

The Cost of Free Movement for Vulnerable (EU) Citizens in the UK (pre and post Brexit).

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Abstract

The portfolio of work presented here (which forms the basis of this PhD) catalogues the lives of EU migrant workers, their experiences of coming to the UK, their living and working conditions and how they navigated their new immigration status in the period leading up to Brexit and now via the UK's Withdrawal Arrangements post-Brexit. The overarching enquiry of this work is to understand what legal problems this group faced in the context of utilising their EU free movement rights. The consistent theme which emerges from this enquiry is that of precarity and its related outcome of vulnerability. Although free movement can be hailed as one of the great successes of the (EU's) internal market, my work shows another side to this success through the experiences of those in low paid, precarious work and unstable low-quality housing/temporary accommodation (e.g. shared housing, caravans). Living and working conditions of free movement can be equated with poverty, exploitation, precarity and vulnerability. Scholarship on this understanding of free movement is limited to date, and this portfolio of work is the first to comprehensively catalogue and analyse these issues. This understanding is sought to improve knowledge around the application and enforcement of EU Law at a local level, as well as (post Brexit) UK Immigration law in action.

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1. Introduction and Outline of the Research

1.1 Setting the scene

Free movement of people within the Member States of the EU is the one of the fundamental rights of EU citizens.¹ EU citizens enjoy a range of rights including the right of entry into another member state, residence in that state,² and the right to equal treatment in respect of housing and social advantages.³ For EU citizens, their (EU and non-EU) family members are also entitled to accompany them and benefit from these same rights.⁴ The detail of these rights are laid down in Article 45 TFEU on free movement of workers and fleshed out in, for example, the Workers' Regulation 492/11 and the Citizens' Rights Directive (CRD) 2004/38/EC.⁵ Free movement across member states represents a post national turn in citizenship and allows EU citizens to move to a new country (member state), look for work, study and live (with their family members) relatively easily and be treated on the same basis as nationals of that member state. In *Grzelczyk* the CJEU (Court of Justice of the European Union) remarked, 'Union citizenship, is destined to be the fundamental status of all nationals of the member states'⁶ and it has been transformative for many. In his book *Eurostars and Eurocities*,⁷ Favell describes the cosmopolitan freedom that can be associated with the ability to undertake a transnational life or to benefit from the opportunities associated with the metropolitan cities of Europe including (then) London, Amsterdam, Milan etc. De Witte describes the enrichment of the fabric of Europe this free movement has enabled, noting that for young people now, '[a]ll elements of their daily lives are infused with the results of free movement, whether it is their Polish classmate, their Belgian lecturer at university, their favourite Italian dish, a Czech football player on their favourite team, or Portuguese boss in the local restaurant'.⁸

¹ Article 21 TFEU says that: 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'.

² Article 45 TFEU; Art 20(2) TFEU.

³ Art 7(2) of Regulation 492/2011 and Article 24 Citizen's Rights Directive (CRD) 2004/38.

⁴ Art 3 (1) CRD.

⁵ For more: <https://ec.europa.eu/social/main.jsp?catId=457>.

⁶ Case C-184/99, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* (EU:C:2001:458) [31].

⁷ A Favell, *Eurostars and Eurocities: Free Movement and Mobility in an Integrating Europe* (Oxford: Blackwell Publishing, 2008).

⁸ Floris de Witte, 'Freedom of Movement is Not Simply an Economic Good, But a Bulwark Against Oppression' (LSE Blogs, 3 February 2016) <<https://blogs.lse.ac.uk/brexit/2016/02/03/freedom->

Free movement thus offers its benefactors opportunities which might not be available to them in their hometowns.⁹ The numbers also tell a tale of its success, with almost 14 million EU citizens to date recorded as exercising their free movement rights.¹⁰

Free movement rights can be found in some of the earliest texts of the EU project. The Treaty of Paris (1952)¹¹ establishing the European Coal and Steel Community laid the groundwork for free movement of workers in these sectors. In fact, workers are one of the most protected groups within the axis of free movement, with significant law and case law outlining and protecting the rights of this group.¹² The corollary of this however is that those free movers who are not in work, or in more precarious work (the focus of this dissertation) can find themselves quickly facing destitution or homelessness due to both conditional and increasingly restricted access to member state support for non-working EU citizens (this is discussed in detail below).¹³

1.2 EU Free Movement to the UK, the national picture

Although the expansion of the EU has been an ongoing process since its inception, the 2004 enlargement was the greatest single expansion, with ten countries joining the EU, including eight from central and Eastern Europe ('A8'¹⁴). The UK, Ireland and Sweden were the only countries which opened their labour markets immediately to workers from these new member states. This meant that around 70% of migrants from the A8 headed for Ireland and the United Kingdom.¹⁵ In 2007 when Romania and Bulgaria (A2) joined the EU, the UK did put in some transitional arrangements.¹⁶ Due to the nature of free movement (i.e. no entry requirements

ofmovement-is-not-simply-an-economic-good-but-a-bulwark-against-oppression/> accessed 27 November 2024.

⁹ Floris de Witte, 'Freedom of Movement is Not Simply an Economic Good, But a Bulwark Against Oppression' (LSE Blogs, 3 February 2016) <<https://blogs.lse.ac.uk/brexit/2016/02/03/freedom-ofmovement-is-not-simply-an-economic-good-but-a-bulwark-against-oppression/>> accessed 17 November 2024.

¹⁰ For more: For more: <https://european-union.europa.eu/principles-countries-history/facts-and-figures-europeanunion_en#:~:text=Multicultural%20societies%3A%20around%2041%20million,one%20in%20which%20they%20reside.> accessed 27 November 2024.

¹¹ For more: <<https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-paris>> accessed 28 October 2024.

¹² Regulation 492/2011/EU [2011] OJ L141/1 on the Free Movement of Workers.

¹³ Case C-333/13 *Dano v Jobcenter Leipzig* [2014] ECR I-2358, EU:C:2014:2358.

¹⁴ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

¹⁵ For more: <<https://www.migrationpolicy.org/article/free-movement-europe-past-and-present>> accessed 27 November 2024.

¹⁶ 'Transitional controls had little impact on Romanians' and Bulgarians' access to UK benefits' *The Migration Observatory at the University of Oxford* (21 February 2014), available at: <<https://migrationobservatory.ox.ac.uk/press/transitional-controls-had-little-impact-on-romanians-and-bulgarians-access-to-uk-benefits/>> accessed 02 February 2022.

etc), pre Brexit the UK did not have an exact number of how many EU nationals were living in the UK, the number was thought to be around 3 million.¹⁷ However, following the introduction of the EU Settlement Scheme (EUSS),¹⁸ as part of the UK's post Brexit arrangements, we now have a clearer idea of how many EU migrants came to the UK. The EU Settlement Scheme is an application system allowing EU citizens in the UK before Brexit to remain in the UK, broadly on the same basis as before. Data shows there has been over 7.9 million applications to the EU Settlement Scheme, of whom over 4.3 million are nationals from A8 and A2 member states.¹⁹ Data from the UN also shows that approximately 1.3 million UK citizens were living in EU member states pre-Brexit, the majority in Spain, Ireland and France.²⁰ In many ways these numbers are an important indicator of the success of the free movement pillar of the internal market.

Despite the apparent success (in numbers) of free movement to and from the UK, in 2016 the UK voted (52:48) to leave the EU in what is often referred to as the 'Brexit' Referendum.²¹ Although Brexit was about more than free movement, 'taking back control of UK borders' was one of the key issues mobilising the 'Leave' campaign. This vote to leave the EU meant a potentially significant change in legal status for those EU citizens who had already exercised their free movement rights to move to the UK. However, in the Withdrawal Agreement negotiations both sides agreed that the rights of those who had already moved to the UK (and vice versa) before Brexit should be protected.²² Section 3.4 below will examine the experiences

¹⁷ According to the Census in 2021, for more:

<<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/internationalmigrationenglandandwales/census2021#country-of-birth>> accessed 02 February 2022.

¹⁸ House of Commons Research Library, (28 November 2023), 'UK-EU Withdrawal Agreement: Implementation of citizens' rights', <<https://commonslibrary.parliament.uk/research-briefings/cbp-9657/>> accessed 28 October 2024.

