that employment will be accessed and (at least initially prior to setting up individual households) pooled to support household members/extended family co-residents, is likely to offer some explanation

for the relatively high level of job-seeking behaviour/employment found amongst participants. However, poor English language proficiency and low qualifications among EU/EEA Roma migrants may affect their ability to earn a living for themselves and their families, leading – over time – to the necessity to resort to IB-JSA or HB as a valuable safety net to avoid destitution and enable residence in often relatively high-cost ethnic enclaves, where networks of social capital pertain. Next to this, Roma migrants’ younger age may also imply a greater likelihood of having children under the age of 16 (Dustmann & Frattini, 2013, p. 20). Thus an argument can be made that IB-JSA and HB are closely interlinked and benefit not only migrant workers, but also their dependent family members, a factor which emergent evidence suggests may often be the case for Roma households, particularly when post-migration family reunification has occurred. One respondent (43 years old, male, with two children), indicated that he was hoping to bring his daughter over once the changing welfare benefit situation becomes clearer, but asked her not to travel for the moment.

In combination with IB-JSA, Housing Benefit thus ‘could form part of the package of benefits designed to facilitate access to the job market’ by ‘enabling a person to maintain residence in order to find work (O’Brien, 2015, pp. 116–117). For these reasons, in some EU Member States, housing costs are automatically incorporated into their ‘minimum income’ schemes (Figari, Matsaganis, & Sutherland, 2013), further evidencing the close inter-dependence and importance of these welfare benefits for migrants seeking work.

However, since 1 April 2014, new EU arrivals to the UK who are in receipt of IB-JSA are no longer eligible for HB. This is likely not only to have a negative effect on their employment prospects, but also negatively affect members of the family (especially small children), resulting in further social exclusion and destitution, because IB-JSA is not usually sufficient to pay rent (O’Brien, 2015, p. 116). Indeed, emergent evidence from a linked on-going study currently being undertaken by one author and colleagues from the Universities of Derby and Manchester suggests that social work contact with Roma migrant families typically contains elements of support work around poverty/destitution and housing issues.

Thus, our wider research project focuses on IB-JSA and HB, aiming in one strand of the study to find out what effect the removal of HB may have had on new EU/EEA Roma migrants and their families (DWP & Smith, 2014), with especially reference to the introduction of the ‘Benefits Cap’ and the implementation of the ‘Universal Credit’ regime in October 2013 (Osborne, 2013).

As detailed above, the role of extended family networks is critical to understanding pre and post-migration support tactics amongst Roma participants and how this may affect Housing Benefit claims. Contrary to our expectation, however, none of the focus group participants were claiming Housing Benefit, with by far the most common living arrangement being with extended family members in privately-rented accommodation (19/20). With regard to the two respondents (10%) who had been in the UK for less than 3 months and were thus ineligible to claim HB, the near-universality of living in an extended household and sharing the rental costs suggests both an adaptive response to accommodation expense in urban areas and a commonly expressed preference for co-residence with family members whilst adapting to life in the UK, and developing networks and saving money towards establishing their own household, at which point the cycle of community-supported migration would recommence. In common with findings from studies of Pakistani

migration and accommodation pathways (Robinson, Reeve, & Casey, 2007), once a new household has been set up, often in close proximity to immediate kin, it was regarded by all Roma participants – and confirmed by support workers in one locality

– as ‘commonly accepted’ that accommodation in the new house would be offered to kin participating in chain-migration who were seeking to establish themselves in the UK. Only one focus group participant (female in early 30s with 3 dependent children) reported living in a house with a mortgage, a premises which they had recently purchased after seven years residence in the UK.

## The UK Habitual Residence Test (HRT): in line with Regulation 883/2004?

Under EU law, the UK Income-Based Jobseeker’s Allowance is classed as a social non-contributory benefit (SNCB) that aims to facilitate access to job market (*Regulation 883/2004 on the coordination of social security systems*, 2004). SNBCs, such as IB-JSA, are covered by Chapter 9 and Annex X of Regulation 883/2004. In the UK, IB-JSA falls within the category of income-related benefits that are ‘non- contributory and means-tested, designed to provide a minimum level of income for those out of work without means’ (Roberts, 2004, p. 68). IB-JSA is granted to applicants who comply with the residence requirements outlined under the right to reside test (RTRT) and in the Habitual Residence test (HRT). The first demands that any claimant is an economically active resident in the UK for the purposes of EU law,

i.e. is a ‘worker’ or a family member of a ‘worker’ (de jure residence); whereas the second requires that claimants show actual residence in the UK for three months before a welfare benefit claim is made (de facto residence). Both tests need to be satisfied before the financial situation of a claimant can be assessed by welfare benefit administrative authorities.

