

Mr Espinera
Department of Communities and Local Government
Communities and Local Government
Zone4/J1
Eland House
Bressenden Place
London SW1E 5DU

12 August 2010

Dear Mr Espineira

EU Migrants

Thank you for your letter of 9 August 2010.

ILPA, the AIRE Centre, and the Migrants' Rights Network have been monitoring procedures taking place at street level under the terms of the 'No One Left Out: Communities Ending Rough Sleeping' strategy as it has affected nationals from the EU states.

In the final paragraph on the first page of your letter you place the current strategy in a welfare context, that of aiming to assist vulnerable people by connecting people to family, friends and support services, helping the 'rebuild their lives, and make more informed choices about returning to work in England in the future.' You refer us to the 'Routes Home' website sponsored by Department of Communities and Local Government, the Mayor of London and Thamesreach.

All the evidence that has come to us strongly suggests that welfare considerations are not in fact taken into account by the UK Border Agency in its approach to this pilot. The information we have received from people working directly with the homeless suggests that the UK Border Agency's typical approach to these matters is limited to identifying rough sleepers as EU nationals and then serving them with a notice to report within two weeks to a police station with evidence that they are either in employment or education. The persons asked to report appear to be

informed that the inability to provide assurances of engagement in either employment or education within this time span will mean that the individual concerned cannot rely on any rights under EU law and will be liable for removal from the UK.

The pilot has to be examined from the standpoint of its compliance with EU law and the rights afforded to EU citizens under the provisions of Directive 2004/38/EC and Regulation 883/04/EC in particular, in respect of both:

- homeless EU migrants' access to benefits; and
- detention and forced removal of EU migrants.

The pilot also has to be examined from the standpoint of good practice with regard to the welfare needs of the people concerned.

A review of the performance of this pilot project is now urgently needed. We understand that the approaches developed in this work will shortly be considered with a view to the possibility of rolling it out to other parts of the UK. In our view it is essential that any review include consideration of:

- (a) Compliance with the letter and the spirit of the EU law;
- (b) Compliance with the good practice standards which have been designed to ensure that the welfare needs of the individuals concerned are uppermost;
- (c) That the pilot in other ways contributes to a wider discussion about alternative ways of supporting communities vulnerable to homelessness prior to the loss of homes; in the case of EU nationals by, for example, ensuring they have access to housing benefits and housing advice prior to the loss of home.

We would welcome the opportunity to discuss with your department and other concerned parties, including the UK Border Agency and homeless support organisations, how these objectives can be secured prior to any roll-out of this project to other parts of the UK. We consider that a roundtable discussion would be a constructive way to take this discussion forward. Would the Department of Communities and Local Government be prepared to host such a roundtable?

We should welcome the opportunity further to discuss this proposal and the logistics of organising such a discussion. We consider that our three organisations have a great deal to contribute to such a discussion, both in terms of good practice and in terms of understanding the complex EU and domestic legal provisions that apply.

The need to deal with this matter and to ensure that the pilot proceeds in accordance with the law is urgent. You will be aware that Government policy on a number of issues concerning the welfare needs of EU nationals has been considered by the EU authorities. The European Commission, following information that ILPA and AIRE have provided, has sent the UK authorities a "reasoned opinion" on the unlawful refusal of housing and homelessness assistance and other forms of social assistance to certain EU nationals in the UK, which is the first step in "infringement proceedings", by which the Commission could take the UK before the Court of Justice of the European Union. We suggest that it is important to consider whether

the procedures adopted in this project are also vulnerable to similar complaint proceedings.

We look forward to hearing from you about the proposal for a roundtable discussion on this policy with you and hope for your early response.

Yours sincerely

Sophie Barrett-Brown, Chair, ILPA
Adam Weiss, Assistant Director, The AIRE Centre
Don Flynn, Director, Migrants Rights Network

Cc Eddy Montgomery, UK Border Agency
Tony Dalton, UK Border Agency