¹⁹ For more see the EUSS Statistics published by Gov.uk, available here:

<<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2024/how-many-people-have-been-granted-settlement-via-the-eu-settlement-scheme>> accessed 27 November 2024,

²⁰ For more see the UK in a Changing Europe (21/09/2020), 'How many British citizens live in the EU?': <<https://ukandeu.ac.uk/the-facts/how-many-british-citizens-live-in-the-eu/>> accessed 27 November 2024.

²¹ For more see BBC News, 'Referendum Results', available here:

<https://www.bbc.co.uk/news/politics/eu_referendum/results> accessed 2 February 2022.

²² Houses of Commons Research Library (18 October 2019), 'The October 2019 EU UK Withdrawal Agreement', available here: <<https://commonslibrary.parliament.uk/research-briefings/cbp-8713/>> 2 February 2022. See also: European Commission, "Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union", (08 Dec 2017) available here <https://commission.europa.eu/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1_en> accessed 27 November 2024.

of those navigating the new immigration application system (the EUSS) put in place by the UK Home Office as a result of these agreements.

1.3 The research cohort

My work (and the focus of the publications which make up this dissertation) is what happens after people decide to exercise their free movement rights, the human face of the internal market and the experiences of those in low skilled (low paid) work, which in this portfolio equates largely to work in factories, mostly in poultry factories in rural areas (Great Yarmouth). Much of the existing literature on EU free movement takes a city-level focus, so this local/rural geographical approach provides a unique contribution to expanding the literature on free movement. Although research shows that post 2004-member state country nationals bore the brunt of the racism during the run up to the 2016 Brexit Referendum,²³ my work also includes a significant cohort of Portuguese nationals living in Great Yarmouth. This points to a commonality of experience as EU citizens in low paid work, irrespective of their member state of origin.

Great Yarmouth, where this work is based, is a seaside town on the Norfolk coast in the East of England. Once a (historically) thriving fishing port and later popular tourist destination, modern day Great Yarmouth suffers from significant levels of deprivation across many metrics. In fact, thirteen of its neighbourhoods are ranked in the top 10 per cent of areas of relative deprivation nationally, with some central wards listed among the most deprived neighbourhoods in the UK.²⁴ Some 20 per cent of children are living in low income families compared with 12.0 per cent in the wider county of Norfolk and 14.7 per cent in England.²⁵ Residents in the town also have low levels of educational attainment with 26.5 per cent having no formal qualifications, ranking sixth worst in the country.²⁶ As is described below, I use legal geography to focus my work in one geographical town. I set out the socio-economic context of the town here, as it is into this context the EU migrant workers in my research moved to undertake low paid work.

²³ L Moroşanu and E Szilassy, 'Denying discrimination: Status, "race", and the Whitening of Britain's New Europeans' (2015) 41 (5) *Journal of Ethnic and Migration Studies* 729; T Guma and R D Jones, "'Where are we going to go now?'" European Union migrants' experiences of hostility, anxiety, and (non-)belonging during Brexit' (2019) 25 (1) *Population, Space and Place* 1.

²⁴ See the Norfolk Insight website, available at: <www.norfolkinsight.org.uk/> 02 February 2022

²⁵ Ibid.

²⁶ 'Education, England and Wales: Census 2021' Office for National Statistics (2022), available at: <www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/bulletins/educationenglandandwales/census2021> accessed 02 February 2022.

My work examines the legal problems these groups faced, despite their protected rights under EU law and now post Brexit by the Withdrawal Agreement. For many, systemic and individual experiences of precarity mean that those rights can be out of reach. Thus, the law on the books differs significantly from the law in action.²⁷ However, I knew that while most of those in the research cohort would not resort to formal legal institutions such as the courts, they would seek help from a frontline advice charity, GYROS. I observed that GYROS' approach to addressing their problems differed from that seen in traditional legal services- and this is detailed in my work through the development of the theory of 'pragmatic law' - outlined below.

This paper is structured as follows. Section two focuses on methodology. Section three considers precarity, the overarching theme of the portfolio. Given the work presented for this PhD includes substantial empirical work, this section also draws from this empirical work using quotes and case studies from research participants to include the voice of those experiencing precarity. Section four provides an overview of my published works, describing them thematically. Section five concludes.

2. Methodology

My work uses an interdisciplinary approach to examine the 'cost' of free movement for low paid EU citizens (in Great Yarmouth). I undertook empirical work across the entire portfolio of works using grounded research methodologies²⁸ to develop a new theory for the study of the work of frontline (migrant) advice charities in the legal landscape. In the following section I will describe how my research utilised empirical work and why this is important in the context of EU law. It also shows the interdisciplinarity of my work including socio legal, ethnographical and anthropological enquiries into everyday law and experiences.

To justify my focus on one particular place and at one particular time, I draw on the work of legal geographers. Orzeck and Hae define legal geography as 'the production of holistic knowledge about the place and function of law in contemporary (and historical) societies'.²⁹ Legal geography has particular resonance in the context of the internal market where the law permits the cross-border movement of people from one state to a specific location in another (in the

²⁷ Roscoe Pound, *Law in Books and Law in Action* (1910) 44 AM. L. REV. 12

²⁸ J W Creswell and V L Plano Clark, *Designing and Conducting Mixed Methods Research* (3rd edn, Thousand Oaks, CA: Sage, 2018); M C Howell Smith, W A Babchuk, J Stevens, A L Garrett, S C Wang and T C Guetterman, 'Modelling the use of mixed methods-grounded theory: developing scales for a new measurement model' (2020) 14 *Journal of Mixed Methods Research* 184.

²⁹ R Orzeck and L Hae, 'Restructuring legal geography' (2020) 44 (5) *Progress in Human Geography* 832. See also F de Witte, 'Here be Dragons: Legal Geography and EU law', *European Law Open* (2022) ;1(1):113-125. doi:10.1017/elo.2021.2.

case of my research, Great Yarmouth). Legal geographers note that ‘nearly every aspect of law is located, takes place, is in motion, or has some spatial frame of reference’.³⁰ To date studies of EU nationals in the UK tend to focus on mostly Western EU nationals (‘Eurostars’³¹) or be based in urban centres like Manchester or London.³² However, data shows most low skilled EU migration has been to rural areas- specifically due to the locations of farms and factories. I therefore draw on legal geography to help understanding the everyday experience of free movement at the local, micro level.

More recently the literature has recognised that EU law is taking an ‘empirical turn’, a school to which this work also belongs.³³ The founding (legal) architecture of the EU is that of Treaties and legislation; therefore, EU law lends itself readily to doctrinal scholarship. The boundaries of this law are then tested via preliminary references to the CJEU (Court of Justice of the EU) to understand the interpretation and or validity of such laws.³⁴ The CJEU has in turn developed a substantial body of case law which develops our understanding of EU law and general principles. A less developed aspect of EU law scholarship has been an empirical view of its application. This is not unique to EU law and is prevalent within legal scholarship more generally, where ‘information on the use of empirical research in legal scholarship is lacking, and anecdotal evidence unreliable’.³⁵ My body of work looks to build on the limited scholarship to date and help advance this method of its study. An empirical approach helps us to develop a bottom-up understanding of EU law which complements the top-down approach of court settings (whether it be national courts or the CJEU). This is important because none of the EU nationals in low paid work in my research invoked a legal process or even accessed legal advice to resolve their legal problems (described below). This means that using only a top-down approach of relying on those cases which come before the domestic and EU court(s) reveals only the tip of the iceberg in terms of the legal problems experienced in the internal market by its citizens. Empirical study allows a more holistic, local and bottom-up view of EU free movement.

³⁰ I Braverman, N Blomley, D Delaney and A Kedar, *The Expansion Spaces of Law* (Stanford, CA: Stanford University Press, 2014), 1.

³¹ Fn 7.

³² A Rzepnikowska, ‘Racism and xenophobia experienced by Polish migrants in the UK before and after Brexit vote’ (2019) 45 *Journal of Ethnic and Migration Studies* 61.

³³ E Grosfeld, A Cuyvers and D Scheepers, ‘Towards Evidence-Based Legitimacy Interventions in EU Law: Challenges and Directions for Empirical Research’, (2023) 19 (2) *Utrecht Law Review*, 87. Available at: <https://doi.org/10.36633/ulr.844>.

³⁴ Art 267 (1) TFEU

³⁵ Gijs van Dijck, Shahar Sverdlov & Gabriela Buck, ‘Empirical Legal Research in Europe: Prevalence, Obstacles, and Interventions’ (2018) 11 *ERASMUS L. REV.* 105, 106.