O’Brien argues that the three months habitual residence requirement, which was introduced and strengthened since January 2014 (HM Government, 2014, para. 1.35–1.37), may be in breach of EU law (O’Brien, 2015, p. 29), pointing to *Swaddling* (*Swaddling v Adjudication Officer*, 1999), where the Court of Justice of the European Union (CJEU) made clear that EU law did not allow Member States to impose a requirement of an ‘appreciable period’ of residence for establishing habitual residence for the purpose of obtaining SNCBs, (in Mr Swaddling’s case, eight weeks). The CJEU stated that the length of residence could not ‘be regarded as an intrinsic element of the concept of residence’ (para. 30) for the purposes of Regulation 883/2004 and that instead Member State authorities must look at the ‘habitual centre of interests’. The latter includes considering ‘the employed person's family situation; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances’ (para. 30). In other words, national authorities are bound to consider a number of factors – not just the length of continuous residence – when establishing whether an EU citizen is habitually resident in a host Member State. This is because the term 'residence' for the purposes of Regulation 883/2004 means ‘being the place where the centre of interest of the person concerned is situated’ (Verschueren, 2012, p. 56). Arguably, this would imply that any national authorities assessing welfare benefit claims should consider all individual circumstances – including reasons for coming to the UK and the claimant’s future intentions with regard to settlement in the UK (Minderhoud, 2011, p. 163) – instead of blindly applying a three-months residence rule, which – unlawfully – has been treated as an unofficial minimum residence by the UK

adjudication officers and social appeal security tribunals since 1990s (Roberts, 2004, p. 78).

As O’Brien notes, the UK ‘appreciable period’ of residence requirement under HRT was removed post-*Swaddling*, but has been effectively reintroduced via the three-month habitual residence condition implemented on 1 January 2014. Now all EU citizens, including UK nationals who have worked abroad in the EU and returned to Britain must fulfil a more restrictive Habitual Residence Test in order to claim SNCBs such as the Income-Based Jobseeker’s Allowance (O’Brien, 2015, p. 113). This national law position clearly aims to protect the UK labour market and may discourage EU citizens in receipt of a similar benefit in their home Member State moving to the UK to find a job, as, according to the rules of Regulation 883/2004, home-state SNCBs are lost when a person concerned moves to another State. Thus, refusing EU migrant work-seekers ‘a similar benefit in the second Member State on the basis of the Directive 2004/38 … amount[s] to them falling between two stools’ (Verschueren, 2012, p. 59).

# Research findings: the slippery slope of the 2013-14 legislation

## Documentary evidence requirements for HRT and RTR: the experiences of Roma migrants

Despite the three-months residence condition being unlawful under EU law, our emergent findings demonstrate that it is not clear from the outset what exact documents claimants need to provide for the RTRT and HRT to be successfully upheld. It has proved remarkably difficult for us (despite considerable time spent on online searches) to find definitive guidance in relation to acceptable documentation which will support claimants required to undertake the HRT and RTR tests. Indeed the Citizens’ Advice Bureaux guidance (CAB, 2015) is merely able to provide a suggested list of evidence which will support such a claim, including mortgage or rental documents, proof of registration with a GP or evidence of children in school, all of which based on our findings may prove difficult if not impossible for new migrants to evidence. The IB-JSA form, dating from October 2013 (DWP, 2013c), also lists documents evidencing the applicant(s)’s ID, financial status, ongoing education/training (if any) and employment history. Our experience of an inability to clarify what may or may not be accepted and the degree of discretion involved in such a decision is therefore in line with evidence gathered from welfare advisors working with recent Roma migrants who report variance in requests for evidence or repeated demands for additional documentation.

Furthermore, the question of whether welfare benefits applicants meet the requirements of the HRT and RTRT are no longer assessed by undertaking a postal application. Instead, since December 2013, EU/EEA migrants are required to attend a local Jobcentre Plus office for an interview (DWP, 2013b), which increases the chances of lack of uniformity of decision making, as well as the possibility of the lack of knowledge of the officers making the assessment:

[Applicants] used to get HRT forms sent out and we would help to fill them in, but now there is an increasing number of people being asked to attend the Job Centre, so [that] the Job Centre can do the Habitual Residence Test with [them]

… As advisors, we know … [that] people may have derived [residence] rights rather than the [right to reside] themselves; so we know what things to tell people proactively, whereas a job centre worker wouldn’t [ask] ‘is your partner working?’,

‘do you have derived [rights] from anybody else?’, ‘what’s your history?’. They won’t do that; they will just do basic questions and then refuse. (NGO staff member: welfare benefits advisor)

Thus emergent evidence from our research suggests that considerable numbers of applicants cease their claim, in the belief that they are unable to provide the necessary paperwork, thus in essence waiving their EU rights because of the national administrative burdens imposed. The above quotation is also supported by reference to a commonly held belief (interviews with NGO support workers) that welfare benefits applicants could not take a third party to the Job Centre Plus interview to provide information about derived residence rights of workers’ family members. Despite this canard, several EU/EEA Roma migrants indicated that they may on occasion invite a family member or a friend who has had experience in dealing with similar welfare claims – and importantly given limited access to translators – who had better English language skills – to come along to the interview.

We have found evidence (information from interviews and on-line survey) that ‘derived rights of residence’ – e.g. being classed as a family member of a ‘worker’ – are proving of increasing importance not just for the purpose of claiming benefits, but also when it comes to the right of residence itself, particularly impacting those women caring for children or elderly dependents on a full-time basis who are considered not to have a personal right to reside because they are not economically active. Thus dependent relatives fear that they risk expulsion from the UK:

If the husband loses his job, they are in danger of being removed. As long as there is one provider in the family, it will be alright; but if they get ill, or lose the job… As long as [there is] one [person] in the family who has a job, they [the spouse and children] have the right to reside. (NGO advice worker)

With the maximum 6 months residence period for newly-arrived job-seekers strictly observed by the immigration authorities, EU/EEA Roma migrants report that they may be forced to return to their country of origin, if at least one of the family members cannot find work in the UK:

Of course now [there is] the issue with immigration control. They say people are not exercising Treaty rights, so they are being moved. [If] you are not claiming [welfare benefits], you’ve not got work, you’re not coming for work, you can’t prove you have work; so … as soon as 6 months arise, chances are you will have immigration on your door. We know people [who] have had immigration turn up and say ‘you are not exercising your Treaty rights’. They did it at Christmas: the enforcement service came out and did a round-up of homeless Roma from Slovakia, … claiming [that these migrants were] not exercising [their] Treaty rights, because people who are homeless have not claimed anything, they have no work, they have no evidence they have tried to find work; so this is becoming an increasing problem. (NGO advice worker)

This example clearly illustrates the close nexus between unemployment benefits and housing benefits outlined above. If EU/EEA Roma migrants have not attempted to claim IB-JSA (e.g. because they have relied on their families for financial and practical support on arrival and whilst seeking work), they are unable to evidence

job-seeking activities and are ineligible for income or welfare support. Accordingly, in a vicious cycle, as from 1 April 2014 such migrants have been unable to claim HB, thus finding themselves homeless and destitute. Evidence from the on-going associated research project on social work and migrant Roma has found that this has been implicated in some of the more harrowing family law/safeguarding cases reported. Moreover when households are seen as becoming a burden on the UK social welfare system, parents may risk expulsion from the receiving Member State whilst their children are involved in safeguarding cases.

## The right to reside test (RTRT) and the one-size-fits-all approach

As observed by the Commission at the oral hearing of a pending case against the UK with regard to family benefits, the current RTRT is problematic in a number of ways (*Notes from Court hearing in Case C-308/14 Commission v UK*, 2015).

Firstly, it is likely to be considered discriminatory on the grounds of nationality, because UK and Irish nationals (i.e. persons from the Common Travel Area) are not required to show that they have de jure residence (the right to reside), so they only need to satisfy the HRT (de facto residence) in order to apply for UK SNBCs, including the IB-JSA. As our research shows, prior to April 2014, when job-seekers were able to claim HB, the RTRT could bar EU/EEA Roma nationals from applying to obtain HB, even if they had been resident in the UK for longer than three months: ‘e.g. someone [who] came last year May/June, … were rejected just because they have no rights to reside, they cannot pass residential rights’ (NGO advice worker).

Secondly, while there is no requirement in the UK for those EU citizens who have resided for five years in the UK to register officially as permanent residents, as per Articles 1(b) and 16 of EU Citizenship Directive (*Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, 2004), a document certifying permanent residence makes it easier to satisfy the RTRT. Vice versa, if an EU migrant has not obtained a permanent residence certificate and is not exercising their economic ‘Treaty rights’, s/he will fall outside the RTRT and thus will be unable to claim any benefits in the UK. Hence, as Puttick observes, the most vulnerable are those migrants who have been in employment, but are unable to *maintain* worker status because they either

(a) ‘cannot bring themselves within the categories of retention’ and do not satisfy the RTR (Puttick, 2015, p. 2); or (b) having sought support from IB-JSA and HB, their earnings fall below the minimum earnings threshold put in place on 1 March 2014.

Therefore, the questions arise as to how welfare-rule-literate EU migrants need to be, in order to fathom all these gaps in their legal status? Clearly, to understand the UK welfare benefit system and be able to navigate it, one requires not only good English language and general literacy skills, but also – typically – expert professional advice. It is thus extremely difficult to see how vulnerable EU/EEA Roma migrants could meet all the above requirements, and avoid the stigma of being perceived of as ‘benefit tourists’. Other evidence gathered from focus groups and interviews suggests that even for those Roma migrants who claim residence in their own right (as opposed to subsidiary rights as family members of a ‘worker’) have been required to demonstrate residence in the UK in excess of five years to satisfy the HRT and RTRT indicating that a ‘blanket’ set of guidance or requirements are being implemented which fails to take account of individual circumstances or previous residence in the UK. These materials will be considered further, in outputs arising from this on-going study.

Thirdly, O’Brien observes that the RTRT is applied in a generic way, which excludes EU/EEA migrants who have been resident in the UK for a number of years; purely because they or their family members *at the time of application* for a welfare benefit have not engaged in economic activity for a certain period of time (which needs to be formally evidenced with the state authorities), they may fall outside the limits of the right to reside. This can happen, for example, to former workers, who have made National Insurance contributions in the past on which they have seen no return and who have been out of work for a while (O’Brien, 2015, p. 115). This can also impact on Accession State nationals, who were not duly registered on the Worker’s Registration Scheme, as their years of work prior to the end of transitional measures would not count towards being considered to be a worker for the purpose of obtaining welfare benefits or for acquiring permanent residence, even if they paid all taxes and National Insurance contributions (*Zalewska v. Department for Social Development*, 2008).