For this study I utilised both qualitative interviews and focus groups to gather data on (legal) issues and lived experiences. Kamberelis and Dimitriadis note that focus groups can be of particular value when researching more vulnerable and marginalised communities and to explore more sensitive topics.³⁶ In my work this in-depth qualitative research helped include the voice and the narrative of those I was interviewing, adding a depth and a richness to the text in the context of lived experience- a key enquiry in my work. Working with GYROS (the migrant advice charity, described below),³⁷ I was able to undertake multilingual focus groups and access a translator for interviews where needed. This (multilingual) approach was appropriate to ensure the participation of those more marginalised non-English speakers, whose voices are not always represented in academic research.

In researching this portfolio of work, I lived in an HMO (house of multiple occupation) for two months with eight EU nationals. I did this to understand what everyday life was like for this group and to talk to them about their experiences in the UK. Ethnographical work within the legal context is still rare. Ethnography can be defined as ‘the study of people in naturally occurring settings or “fields” by means of methods which capture their social meanings and ordinary activities, involving the researcher participating directly in the setting (if not always the activities) in order to collect data in a systematic manner, but without meaning being imposed on them externally’.³⁸ More prevalent in the US to date, most legal ethnographies have featured court rooms and people’s experiences of interacting with the law in this way.³⁹ However, in reality, the set-up of the house and the living conditions made it difficult to undertake ethnographic work in the purest sense. The tenants of the house all worked 12-hour shifts, and often travelled over two hours a day to and from work. There were no communal spaces in the house, apart from one shared bathroom and a laundry room. This made observation more difficult. Tenants would come home and go to their ‘bedsit’ rooms which also contained a hot plate for cooking and a small fridge. Spending time outside the room was mostly for going to work and coming home.

³⁶ G Kamberelis, G Dimitriadis, (Chapter 17), ‘Focus Group Research: Retrospect and Prospect’ in Patricia Leavy (ed.), *The Oxford Handbook of Qualitative Research*, (2nd edn, Oxford Handbooks, 2020), 485.

³⁷ For more see <www.gyros.org.uk> accessed 24 November 2024.

³⁸ J Brewer, “Ethnography,” in *The A–Z of Social Research*, edited by R. Miller and J. Brewer (London: Sage, 2003), 99.

³⁹ S Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans* (Chicago: University of Chicago Press, 1990); J.M. Conley and W.M. O’Barr, *Rules vs Relationships: The Ethnography of Legal Discourse* (Chicago: University of Chicago Press, 1990). For UK based ethnography see for example The EU Rights and Brexit Hub’s work on advice led ethnography: <https://www.eurighthub.york.ac.uk/introduction-to-the-hub>.

Others have faced similar frustrations when undertaking ethnographic work. One leading scholar, Sally Engle Merry, recorded similar issues in a low-income housing development in the US. She said: ‘at the same time I despaired of finding a place to do ethnography. The residents did not spend much time hanging around the neighbourhood.’⁴⁰ For this reason, I also undertook in-depth qualitative interviews with all the residents and the landlord (nine interviews in total), as well as interviewing one previous tenant who had lived there for almost a decade. This helped to counterbalance the lack of meaningful everyday interactions and observations.

As noted above, my methodology also included work with an advice charity called GYROS (Great Yarmouth Refugee and Outreach Support) which has been working in the town of Great Yarmouth since 1998. They offer free, multilingual general advice and specialist immigration advice. GYROS advice workers all have experience of migration and have often followed the same migration pathways of those they are now advising. GYROS gave me access to their advice work case notes from 2015-2020, providing a longitudinal view of the issues that local migrant communities were seeking help for. Each client’s attendance at GYROS’s service is recorded under a relevant ‘enquiry label’ on that day; the label indicates the issue they were seeking help with – for instance, housing, employment and health. Because clients can come in for help under the same enquiry label more than once – for example, a person might seek housing support over several years – the client is allocated an individual ID (identification) number. This unique ID number was used to identify whether the same client came in for help with more than one issue (other identifying information, such as name and address, were not shared). All enquiries in the dataset are assigned the relevant label, and a unique case note is recorded for each visit. The dataset contains 3,018 unique enquiry labels with 6,856 unique case notes. STATA was used to analyse the quantitative data.

This longitudinal lens (2015-2020) allowed a view of legal problems both pre and post Brexit as well as during the period of COVID19 in 2020. The case notes provided a rich view of what legal problems people were experiencing in this time. The analysis also allowed a view of the approach of GYROS in helping to resolve these legal problems. GYROS advisors are not legally trained. Analysis of their problem resolution methods led to an emerging theory of ‘pragmatic law’ to be developed, which describes the resolution of legal problems by frontline advice agencies (such as GYROS) without the need for more explicit interaction with formal law advice/ resolution pathways such as a law centre, solicitor etc. This contributes to a more holistic view

⁴⁰ Sally Engle Merry, ‘Crossing boundaries: ethnography in the twenty-first century’ (2000) 23 *Political and Legal Anthropology Review* 127, 128

of legal issues (and legal problem resolution) and therefore of EU (and UK) law in action for these free movers.

My research also utilises publicly available data, in particular data shared by the UK Home Office around EUSS⁴¹ applications and FOIs (freedom of information requests⁴²) for additional data on, for example, support for looked-after children to make EUSS applications, and homelessness and housing assistance data from local authorities. This allowed me to situate the local lens I was using in a wider regional and national picture, to contextualise the Yarmouth view.

This multi-pronged approach to gathering data, helping to ensure those more marginalised i.e. non-English language speakers could participate, is one of the unique aspects of this research, offering a different perspective of the experiences of EU free movement. Drawing on the data collected, in the next section we examine the overarching theme found in the works.

As described throughout this work specific methodologies have been chosen to examine EU law in action empirically and to include the voices and experiences of those most vulnerable. Legal geography has been used to examine the operation of law in a specific spatial area, here Great Yarmouth. This empirical approach has allowed for the development and realisation of the theme of the precarity across the work-to which we now turn.

3. Themes: Precarity and vulnerability

3.1 Introduction

Precarity is experienced in different aspects of (low paid) EU migrant workers lives in an intersectional way. My published work uses various lenses to examine this precarity, with focus on, for example, immigration status, employment, housing and welfare benefits, legal problems and access to justice (among others). This precarity drives legal needs and also health needs- both of which are also covered across the portfolio of work. Largely, EU migrant workers in this research moved to the UK for work and, in fact, ‘precarity’ is an increasingly recognised symptom of (some) modern working arrangements⁴³ such as for those in low skilled, low paid agency work⁴⁴ which is often also zero-hour work. This results in unstable and sporadic income.

⁴¹ For more: fn 19.

⁴² The Freedom of Information Act (FOIA) 2000

⁴³ J Choonara, ‘The Precarious Concept of Precarity’ (2020), 52 (3), Review of Radical Political Economics, 427, 427.

⁴⁴ H Zhang, L Nardon, and G J Sears, ‘Migrant workers in precarious employment’, (2022) 41 Equality, Diversity and Inclusion: An International Journal 254, 260.

Alongside these precarious employment arrangements, an increasingly restricted social security landscape further sharpens the edges of this precarity.⁴⁵ Standing sums up this precarity, looking beyond solely working arrangements and discussing those for whom ‘this is not just a matter of having insecure employment, of being in jobs of limited duration and with minimal labour protection, although all this is widespread. It is being in a status that offers no sense of career, no sense of secure occupational identity and few, if any, entitlements to the state and enterprise benefits’.⁴⁶ Focusing on migrant workers, Vosko too says precarity is ‘characterised by uncertainty, low income, and limited social benefits and statutory entitlement’.⁴⁷ My work fits within these broader definitions of precarity. For those in low paid work, immigration status and legal insecurity adds another layer of precarity to their everyday life as this status is the gatekeeper for access to work, housing, public funds and more.

The migrant workers in my corpus of work live precarious lives, experiencing intersectional and clustered problems.⁴⁸ This problem clustering can result in vulnerability. Developing this concept, Fineman's ‘theory of vulnerability’ puts forward a central thesis that vulnerability is ‘a universal, inevitable, enduring aspect of the human condition’,⁴⁹ while also acknowledging that while ‘Undeniably universal, human vulnerability is also particular: it is experienced uniquely by each of us, and this experience is greatly influenced by the quality and quantity of resources we possess or can command’.⁵⁰ Building on this theory of vulnerability, (and other related work⁵¹) this portfolio looks at the ways in which precarity leads to vulnerability and disadvantage, exacerbating marginalisation in the lives of migrant workers.