Therefore, as our data confirms, in practice the RTRT is applied to all work seekers in the same way, without distinguishing between ‘people who have worked and then become jobseekers (without retaining worker status)’ and newly arrived jobseekers. The latter ‘have a total of six months’ right to reside as jobseekers, with the first three unpaid’, while the former ‘face losing their right to reside after only three months of job seeking’, hence being treated less favourably as compared to new arrivals (O’Brien, 2015, p. 115). O’Brien also points to UK case law (*Secretary of State for Work and Pensions v MK*, 2013, para. 69–72) instructing that those who have become involuntarily unemployed have to register with Jobcentre Plus without ‘undue delay’; otherwise, they will be treated as newly-arrived jobseekers. However, ‘many workers on becoming involuntarily unemployed do not immediately sign on as jobseekers, because they initially look for work using their own networks, and would rather not claim benefits while they still have earnings saved up’ (O’Brien, 2015, p. 123). This danger of applying the ‘blanket rule’ to different personal circumstances has been further noted as problematic by Advocate General Wathelet in his Opinion in the *Alimanovic* case (*Jobcenter Berlin Neukoln v Alimanovic*, pending) and is supported by findings from our focus groups, to be discussed in more detail in the project’s final report and future publications.

## Xenoscepticism of UK welfare benefits authorities

Our emergent data suggests that a key concern of EU/EEA Roma migrant participants is that social welfare administrators and decision makers fail to identify the holistic circumstances of the claimant for the purposes of ascertaining their HRT/RTRT to access to SNCBs. Most commonly, concerns were noted about the degree of decision makers’ scepticism (xenoscepticism) regarding the genuine nature of their claim and reportedly seeming reluctance or lack of interest in taking into account the length, continuity and general nature of actual residence, including existing family connections to the UK. Added to this, some respondents (and support staff) suggested that there appeared to be tolerance or even tacit approval of delaying tactics such that Roma claimants were constantly being sent back and forth to seek more evidence, or return for subsequent interviews, delaying the ultimate outcome and deepening social exclusion, poverty and destitution:

Very bad experience, because he applied for housing benefits because of his illness, he is not fit. When he went to … City Council he was told to bring old pay

slips, e.g. [last] 2 months, and when he brought it to the Council, they told him he had to bring something else. When he got all the documents, they wanted something else, so he has a bad experience. He has to pay for rent, otherwise he will be homeless, it is very complicated and he is not fit to go to work and he does not have enough money to pay the rent. He expected a more compatible communication with the council regarding benefit. (Translator explaining the experience of Roma migrant from Slovakia – resident in the UK for 5 years, formerly employed)

I am waiting one month, I am calling every week. They say the decision is on 21st May. I called yesterday, they say they are missing paper of the residence test … No pay for me to house and I am waiting. (Female Roma migrant from Poland, resident for four years in the UK, formerly employed, prior to that on IB-JSA)

You get evicted by landlord if rent is not paid; and you are waiting for decision for four months, and then they are going to discontinue housing benefit because they link the income to housing benefit. If you wait long enough, they don’t just reinstate - they make you make a new claim for housing benefit, which again will take another three or four months while they process the new claim. Then you have to apply for back-dating, which may or not be granted. (NGO advice worker)

Interestingly, although there was no indication that Roma were particularly singled out for such treatment in the UK – and indeed anecdotal evidence and other studies suggests that Roma migrants often prefer residence in the UK because of the general lack of Romaphobia and multi-cultural nature of Britain – advice workers noted that this ‘administrative delaying strategy’ is not new and seems to be deeply embedded in the anti-immigrant institutional culture:

[Defining] ‘compelling evidence’ [for the purpose of the genuine prospects of work test] … reminds me … historically of the lack of definition or lack of clear list of documents [that] needed to be provided for Romanian nationals prior to their full rights of the EU.. between 2007-2014… it was very unclear and yet exceptionally difficult for Romanian self-employed workers to prove that they are genuine workers, and yet there wasn’t a clear defined list of what sort of papers needed to be provided … When I used to do case work with Romanian nationals … this is what caused exceptional delays and it seems this is happening again. When you don’t have a clear definition of something that you can interpret in any way you want, you can justify delays. You [support workers] can argue it until the cows come home and not get anywhere. (NGO advice worker)

The lack of precise reasons for rejection was clearly the cause of great frustration for Roma migrant families we interviewed. One respondent (resident 14 years, from Poland) recounted how his two adult children, permanent residents in the UK and previously employed, claimed IB-JSA when their jobs ended. One young woman received the benefit, while the other one was refused:

Both daughters claimed online at the same time, they went for the signature interview together at the job centre. The [first] daughter got the positive decision after a few weeks and everything was fine, [while the other] was refused after three months. [The second child] was treated like she had just come to the UK,

though she has been here for 19 years, and he [the father] had been working for 10 years. How to understand that? One daughter was accepted, and the other refused? (Translator in focus group explaining the situation of the Roma migrant)

Arguably, the practical application of ‘habitual residence’ tests in national contexts must not depend on which person in a state institution is assessing the case, and the treatment of each case needs to take into account all personal circumstances. It is of course possible that the person assessing the second daughter’s application believed her age was too high (23 years old) to qualify as for the right to reside as a ‘family member’ under Article 2(2)(c) of EU Citizenship Directive. However, it is equally possible that the authorities did not take into account her previous employment and long-term residence, both of which show real a genuine link with the UK (*Collins v Secretary of State for Work and Pensions*, 2004).

Following the above, our focus group findings indicate that the authorities treat those who base their residence on their own right of residence in the same way as those whose residence derives from being a family member of a ‘worker’. Furthermore, permanent residents who may reside as family members still appear to be required to show they have the right to reside in their own name, despite having been legally resident as family members in the UK for more than 5 years. Thus, our research shows that in administrative practice the right to reside seems to be applied as a 'blanket' test, without taking into account all individual circumstances, or previous – derived or even permanent – residence in the UK. These shortcomings on the practical application of the RTRT by UK authorities clearly evidence concerns of many welfare advice workers supporting EU/EEA Roma migrants. Accordingly, the above narrative illustrates what AG Wathelet has described as illegal in EU law: the application of the generic right to reside as ‘a single condition that is too general and exclusive in nature… to the exclusion of all other representative elements [goes] beyond what [is] necessary’ in seeking to protect national welfare benefits system (Opinion of AG Wathelet in (*Jobcenter Berlin Neukoln v Alimanovic*, pending, p. 108). Interestingly, the Court of Justice has already ruled that UK Courts can set aside such a generic test in the retention of worker status scenarios, as illustrated by formerly economically-active claimants like Jessy St Prix who, having previously worked as a teaching assistant, became economically inactive and sought Income Support, but was considered by national authorities having lost worker status as a result of pregnancy (*Jessy St Prix v Secretary of State for Work and Pensions*, 2014).

## Equity and the role of individual judgement in the ‘genuine prospects of work’ test

The above vignettes demonstrate the lack of clarity and reliability in administrative decision-making processes. It is disturbing that two siblings with comparable residence status, work experience and evidence showing genuine prospects of seeking work experienced completely different outcomes; on the face of it, because their applications were assessed by two different officials. O’Brien supposes that such events can occur because the decision-makers are given guidance about retaining jobseeker status and retaining worker status which is ‘is complicated and liable to confuse’ (O’Brien, 2015, p. 117). Similarly, the burden of proof under which the IB-JSA applicant has to demonstrate that they are seeking work is much higher under the newly-introduced ‘genuine prospects of work’ test. O’Brien argues that this

test is significantly stricter than the one laid down by the Court of Justice in *Antonissen*, (*R v Immigration Appeal Tribunal, Ex parte Antonissen*, 1991) requiring an applicant to have secured a job, rather than being in ‘the active ‘seeking’ part of the process, … or waiting for likely imminent employment’ (O’Brien, 2015, p. 117). Thus the evidence of genuine prospects of work has to be ‘compelling’, including documentary evidence of an actual job offer and evidence that makes it ‘likely the claimant will receive a job offer imminently’ (DWP, 2014c); otherwise chances of success are very slim. As the father above reported in relation to his unsuccessful claimant daughter: ‘she was doing everything: internet, papers, adverts in shop windows, she got reference numbers, phone numbers, did everything she was asked to. After 3 months – goodbye [claim dismissed].’

According to the data gathered, the assessment of ‘compelling evidence’ depends to a great extent on who is looking at the claim and it is frequently impossible to ascertain the reasons for rejection, because the letter stating the outcome does not provide reasons for the decision, making it difficult to appeal in national courts or tribunals:

There was a letter, very strange letter: [that] there was no compelling evidence … that you have a genuine prospect of work. There is no definition of what is compelling evidence, [which] is the problem. Compelling evidence could [depend on the] judgement of advice worker. It is very difficult, because when we go to appeal, we ask for a list of reasons, so we know exactly why. [If] they just say they have no compelling evidence … it is difficult to appeal. (NGO advice worker discussing the rejection letter of client’s benefit claim)

Particularly alarmingly, as one advisor further noted, a Kafkesque cycle could occur on the occasion of a rejection of a welfare benefit claim: they had experienced state authorities questioning the applicant’s right of residence in the UK once a welfare benefit claim had failed:

I notice the content of those letters have changed. [People] used to get letters saying ‘you are not entitled’ [without a reason why], and [we] would go back for a statement of reasons. But now the letters are saying ‘you are not entitled, but also now we need to consider whether you have a right to reside here’, so [they are questioning] on what other basis are you residing here if you are not a job seeker. They never used to put things like that in the letters; it was ‘you are not entitled’ and go on your way.

The fact that an applicant’s right of residence may be questioned following an unsuccessful welfare benefit claim is extremely alarming. However, this is lawful under UK law: it is based on the recently updated Government guidance that is to be followed when applying the Immigration (EEA) Regulations 2006 (Home Office, 2015). According to regulation 19(3)(a), an EEA national or their family member (or any person with a derivative right of residence) can be administratively removed from the UK if they have never had or stopped having a right to reside. Administrative removal as distinct from deportation, only prevents re-entry into the UK for 12 months; and then still only if, upon re-entering the UK the EU/EEA citizen is unable to show they are exercising their Treaty rights (i.e. meet the right to reside test immediately upon re-entry).