Why is this important? Some scholars speak of the ‘trade off’ international migrant workers accept when they move for work: their mobility to access the host country’s labour market comes at the price of the rights available to them;⁵² my work sees this too with EU migrant workers in Great Yarmouth. Some EU citizens are, in reality, experiencing diminished

⁴⁵ L F Vosko, *Managing the Margins: Gender, Citizenship and the International Regulation of Precarious Employment*, (Oxford University Press, New York, NY, 2010) 2.

⁴⁶ Guy Standing, *The Precariat the New Dangerous Class*. (Bloomsbury Academic, London, eds 2014) 41.

⁴⁷ Fn 45, 2.

⁴⁸ H Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing, 1999), 31

⁴⁹ M Albertson Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 *Yale Journal of Law and Feminism* 1, 8.

⁵⁰ Ibid 9.

⁵¹ L Clement, *Clustered Injustice and the level green*, (Legal Action Group, London, 2020), 5.

⁵² Chenchen Zhang, ‘Free Movement and Social Citizenship: Towards a Politically Constructed Conception of Solidarity Across Borders’ in Helle Krunke, Hanne Petersen, and Ian Manners (eds), *Transnational Solidarity: Concept, Challenges and Opportunities* (Cambridge University Press 2020) 331.

supranational EU rights as part of their free movement journeys. This reality is not considered in the EU law and treaties setting out these rights.

However, the reality too is that in moving to a new country, migrants might be able to access rights and benefits not available in their country of origin. An example of this was highlighted in a focus group with those from the Roma community who said they moved to the UK for work opportunities not available in Bulgaria due to what they described as discriminatory practices towards Roma people in accessing employment.⁵³ This story is not simply one of vulnerable ‘victims’⁵⁴ of (often) precarious and exploitative working conditions but also empowered individuals who have navigated complex migration journeys for improved life/work conditions. For many of those in my research, access to work in the UK with opportunities for higher pay than in their country of origin, meant the reality of poor working and housing conditions were ‘worth it’, at least initially to be able to gain a foothold in the UK. This is recognised in the wider literature too, with ‘first job, any job, dream job’⁵⁵ trajectory characterising the migration journey. Many accept, at first, any job in the host country, with the plan to move ‘up’ to a better and eventually a dream job with security and better pay and working conditions. Yet in reality, many of those in low paid (low skilled) work do not move past the ‘first job’ stage. Low paid, low skilled work in the UK offers little chance of progression or promotion beyond moving ‘up’ the factory line to line supervisor. Even this promotion is based on acquiring English language skills. As described below, learning the local language can be a difficult feat in an environment where English is not the working language of the factory floor.

To illustrate the overarching theme of precarity as set out in my work, I will use three timestamps in the migration journey. Firstly, the journey itself. This section will look at experiences of utilising free movement rights and the journey to the UK as well as putting down initial footholds here. Next, I will examine post- arrival experiences in the UK and issues of precarity during this stage; starting with experiences work, then accommodation experiences followed by (for some) accessing welfare benefits to top-up low paid work, or to ameliorate the effects of zero-hour work and unstable income. Finally, the third timestamp will be that of UK Referendum to leave the EU. This section will examine the impact Brexit had on EU citizens in the UK who had already

⁵³ Bulgarian national focus group (Great Yarmouth, December 2022).

⁵⁴ L Briones, *Empowering Migrant Women: Why Agency and Rights are not Enough* (Routledge, First Eds, 2009).

⁵⁵ V Parutis “‘Economic Migrants’ or “‘Middling Transnationals’”? East European migrants’ experiences of work in the UK’ (2011) 52(1) *International Migration* 36, 41.

exercised their free movement rights to the UK as well as experiences of navigating their new immigration status under the EUSS. But first, we will turn to the journey to the UK.

3.2 Free Movement to the UK- the journey

As set out above the Worker's Regulation 492/11 and the Citizen's Directive 2004/38 give EU citizens fundamental rights to move to another EU members state, to live and work there and to expect non-discriminatory practices in that work. The Court of Justice recognised the rights of jobseekers in its early jurisprudence on the rights of EU migrant workers in the case of *Antonissen*.⁵⁶ My work too documents EU citizens moving to the UK to find work. It also shows the precarity experienced by EU free movers even at this early stage of their migration journey. For example, one research participant recalled her journey from Latvia to England via bus. She had paid money to agents in Latvia who promised (in return for this fee) to coordinate her travel to the UK, her accommodation once she arrived and to find her work too. She (Rasa⁵⁷) described her first night in the UK after the bus arrived from Latvia:

‘And we were seven people in the sitting room [of a caravan], and we are sleeping some on sofas, somebody on chairs. Three girls, no three boys and four girls. And we are sleeping how we come, nowhere to change, no nothing, because next morning you went to work and then [next] afternoon gave for us right room [a shared room] ... I arrive at eight o'clock at night. And the next morning, four o'clock, I went to work.’⁵⁸

This means after her bus journey from Latvia, Rasa slept for a few hours on a chair in the living room of a caravan with six other people and was then taken to work in the chicken factory at 4am. She undertook her first day's work after before she was shown to her new bedroom. After her first shift she was shown to a small, shared room in a (formerly tourist) hotel in the town. When she later sought to move out of this accommodation as she had found something more suitable, she was told if she left the accommodation, the agency would no longer offer her work in the chicken factory. Others too reported issues with similar agents. Edita, (another interviewee, who similarly engaged agents in Latvia) told me she had to pay £10 per week *not* to live in the tied accommodation where she was placed. She said she did not know how many people were living in the shared house she was placed in, that some of the rooms upstairs were filled with bunk beds. She moved out because she was physically assaulted by another male resident in the house. She continued to pay this money and to work off her debt via translations

⁵⁶ Case C-292/89 *R v Immigration Appeal Tribunal, ex p Antonissen* [1991] ECR I-745, EU:C:1991:80.

⁵⁷ Names have been changed to protect the anonymity of those who participated in the research.

⁵⁸ Interview with Rasa, Great Yarmouth (28 September 2021).

for others in the house (Edita was multilingual and picked up English quickly once she moved to the UK), until her debt was repaid. While the EU10 citizens in my research were more likely to move to the UK via the involvement of these (informal) agents, those from Portugal were more likely to have been recruited in their country of origin by (more formal) employment agencies or directly by the employer. For example, one particularly visible employer, Bernard Matthews, opened a recruitment office in Lisbon soon after Portuguese accession to the EU. It was reported that by the early 2000s they had recruited many thousands of workers to come and work in their poultry factories in Norfolk and Suffolk. This recruitment drive was particularly intense during the so called ‘Christmas campaigns’ where many workers were/are needed to deal with demand for turkeys during the festive period. At the time it was reported by Bernard Matthews that this transnational recruitment drive was due to its ‘satisfaction with established Portuguese employees, Portugal’s EU status and its high unemployment’.⁵⁹

Although Bernard Matthews was an early and visible example of the transnational recruitment practices by local large employers, others followed suit. For example, 2 Sisters Food Group (which later bought Bernard Matthews) and Banham Poultry. To give an example of the scale of operations of these local companies (and therefore their recruitment needs), Bernard Matthews was once the largest turkey producer in Europe, the 2 Sisters Food Group produces one third of all poultry products consumed daily in the UK⁶⁰ and Banham Poultry sells more than 650,000 chickens per week.⁶¹

My work shows to some extent the success of Regulation 492/11, in that EU citizens were able to move to the UK and take up work with no barriers for example, no visa requirements etc. However, my work also shows how more vulnerable nationals, particularly those from Eastern Europe (and later Romania and Bulgaria), utilised informal agents to support this move and the difficulties and precarity they then faced in navigating this resulting tied relationship. More recent work in Germany has also identified this practice.⁶² This shows the importance and

⁵⁹ “‘Bootiful’ Portuguese boost Bernard Matthews’ *The Times* (16 September 2004), <<https://www.thetimes.com/article/bootiful-portuguese-boost-bernard-matthews-9nc9r79t2nf>> accessed 23 November 2024.

⁶⁰ Website available here: <<https://www.2sfg.com/About-Us>> accessed 23 November 2024.

⁶¹ Website available here: <<https://banhampoultry.co.uk/>>, accessed 23 November 2024.