The administrative removal regime stands in stark contrast to the limited possibilities for deportation/expulsion, which normally follows after a migrant is convicted of a crime. In this way, administrative removals are used as the default tools of choice when handling ‘underserving’ migrants: ‘the preferred choice to deal with immigration wrongdoers is through executive removal because a criminal prosecution and the proceeding that follows are more time-consuming and expensive than an administrative one’ (Cherti, 2014, p. 19). Such mechanisms, underpinned with a politicised anti-immigration agenda and apparent xenoscepticism of the welfare benefits administrative system support what appears to be the primary goal of the immigration service: the effective removal of irregular migrants from the UK (Weber & Bowling, 2004).

In terms of EU law compliance, Shaw observes that the UK administrative removal system is not explicitly covered by EU Citizenship Directive (which instead regulates expulsion under Article 28), and that the wide-ranging powers and wide discretion given to Immigration Officers under the Immigration (EEA) Regulations 2006 may mean that the resulting practise can infringe the EU free movement rules (Shaw, 2008). We argue that this is indeed the case, especially if the right to reside test is set aside in the pending case C-308/14 *Commission v UK*, and highlighting Puttick’s (2015, p. 3) call that ‘national authorities should be sure to carry out an effective review, case-by-case, and apply proportionality requirements fairly before removing residence rights.’

Moreover, we would stress that, in the broader context, such administrative practices negatively impact community cohesion: populations constructed as ‘undesirable’ are subject to hostile public discourse, exclusion and expulsion, such as notoriously occurred in France in 2010 (UNHR, 2012). We suggest that the impacts of such subversion of legislation to enforce de facto exclusion and, at its worst, administrative removals, are utterly outwith the spirit of the EU Charter (*Charter of Fundamental Rights of the European Union*, 2010) and associated Treaty principles, and (per the discussions above on destitution and social services engagement) potentially in breach of international obligations pertaining to children’s rights (*The United Nations Convention on the Rights of the Child*, 1989). Overall, it would thus appear that diminishing access to welfare benefits is operationalised in a quasi-covert manner, to create a politicised social ‘bordering’ process (Kolosov & Scott, 2013), in which the legitimacy of EU/EEA Roma migrants’ rights is subverted by state policies and procedures.

## Limits on Jobcentre Plus advice and interpretation services

In relation to the value of advice and recognition of education as an alternative to seeking employment, or as an option selected to aid in employability when work is unavailable, our preliminary findings indicate that Jobcentre Plus staff, whether through lack of genuine knowledge, or obstructiveness, may fail (contrary to discretionary powers) to take account of educational training undertaken by claimants. Similarly, a number of respondents, both Roma claimants and advice centre staff, noted that older migrants or those unfamiliar with IT were frequently not offered the assistance they required to demonstrate that they were validly seeking work. Limited access to interpretation services were also noted as a significant practical hurdle to be overcome when seeking to engage with Jobcentre Plus services.

As O’Brien observes, at Jobcentre Plus interpretation is now only available for explaining the duties (under e.g. Claimant Commitment), but not the rights of the claimant, with the ‘the implicit direction … for advisers to muddle through where they can’ (O’Brien, 2015, p. 121). She also points to the NIESR data, connecting

… lack of English language skills with social exclusion – that those who did not speak English were less likely to use services, and more likely to rely on friends and family. In the context of public employment services, reduced access to interpretation might repel migrants from engaging with Jobcentre Plus at all (O’Brien, 2015, p. 121).

Thus, the extremely limited use of interpretation service at Jobcentre Plus covertly reduces welfare benefits claims, even though the Government has (arguing in language which mirrors Equality Act duties) proposed that people will learn English anyway if they want to get a job (HM Treasury, Morgan, DWP, & HMRC, 2014), suggesting that a freeze on interpretation services would ‘promote equality of opportunity and help foster good relations between different groups’ (O’Brien, 2015,

1. 121). This supposition, which is likely to increase reliance on the ‘ethnic economy’ and potentially expose job-seekers to low wage or exploitative employment opportunities gained through more well-established migrants (Fremlova & Anstead, 2010), is not supported by robust evidence. Indeed on the contrary: available research shows that translation and interpretation when helping with job search supports integration and social cohesion (O’Brien, 2015, p. 121).

One of the respondents in the focus group, resident in the UK for five years, who applied for HB, told us that he uses his current language skills (Russian and Polish) to communicate with migrants from other EU Member States (Lithuania, Poland), whose English language comprehension and expression may be more advanced, and asked them for help when dealing with welfare benefits authorities:

When he went to the Jobcentre, [they] gave him the declaration in English. So when he first came to the country [as a single man], he couldn’t read or speak [English], so it was hard for him, as he didn’t understand anything. He made a claim, but he had to provide some documents, he didn’t speak English at that time, so it was difficult for him, so he just left it. And now this is the first time claiming since he became ill … because he is with a partner, and he has an illness, and she [the partner] speaks English. (Translator in focus group explaining the situation of the Roma migrant)

Thus our research shows that applicants may give up pursuing their welfare benefit applications because of poor English skills, only to re-apply at a later stage when help from family/friends becomes available. Such a delay may mean that during this time the rules have changed, impacting on their original entitlement to that specific benefit, leaving an applicant in a more difficult financial position than at the point when the original claim was made.

# Discussion: Diminishing social justice in the UK and in the EU?

In this article, we have engaged with the theory posited by O’Brien that changes to IB-JSA and HB have not occurred in a vacuum. The introduction of Universal Credit and ‘the abolition of the present structure of means-tested benefit system’ in 2013

(Osborne, 2013) has led to the ideologically-driven transformation of the whole British welfare state, underpinned by political neoliberal concepts which seek to ensure that ‘work pays’, but only for those who are able to find well-paid jobs (BBC, 2015). O’Brien concludes that, taken together, the 2013-2014 welfare benefit changes are deeply concerning, because

they challenge the fundamental principles of EU law – free movement and equal treatment; secondly they inculcate a xenosceptic legal and administrative culture, placing this cohort of the ‘precariat’ in an even riskier position; and thirdly, they import neoliberal ideals into the welfare system, reducing resistance to child destitution (O’Brien, 2015, p. 124).

This latter point is explored further in a forthcoming publication on social work engagement with migrant Roma households, which demonstrates the escalating and consecutive downward spirals into which unsuccessful welfare benefits claimants fall, with destitution leading in many cases to s47 Children Act interventions, focused on neglect associated with poor housing condition and food poverty (Greenfields et al, forthcoming, 2015),

The UK welfare reforms are potentially even more problematic over the long- term, as they appear to target a very small population (EU/EEA migrants), but in reality they affect much wider segment of the society, including specific ethnic groups with EU citizenship (e.g. Roma), as well as UK nationals. Accordingly,

An accentuated welfare precipice for EU migrants has consequences for the overall structure of the welfare system….. How civilised a society actually is can be judged by how it treats a vulnerable minority. And the rules have significant ramifications beyond the claimants in question (O’Brien, 2015, p. 112).

Despite the transformational nature of the reforms, it does not seem that the 2013-2014 welfare benefits legislation has been introduced on the bases of policies driven by reliable economic and social data; this raises questions whether it was instead grounded in ideological and populist anti-immigration rhetoric. The UK government’s impact assessment of the introduction of the three-month residence requirement under HRT states that there are no monetary costs to this change, because of ‘the lack of detailed data and the uncertainties regarding future migration patterns’; at the same time, non-monetised costs will include ‘an extra element of the Habitual Residence Test to administer’ (DWP, 2013a, p. 1). The impact assessment on the removal of HB for EU/EEA nationals projects £70m in monetised costs and the same amount in benefits, also noting ‘the possibility that migrants may be less likely to come to the UK, or that they are more likely to find work as a result of the greater work incentives from lower out-of-work state provision’ (DWP, 2014b, p. 2), completely ignoring the cumulative effect of the welfare benefits reform observed in the Government’s own equality analysis assessment, noting that that lone parents ‘could face an increased risk of homelessness’ (DWP, 2014a, p. 7), as in four of those affected by the removal of Housing Benefit have dependent children (DWP, 2014a, p. 8). Hence, the absence of Housing Benefit support for EU/EEA jobseekers increases the risk of them falling into ‘difficult circumstances’, especially if they are the ‘vulnerable, such as families with children’ (DWP, 2014b, p. 5). With local authorities running on extremely short on budgets (Toynbee, 2003) and with the

strengthening of HRT and RTRT for newly-arrived EU/EEA nationals, it is difficult to see how they could effectively ‘claim JSA(IB) for a period and in certain circumstances they may be able to apply for support from the Local Authority’ (DWP, 2014b, p. 5).

Taking an ethical cost-benefit analysis which considers social good as an ‘asset’, one could question how DWP defines costs: are these only immediate costs of implementing the new rules (i.e. associated with Housing Benefit claims), or do these also take into account other long-term fiscal and social welfare costs, many of which are likely to be shifted to charities and civil society who care for the homeless and those experiencing destitution. We would argue that the recklessness of the implementation of the Government’s policies is visible in the impact assessment of the most recent legislation that introduces freeze of JSA(IB) and HB for four tax years and reduces social housing rents (“Explanatory Notes to the Welfare Reform and Work Bill as introduced in the House of Commons (Bill 51),” 2015), when such assessment of public and individual wellbeing is not required, because ‘no [fiscal] impact on business, charities, voluntary bodies or the public sector is foreseen’ (“Explanatory Note to Regulations amend the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003),” 2014).

In our focus groups, we asked EU/EEA Roma migrants what they knew and how they felt about the forthcoming changes, as announced post-2015 election. Only one participant was aware of the reforms taking place, but not of the specific changes proposed or implemented. When informed that the Government may be considering imposing a four-year residence requirement before any benefit could be claimed, even by the working EU/EEA migrants (Barker, Foy, & Parker, 2015), some respondents suggested that they might accordingly consider returning to their countries of origin, despite experiences of racism and social exclusion (FRA, 2009). Similarly, more than one respondent (and also NGO staff) warned that if this change is introduced, there are likely to be more homeless Roma, more families and children living in poverty and in poor health, circumstances which are not only ethically concerning, but – in the words of one of our focus group respondents – ‘scary to think about’. Given the findings emerging from the linked social worker and Roma engagement study, this provides sober food for thought (Greenfields et al, forthcoming 2015).