⁶² P Manolova, T Schlee and L Wiese, ‘Multiple precarisation- The living situation of Eastern European migrants in urban social spaces’, (2024) 10 IAQ report, 8-9. For more:

<https://www.researchgate.net/profile/Polina-Manolova/publication/384978240_Multiple_precarisation_-_The_living_situation_of_Eastern_European_migrants_in_urban_social_spaces_Using_the_example_of_the_two_Duisburg_districts_of_Hochfeld_and_Marxloh/links/6710bda409ba2d0c76057b42/Multiple-precariation-The-living-situation-of-Eastern-European-migrants-in-urban-social-spaces-Using-the-example-of-the-two-Duisburg-districts-of-Hochfeld-and-Marxloh.pdf> accessed 02 October 2024.

usefulness of empirical work in understanding the lived experience of the application of EU rights. The role of shadowy agents as described above in the experiences of Rasa and Edita mean that precarity was present from the first moment of free movement- with many arriving already indebted with more debts quickly added for administration costs for finding work, for travel to work, and for accommodation costs. For this group the debtor is both their landlord and their employer. Edita described the lack of control she felt over her own life when she first moved to the UK due to the role of the ‘agent’. These agents control what works shifts they get, what bed they sleep in and even how they travel to and from work. This precarity is compounded by the work available which is usually zero-hour and temporary. GYROS reports that the busiest time for their advice service is January. This is because all those who had accepted work for the busy Christmas campaigns found that this work ended (or reduced) in January and so too the accommodation they had been provided. Many clients would then present to GYROS as homeless and searching for work. Here we can see the experiences of EU migrant workers in finding work in the UK as falling within the definition Standing offers (insecure employment, jobs of limited duration, minimal labour protection⁶³), outlined at the beginning of this section. Having examined the journey to the UK and early experiences of precarity, in the next section we turn to day-day life thereafter.

3.3 Experiences in the UK – post arrival.

After arrival to the UK many EU migrants started work almost immediately, particularly those working in poultry factories. As discussed already for many their accommodation was tied to their employer and agent and below, I will set out some of the housing experiences of those in my work particularly those living in sub-standard, precarious housing. The Worker’s Regulation also sets out that EU citizens are entitled to social assistance⁶⁴ which can be of particular relevance to those in low paid work who may need to ‘top-up’ their income. Here, my work examines whether those EU citizens who moved to Great Yarmouth for work and needed to access social assistance were in reality able to access it. However, in the first instance we turn to work experiences after arriving in the UK.

3.3.a Employment

My work shows the poor working practices and conditions experienced by EU citizens who moved into low paid work in the East of England. The work is hard, the hours are long, and the factory floor is cold. Those in focus groups agreed that the worst section to work in involved

⁶³ Fn 46.

⁶⁴ Fn 3.

lifting heavy weights.⁶⁵ One participant said she was expected to lift “very heavy cold turkeys and heavy bones from one area to another”.⁶⁶ Many workers stop work earlier than they might have otherwise due to work-related health conditions- this may in turn lead to future reliance on social assistance and out of work benefits- an issue returned to below (3.3.c). For some the physicality and repetitive nature of the work can lead to health needs resulting in further precarity and vulnerability both in terms of lack of employment (income) but also as we shall see below increased conditionality around access to social assistance which can leave some in an even more precarious position.

I also saw from the GYROS data that it was common for migrant workers not to be given holiday pay or salary, as well as not receiving payslips. The following case note from the GYROS dataset gives an example of one client enquiring about her right to access Maternity Allowance and the difficulties she was facing as her two previous employers had not provided her with payslips- therefore she was now struggling to prove she had been working and therefore qualified for assistance.

Client is pregnant and due in June. Client is not employed at the moment and wanted to know if she can get MA (Maternity Allowance). I checked her test period (March 2017– June 2018) and her employment in that period. She had two jobs: from one only four payslips (August–Sept 2017) and no payslips from the other. She is not sure if she was on their books. So, she will check and come back next week to our drop in. I explained her that in order to get MA she needs to prove that she was employed for 26 weeks in her test period and provide 13 payslips from that period. *[Portuguese, female, GYROS case note ID 1242]*

These issues are not unique to those in my research cohort: the 2019 ‘Unheard Workforce’ report by the London-based Latin American Women’s Rights Service said that 20% of their client group working in the cleaning, hospitality, and domestic work sectors did not receive payslips.⁶⁷ The knock-on effect of this lack of paper work to document your life in the UK drives further precarity- as will be discussed below in relation to both accessing social assistance and making an application under the EUSS.

⁶⁵ Focus group (Great Yarmouth, November 2021).

⁶⁶ Portuguese focus group (Great Yarmouth, July 2022).

⁶⁷ The Unheard Workforce (2019), available at <https://lawrs.org.uk/wp-content/uploads/2020/11/Unheard_Workforce_research_2019.pdf> last accessed 25 January 2022.

Language issues can also be a factor in the workplace. My dataset shows clients asking for help from GYROS to engage with their employer or to understand employment-related paperwork. However, English language skills tend to be less of an issue on the factory floor as research participants report that the working language of the factory floor is usually that of the line manager (Lithuanian, Portuguese etc), and many workers report that factories are informally delineated on nationality and language lines. So, for example, one former recruitment agency worker told me:

That is how it works. I will have people that say OK that factory, they can't go there because it is a Lithuanian factory. And honestly you go there, and everyone speaks Lithuanian and maybe a few Polish, Latvian, a few Portuguese but a few only and then the rest is Lithuanian. There are many factories like that. We even had managers who said I only want Polish, Lithuanian and Latvian, I don't want any other. I couldn't believe I am actually being told by my boss – listen you employ only this this and this [nationality].⁶⁸

Workers report that long working hours and anti-social shift patterns leave little time to be able to learn English and to spend time in the wider community to improve their language skills. Grzymala-Kazłowska⁶⁹ also noted that structural constraints such as long working hours, or working solely with other non-English speakers, can make it difficult for some migrant workers to establish English language skills and connections in their wider communities. This can leave migrant workers in precarious and vulnerable positions as they are then reliant on others to be able to navigate life in the UK. This lack of opportunity to learn English can, as described above, affect the migration trajectory of those moving to the host member state preventing progress and promotion in the workplace. It makes integration into their new town difficult too, such as navigating everyday life as well communication with the wider community. It is to this wider community and the housing situation of EU migrant workers in Great Yarmouth we turn next.

3.3.b Housing

Housing and accommodation are a crucial element of free movement. This is unsurprising- a person will need somewhere to live once they take advantage of their free movement rights. What is surprising is how little attention housing needs have been subject to in the context of

⁶⁸ Interview with former recruitment agency worker on 14 November 2020.

⁶⁹ A Grzymala-Kazłowska 'From connecting to social anchoring: Adaptation and "settlement" of Polish migrants in the UK' (2018) 44 (2) *Journal of Ethnic and Migration Studies* 252, 260.

transnational mobility within member states. Or perhaps to put it more accurately, how little academic attention has focused on the private rented sector in the context of free movement.

Housing more generally, specifically social housing had already been identified in the 1950s by the Member States as a potential challenge to free movement.⁷⁰ Member states worried that any right to housing would translate into overwhelmed social housing lists in their respective domestic spheres. This was a particular concern for the Dutch delegation fearing newly arrived migrants with larger families could (based on need and urgency) be given housing priority over Dutch nationals who have been on the list for a longer period. Similarly, German and Belgian delegations were concerned about how migrant workers would ensure their housing needs were sufficient for any joining family members- worrying about families and children coming to live in unsuitable housing (a reality Great Yarmouth shows to be the case- see below). However, during negotiations the then President of the European Parliamentary Assembly, Robert Schuman, said that ‘the time had come to consider migrants from the Member States of the Community not as a complementary labour force, but as a settled population, and that it would not therefore be proper to introduce into the text of the Regulation a clause prohibiting such an establishment’.⁷¹ Following negotiations, the resulting Regulation on freedom of movement for workers within the Community was passed and came into force on 15 October 1968 and was later repealed in April 2011 by the Worker’s Regulation 492/11 (in force). In this (Worker’s Regulation 492/11), Article 9(1) provides that a worker who is a national of a Member State and who is employed in the territory of another Member State must enjoy all the rights and benefits accorded to national workers in matters of housing, including being able to buy a home. Article 9(2) provides that a worker ‘may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities’.