# Conclusion

Whilst this paper reports merely on preliminary findings from the on-going study, we consider that the most important elements of this research to date can be summarised are as follows:

* 1. There is no clarity as to the advance list of documents which EU/EEA Roma migrants need to produce for the assessment of their right to reside; this often causes delays and results in abandoning of many welfare benefits applications.
  2. RTRT is applied by authorities without taking into account particular personal circumstances, e.g. the derived rights as a family member of a worker; non- certified permanent residence of longer than 5 years; involuntary loss of employment in the past; or delay to apply for IB-JSA after losing a job.
  3. The removal of Housing Benefit affected some families in difficulty, e.g. where the breadwinner of the family unit had become ill.
  4. If IB-JSA is refused, there is a real risk of expulsion after six months of residence for jobseekers and their families, which is likely to be contrary to EU law (depending on whether a detailed individual assessment of all circumstances is made).
  5. There is a lack of clear guidance on what constitutes compelling evidence for the purpose of the genuine prospect of work test.
  6. The absence of the statement of reasons in the letters rejecting welfare benefit claims means that claimants are unable to challenge these decisions before courts, which prevents access to justice.
  7. The removal of interpretation services at Jobcentre Plus increases social schisms between the English-speaking local population and EU/EEA migrants who can communicate among themselves in a number of Eastern European languages (Polish, Russian, Slovak), thus inhibiting social cohesion and integration in the UK.
  8. The Habitual Residence Test, at present set at three months and arguably contradicting *Antonissen* and *Swaddling*, is currently proposed to be extended to four years, raising UK law compatibility issues with the EU free movement law.
  9. The impact assessment of the 2013-2014 welfare benefit reform either has not been carried out properly by the Government, or is patchy and even contradictory across the different measures, showing that policies are not backed up by substantive evidence, but driven by populist politicised agendas.
  10. The changes implicitly communicate to benefit claimants and the public that EU/EEA Roma citizens are ‘unwanted’, which may influence their decision to migrate back to home countries and face discrimination there, despite this potentially being a reason for asylum claims in the UK some 19 years ago.

Sadly, the impact of the 2013-14 welfare benefits changes, as viewed by EU/EEA Roma migrants we interviewed, is that the Government’s aim is not just about limited access to benefits, but also to reduce access to UK territory in general (O’Brien, 2015, p. 124), replicating the centuries of discrimination and economic exclusion experienced by these vulnerable minority groups (FRA, 2009; ERRC, 2007; Matras et al., 2014). Moreover, policies aimed at restricting EU migration in any possible way not only go against the core of the EU freedom of movement principle (and breach Arts 45, 49 and 56 TFEU and the Charter), but the cumulative effect of neoliberal anti-migration legislation is a creeping incrementalism of restriction of welfare benefits rights, impacting not only on EU/EEA migrants, but also on UK nationals claiming benefits upon their return to the UK (O’Brien, 2015, p. 125 on the *Swaddling* case). This is self-evident from the UK’s observations in many cases before the Court of Justice (e.g. *Familienkasse Sachsen v Tomislaw Trapkowski*, pending, where UK has intervened), as well as from national case law (*Secretary of State for Work and Pensions v PS*, 2009) that ‘other Member States ought to be responsible for UK national benefit claims , even in cases when UK nationals have returned to seek work in the UK and are receiving JSA and UK national insurance credits’ (O’Brien, 2015, p. 125). At the same time, there is a marked reluctance by the British authorities to permit ‘exporting’ of welfare benefit payments under Regulation 883/2004 by EU/EEA nationals remitting welfare payments such as Child Benefits to their country of origin, leading Poland’s foreign minister, Radoslaw Sikorski, to ask publicly: ‘if Britain gets our taxpayers, shouldn’t it also pay their benefits?’ (BBC, 2014).

Overall, ‘taken together the changes paint a picture of undeserving benefit tourists. This culture has resounding effects on all EU migrants… This lack of security again creates a discriminatory, alienating way of life for the EU migrant worker, damaging to health – a life on the precipice’ (O’Brien, 2015, p. 126). This danger is particularly profound in the case of Roma migrants, experiencing such profound inequality and social exclusion in their countries of origin, that migration has all too frequently been perceived as the only way to escape a lifetime of poverty and risk (FRA, 2009). Thus, as O’Brien notes (2015, p. 130), a view with which we can only concur, ‘the pillory and the precipice experienced by EU migrants may lead to a slippery slope of degradation for our social conscience, exacerbating xenoscepticism and shaping the current and possible future directions of our welfare state’.

# Acknowledgements

We wish to thank Roma Community Care (RCC) and the Roma Support Group (RSG) for their participation in this research as community partners. Both agencies have provided advice and assisted with the recruitment of research participants for this pilot study. The views expressed in this publication are our own.

# Disclosure statement

No potential conflict of interest was reported by the authors.

# Funding

This research was conducted as part of an SLSA funded project ‘Access to welfare benefits for EU/EEA Roma migrants in the UK after the 2014 benefit reforms’, with financial assistance to support additional transcription costs provided by Professor Alison Chambers (Pro Vice Chancellor’s Fund, Faculty of Society and Health, Buckinghamshire New University), for which we are extremely grateful.

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