In the UK context too, there was concern, particularly after EU enlargement (2004), that migrant workers would come to the UK and overwhelm social housing lists. In fact, in 2007 then Labour Cabinet Minister Margaret Hodge wrote in *the Observer* that EU migrant workers were moving to

⁷⁰ This section draws from: C Barnard and F Costello, 'The Darker Side of the Internal Market Ideal: EU Migrant Workers Living in a Coastal Town', in Jeremias Adams-Prassl, and others (eds), *The Internal Market Ideal: Essays in Honour of Stephen Weatherill* (Oxford, 2024; online edn, Oxford Academic, 22 Feb. 2024).

⁷¹ Historical Archives of the European Union, Council of the European Communities, CM2/19681011.1297 f/68 (PV/CONS 21). The original reads as follows: ‘le temps est venu de considérer les migrants en provenance des États membres de la Communauté non comme une main-d’œuvre d’appoint, mais comme une population d’établissement, et qu’il ne conviendrait pas par conséquent d’introduire dans le texte du règlement une clause interdisant cet établissement.’

the UK and benefitting from social housing at the expense of native UK nationals.⁷² However, '[e]vidence soon emerged revealing that relatively small numbers of foreign nationals, and virtually no migrant workers, were gaining access to and living within the social rented sector.'⁷³ Access to social housing and housing support is qualified⁷⁴, where EU citizen's face additional eligibility requirements including showing they have a 'right to reside' (that they are residing 'lawfully' in the UK (working, studying etc)) and that they are 'habitually resident' in the UK (proving their residence here with accepted documentation, for example a tenancy agreement).⁷⁵ They also need to show they have a 'local connection' to the area in which they are seeking support. However, this focus on provision of housing via social assistance and or the right to purchase property in the host member state disregards the reality of the vast majority of those featured in my work and that of others. As Meers et al state: 'A far greater proportion of people living in the UK who were born in the EU rent the property they live in – 44 per cent of individuals – compared to just 14 per cent of those born in the UK'.⁷⁶

Despite the recognition that the majority of EU citizens living in the UK are living in the private rental sector (PRS), less empirical work to date has been undertaken to understand the conditions of that accommodation. In aiming to understand the realities of EU migrant workers' experiences of housing through ethnographical work of living in an HMO makes my work unique. The ethnographic work provided firsthand experience of the poor quality of the accommodation people were living in and the bad practice of landlords. The failure to provide paperwork drives precarity e.g. informal rent arrangements including a lack of tenancy agreement, lack of proof of rent paid, has significant repercussions when migrant workers need to prove their 'habitual residency' for welfare benefits, or to apply for the EU Settlement Scheme.

The empirical work in Great Yarmouth helped to uncover another practice which is less associated with EU Free Movement than with other non-EU migration: tied accommodation in the PRS, as described above. What this means is that the majority of those I spoke to in my

⁷² For more see Philip Johnston, 'Hodge: "Give Natives Priority for Social Housing"' The Telegraph (21 May 2007) <www.telegraph.co.uk/news/uknews/1552180/Hodge-Give-natives-priority-for-socialhousing.html> accessed 23 November 2024.

⁷³ David Robinson, 'New Immigrants and Migrants in Social Housing in Britain: Discursive Themes and Lived Realities' (2010) 38 Policy & Politics 57, 57.

⁷⁴ Immigration (European Economic Area) Regulations 2016 SI 2016/1052.

⁷⁵ This section draws from the "Housing" chapter in C Barnard, F Costello, and S Fraser Butlin, *Low Paid EU Migrant Workers, The House, The Street. The Town* (Bristol University Press, 2024).

⁷⁶ J Meers, J Tomlinson, A Welsh and C O'Brien, 'Does Digital Status Unlawfully Penalise EU Citizens Accessing the UK's Private Rented Sector?' (2024) Mod Law Rev 1, see also: Marina Fernández Reino and Carlos Vargas-Silva, 'Migrants and Housing in the UK' (The Migration Observatory, Briefing, 2 September 2022) at <<https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-and-housing-in-the-uk/> [https://perma.cc/ZC2R-T9KU]> accessed 23 November 2024.

research had lived or were living in accommodation that was tied to their employer or de facto work agent. This meant living in caravans in fields (farm work) or HMOs in town centres (factory work). This practice of tied accommodation was particularly stark at point of arrival- and the examples of Rasa and Edita above illustrate this.

My research aligns with other research about a common migration trajectory of improvement- at first any house/any job in the hopes that this initial foothold will help the individual to move onto a better house/better job and finally maybe even a dream house/dream job.⁷⁷ However, this trajectory suffers from the realities of rural geography. The housing stock in Great Yarmouth is generally low quality. A number of previous hotels and B&Bs once popular with tourists but now not in demand have been converted into HMOs to house the increasing migrant worker population in the town. The conditions were often poor. For example, the HMO of my research had no central heating, the building was in parts unfinished with ‘construction, do not enter’ on boards, the bathroom had no ventilation due to a broken window and there was significant black mould on the ceiling, as well as green moss on the inside of the bathroom window. None of the tenants had a tenancy agreement, all paid for the rent and utility bills in cash directly to the landlord. Yet, all tenants described this house as a ‘better’ house than previous accommodation. One tenant described the fraud she had suffered at the hands of a previous landlord who took money for utilities but did not pay them. When she was moving out, she was faced with a large Council tax bill she could not afford to pay.⁷⁸

The informality (lack of paperwork) of the housing can cause other issues for the tenants, beyond unpaid council tax bills as above. Proving your rights in the UK as an EU citizen involves a robust paper trail of residency, here including tenancy agreements, proof of rent payments, name on utility bills etc. Not having this important documented footprint presents barriers as outlined below in accessing welfare benefits, housing assistance should it be needed as well as in applying to the EU settlement scheme to regularise the migrant’s future stay post Brexit. The bureaucratic bordering of EU migrant communities and the precarity and vulnerability it sustains is starkly highlighted here too in the context of housing.

Although EU law sets out provisions for EU citizens to be able to access housing- both social housing and purchasing private property on the same basis as nationals of the members states, the reality for those in low paid work is that they are more likely to be in private rented

⁷⁷ V Parutis “‘Economic migrants’ or “‘middling transnationals’”? East European migrants’ experiences of work in the UK’ (2011) 52 *International Migration*, 36, 36.

⁷⁸ Fn 75, 117.

accommodation. Therefore, more work is needed to understand the lived experience of accommodation of those who are accessing their free movement rights, particularly those moving into low paid and low skilled work- which is the majority of free movers across the European Union. Importantly, for EU migrant workers my work highlights the practice of ‘tied’ accommodation for EU migrant workers. This type of work/accommodation arrangement is well known for those accessing for example seasonal visas to come and work on farms and living in tied caravan accommodation on the farm. Less is known about this practice for those working in sectors where accommodation is not usually associated with the work- here in poultry factories and particularly around the role of unregulated agents operating in and controlling this space. This work serves to develop literature and knowledge of practice in this area of free movement. As outlined above informal housing arrangements can mean a lack of proof of residency in the UK- an important source of proof needed in accessing social assistance in a host member state as the next section describes.

3.3.c Social Assistance

Although the EU migrant workers across my portfolio of publications are largely in work, many need to access welfare benefits to top up that low paid work, or to help manage the day-to-day impact of unstable income related to zero-hour contracts. Welfare benefits is an area where precarity was already most pronounced pre-Brexit,⁷⁹ due in part to the provisions of EU law, in part to the strict implementation of that law by the UK Government and in part due to the heavy administrative burden required to be able to claim welfare benefits. This was summed up by O’Brien: ‘the complexity is significantly compounded for EU nationals whose situations are governed by EU legislation and the UK implementing legislation and possibly laws of Member States all interacting with the already labyrinthine domestic welfare system’.⁸⁰ Alongside this complexity, EU free movement has been accompanied by a ‘more restrictive approach to EU migrants’ entitlement to social benefits [that] has been evident, particularly in the U.K., through the application of the conditions for residence rights’.⁸¹

⁷⁹ P J Dwyer, L Scullion, K Jones and A Stewart, ‘The impact of conditionality on the welfare rights of EU migrants in the UK’ (2019) 47 (1) Policy & Politics, 133.

⁸⁰ C O’Brien, *Unity in Diversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Oxford: Hart, 2027), 25.

⁸¹ I Shutes and S Walker, ‘Gender and free movement: EU migrant women’s access to residence and social rights in the U.K’ (2018) 44: 1 Journal of Ethnic and Migration Studies, 137, 137.

Nevertheless, in principle, EU citizens can claim benefits on equal terms with nationals.⁸² Specifically, EU migrant workers can claim social advantages under Regulation 492/11,⁸³ and EU citizens can claim social assistance after the first three months of residence under the Citizens' Rights Directive 2004/38.⁸⁴ In the UK top-up for low paid work comes in the form of Universal Credit, introduced in 2013⁸⁵ to streamline welfare benefits in the UK. Zero-hour contracts and seasonal work (for example the Christmas campaigns in Turkey factories) means EU citizens might find themselves economically inactive, or in between jobs meaning they need to access social assistance in the interim, retaining their worker status for a period of time.⁸⁶ However, for those who are not working and have not retained worker status, access to social assistance is limited.

Economically inactive EU citizens (and workers) face restrictions in accessing social benefits in their host Member State, during the first 3 months under Article 24(2) CRD. After 3 months, they can only access social assistance if they are legally resident and meet the conditions (sufficient resources and comprehensive health insurance).⁸⁷ Even then, host states can limit access to certain benefits, particularly for those without permanent residency or who risk becoming an unreasonable burden on the social assistance system.⁸⁸ In *Brey*⁸⁹ the Court of Justice said that the phrase 'social assistance' meant 'all assistance introduced by the public authorities, whether at national, regional or local level, that can be claimed by an individual who does not have resources sufficient to meet his own basic needs and the needs of his family'.⁹⁰ This wide reading of social assistance suggests that it could include any social assistance benefits intended to protect against destitution including Universal credit and housing benefit in the UK. However, in *Dano*⁹¹ the Court said, and it was confirmed in *CG*,⁹² that the right of residence is subject to the conditions set out in Article 7(1)(b) CRD, which requires economically inactive

⁸² Provided they comply with EU law's residence and resource conditions- see cases Case C-333/13 *Dano v Jobcenter Leipzig* [2014] ECLI:EU:C:2014:2348 and Case C-67/14 *Alimonovic v Jobcenter Berlin Neukolln* [2015] ECLI:EU:C:2015:597.

⁸³ Article 7 (2) Worker's Regulation 492/11: <http://data.europa.eu/eli/reg/2011/492/oj>.

⁸⁴ Citizen's Rights Directive 2004/38/EC: <http://data.europa.eu/eli/dir/2004/38/oj>.

⁸⁵ Welfare Reform Act 2012.

⁸⁶ Article 7 (3) of CRD sets out the conditions for retaining working status, although it is not exhaustive see Case C-507/12 *Saint Prix* ECLI:EU:C:2014:2007

⁸⁷ Article 7 Citizen's Rights Directive 2004/38/EC:

⁸⁸ Fn 84, Article 7.1 (b). See also Daniel Thym, 'The elusive limits of solidarity: Residence rights of and social benefits for economically inactive Union citizens', (2015), 52, *Common Market Law Review*, Issue 1, 17-50,

⁸⁹ Case C-140/12 *Brey v Pensionversicherungsanstalt* [2013] ECLI:EU:C:2013:565.

⁹⁰ *Ibid* [para 61]

⁹¹ Case C-333/13 *Elisabeta Dano and Florin Dano v Jobcenter Leipzig*, EU:C:2014:2358.

⁹² Case C-709/20 *CG v Department for Communities in Northern Ireland* EU:C:2021:602.

citizens to have sufficient resources for themselves and the members of their family, because otherwise there was a risk of ‘allowing economically inactive Union citizens to use the host Member State’s welfare system to fund their means of subsistence’.⁹³

One of the rationales behind this restriction of access was due to the fear that unrestricted access might ‘lead to welfare migration and thus to be a fundamental challenge to the welfare state’.⁹⁴ Much of the literature around access to welfare benefits for EU citizens focuses on this idea of ‘welfare tourism’. In fact, Giulietti’s empirical research showed that there is no strong support for the ‘welfare magnet hypothesis, empirical evidence suggests that immigration decisions are not made on the basis of the relative generosity of the receiving nation’s social benefits’.⁹⁵ My own work also shows very little evidence of ‘welfare tourism’, in fact the precarity many of the workers face in their day to day working arrangements often puts welfare benefits out of reach. The following quote from one of my papers shows the lack of ownership workers have over their own working lives, particularly in the context of zero-hour work, here an example of a worker going to advice charity GYROS for help:

Client thought he was no longer working for (Agency) and wanted to know why he did not receive P45. I called to main office to speak to the agency directly and administrator informed that client is still employed, and he still has outstanding holiday pay. Client did not know he was still employed as he hasn’t been called for any shifts. Said he will then try to get some work with them, if not he will come back if he needs to in order to request P45. [Lithuanian, male, food processing factory, GYROS case note ID 485]

Equally, there are others who, due to poor practice of employers, will not be able to meet the standards of proof required to claim welfare benefits, irrespective of being entitled to it:

Client has been working for employer for three years without any payslips. He thinks if he approached his employer to ask for payslips he will be fired. Client instead is seeking support to apply for a new job and would like help with a CV and to complete an

⁹³ Fn 91.

⁹⁴ D Sindbjerg Martinsen, G Pons Rotger, and J Sampson Thierry, ‘Free movement of people and cross-border welfare in the European Union: Dynamic rules, limited outcomes’ (2019) 29: 1 *Journal of European Social Policy* 84, 84.

⁹⁵ C Giulietti, ‘The welfare magnet hypothesis and the welfare take-up of migrants’ (2014) *IZA World of Labor*, 37 doi: <10.15185/izawol.37>; see also A Gago (2021). “All of the same type? The use of fears of ‘welfare tourism’ to limit the access of EU migrants to social benefits in the UK and Germany” In *Social Policy Review* 33 (Bristol Policy Press, 2021) <<https://doi.org/10.51952/9781447359739.ch010>>; S A Mantu and P E Minderhoud, P E, ‘Exploring the limits of social solidarity. Welfare tourism and EU citizenship’, (2016), 2 (2) *Unio. EU Law Journal*, 4. < <http://dx.doi.org/10.21814/unio.2.2>> accessed 23 November 2024.

application form. Children's services are involved with the family due to their current financial situation; family are in receipt of food parcels and have been unable to fully furnish their rented property. Client is struggling to apply for UC due to lack of paperwork. [Romanian, male, food processing factory, GYROS case note ID 163].

The wider literature also outlines the bureaucratic bordering⁹⁶ of non-national communities; this is reflected in my work. Bureaucratic bordering is the day-day experience of immigration control by internal actors charged with undertaking immigration checks e.g. employers and landlords. Therefore, another argument against that of welfare tourism is the reality of the administrative burden placed on EU citizens to prove their entitlement to access social assistance, meaning that for many access is out of reach.

The client has been in the UK since May 2014 and has been working for several employers distributing leaflets. Client speaks Turkish very well and it was easy for him to get this job with them, but he does not have any payslips or P60 for all this time he has been working so he cannot pass the HRT (habitual residency test) for the UC to be able to claim CHB (child benefit) or UC. The client has a 3-month-old baby, and his partner is not working but she used to do the same work as the client does. The client is okay financially today as he works...gets 130 p/week but at the end of the day, there is no money left for food and [children services] is very worried that client will not be able to support his family. I explained to them that for what they told me he cannot claim UC or CHB (child benefit) as he does not have evidence that they have been in the UK exercising their treaty rights and they will fail the RTR (right to reside) test. [Client ID 163].

Empirical work helps to illuminate the experiences of low paid EU migrant workers (in the UK). More work is needed to understand the experiences of those in other EU member states. Access to social assistance works best for those who are in work (and can prove it). EU law in its protections and rights is most robust for this group.⁹⁷ However, as the above (and the wider corpus of my work) shows, precarious work arrangements, lack of paperwork, lack of consistency, zero-hour contracts, can mean work suddenly stops, and individuals need to prove they have been working to access social assistance. Many, like in some of the case note examples above, risk destitution should they not be able to prove their rights. Those not in work

⁹⁶ P Manolova, 'Inclusion through irregularisation? Exploring the politics and realities of internal bordering in managing post-crisis labour migration in the EU' (2021) *Journal of Ethnic and Migration Studies* 1, 1.

⁹⁷ See Fn 12.

or out of work for long periods (for example 1 year or more) are not entitled to access welfare benefits at all. Destitution and possibly homelessness can, and in many cases does, follow.

In the UK in 2016, the UK Home Office introduced a system of removals for EU citizens who were street homeless, with the new policy maintaining that rough sleeping was an ‘abuse’ of EU free movement rights.⁹⁸ Almost 1,000 EU nationals were ‘administratively removed’ (back to their country of origin) in the period 2016-2017 until a successful judicial review was brought by the Public Law centre to prevent this practice from occurring.⁹⁹

However, in reality this practice continues through ‘voluntary reconnection’¹⁰⁰ and is mostly unremarked upon in the academic literature.¹⁰¹ Those without an immigration status- particularly post Brexit are most vulnerable to losing or being unable to prove their right to work and rent. In the next section we turn to that immigration status and the experiences of navigating the EUSS in the aftermath of the UK’s decision to leave the EU, as well as what Brexit has meant for access to social assistance for those more vulnerable.

3.4 Brexit: ending EU free movement to the UK.

The final lens I will use to describe precarity in the lives of (low paid) EU migrant workers in Great Yarmouth is that of Brexit. The UK’s vote to leave the European Union in 2016 represented a significant rupture in the lives of EU citizens living in the UK. Universally referred to as ‘Brexit’, leaving the EU has meant the end of freedom of movement for EU nationals under EU law, together with Norwegian, Icelandic, Liechtenstein, and Swiss nationals (European Economic Area (‘EEA+’1)), as well as their non-EU national family members (NEFMs), into the UK (and UK nationals in Europe). The entirety of the empirical work put forward in this portfolio occurs after the Brexit vote¹⁰² and so also considers the application of the post Brexit arrangements and agreements. Brexit introduced a form of precarity into the lives of EU nationals which had not existed before- namely a need to make an application to the UK Home Office to be able to

⁹⁸ A Radziwinowiczówna and B Morgan, ‘London’s deportation apparatus: The ‘administrative removal’ of rough sleeping European Union citizens, 2010-2017’, (2023), *Population, Space and Place* 1 <<https://doi-org.ezp.lib.cam.ac.uk/10.1002/psp.2633>>.

⁹⁹ *Ibid*, 9.

¹⁰⁰ For more see C Barnard and F Costello (2020) for the UK In a Changing Europe: ‘Deportation and ‘reconnection’ of homeless EU nationals in the UK’, <<https://ukandeu.ac.uk/deportation-and-reconnection-of-homeless-eu-nationals-in-the-uk/>> accessed 02 February 2022.

¹⁰¹ See fn 98; also the Public Interest Law Centre published a report on this matter: ‘Still here defending the rights of homeless EU citizen’s after Brexit and COVID19’, (July 2021) <https://www.pilc.org.uk/wp-content/uploads/2021/06/PILC_EEA_A4_ONLINE-1.pdf> accessed 23 November 2024.

¹⁰² Although the longitudinal data studied covers 2015-2020.

continue to live and work (and study etc) in the UK on the same basis as they had done before the end of the transition period in December 2020.

This application process was called the EU Settlement Scheme (EUSS). As outlined above, the EUSS is a Home Office (HO) scheme giving effect to the citizens' rights provisions of the Withdrawal Agreement which was implemented in the UK by the European Union (Withdrawal Agreement) Act 2020. Those EU nationals who had already lived in the UK for more than five years, with their residency having begun pre-December 2020) received 'settled status' akin to indefinite leave to remain in the UK. Those with evidence of less than five years residence at the point of application were granted pre settled status akin to limited leave to remain.¹⁰³ In the fullness of time this second group must make a new application to 'upgrade' to settled status.¹⁰⁴

Those featured in my portfolio of work were affected by this change in legal status on both a practical and personal level. Previously, many reported seeing themselves as equal EU citizens who had moved to the UK under the freedom of movement rules. Brexit initiated a process of being reclassified as a 'migrant' and of being 'othered'.¹⁰⁵ which some struggled with. Quotes from participants in my empirical work emphasise this:

Before the referendum I felt British. It's since been made clear to me via media and individuals that I am not part of this country. (German national)

Yes, I feel as an immigrant now whereas before I felt fully integrated in UK society. (French national)

EU citizens in this research also reported the impact Brexit had on both their sense of safety and security in the UK. Many reported instances of hate crime which occurred after the Brexit Referendum, including both verbal and physical assault.¹⁰⁶ All research participants in focus groups described experiencing 'go home' rhetoric during their time in the UK.¹⁰⁷ However, for low paid EU migrant workers in Great Yarmouth, many described everyday racism and security fears

¹⁰³ European Union (Withdrawal Agreement) Act 2020, <<https://www.legislation.gov.uk/ukpga/2020/1/enacted/data.htm>>.

¹⁰⁴ Although at time of writing the Home Office has implemented changes to upgrade as many people as possible automatically via automated digital residency checks such as via MHRC or DWP. Those whose digital footprint can be identified will be upgraded to settled status.

¹⁰⁵ T Guma and R D Jones, "Where are we going to go now?" European Union migrants' experiences of hostility, anxiety, and (non-)belonging during Brexit' (2019) 25(1) Population, Space and Place 1, 2.

¹⁰⁶ See also: A Rzepnikowska, 'Racism and xenophobia experienced by Polish migrants in the UK before and after Brexit vote' (2019) 45 (1) Journal of Ethnic and Migration Studies, 61.

¹⁰⁷ C Barnard, S Fraser Butlin, and F Costello, 'The changing status of European Union nationals in the United Kingdom following Brexit: The lived experience of the European Union Settlement Scheme' (2022) 31 (3) *Social & Legal Studies*, 365.

as an ongoing feature of life in the UK, not as a new phenomenon which began after the Referendum.

Years ago, before the Referendum, I was told at the NINO [national insurance number] office to go back to where I came from. (Lithuanian national)

Another time I was outside the school and was told 'if you want to talk in your own language, go back to where you came from'. (Bulgarian national)

As outlined above, this is supported by the literature which records a particular hostility to Polish, Romanian and Bulgarian migrants but more broadly to anyone referred to as 'Eastern Europe'.¹⁰⁸ Research from the 3 million group¹⁰⁹ in 2019 noted that 'existing evidence from other research projects indicates that Eastern Europeans are a group with specific experiences and vulnerabilities, not least because they have been particularly affected by xenophobia and hate crimes during and since the EU referendum'.¹¹⁰ My work supports this argument but also charts the experiences of Portuguese citizens, including ethnic minority Portuguese nationals and those from former Portuguese colonies such as Guinea Bissau, Mozambique, Angola, Sao Tome and Principe and East Timor. This group, too, have been the victims of racist and discriminatory practices in their life in the UK. One research participant, Luca (Black Portuguese), described how, just after his arrival in Yarmouth aged 7, he and his brother were assaulted in the park by local (English) children, telling them to 'get the fuck out of here, because you don't belong here. Go back to your country.'¹¹¹ They had shoes and stones thrown at them. He then went on to experience years of racist bullying in his primary school, until eventually he moved schools.

Others describe similar instances of racism and discrimination, even within the same citizenship communities, for example one participant told me that those from East Timor can face discrimination from other Portuguese citizens due to an unspoken (but felt) categorisation

¹⁰⁸ J E Fox, 'The uses of racism: Whitewashing new Europeans in the UK' (2013) 36 (11) *Ethnic and Racial Studies* 1871; J.E Fox, L Moroşanu and E Szilassy, 'Denying discrimination: Status, "race", and the Whitening of Britain's New Europeans' (2015) 41 (5) *Journal of Ethnic and Migration Studies* 729; T Guma and R D Jones, "'Where are we going to go now?'" European Union migrants' experiences of hostility, anxiety, and (non-)belonging during Brexit' (2019) 25 (1) *Population, Space and Place* 1; L Moroşanu and R King, 'And then came Brexit: Experiences and future plans of young EU migrants in the London region' (2018) 24 (1) *Population, Space and Place* 1; A Lulle, R King, V Dvorakova et al., (2019) 'Between disruptions and connections: "New" European Union in the United Kingdom before and after the Brexit' (2019) 25 (1) *Population, Space Place* 1; A Rzepnikowska, 'Racism and xenophobia experienced by Polish migrants in the UK before and after Brexit vote' (2019) 45 (1) *Journal of Ethnic and Migration Studies* 61.

¹⁰⁹ For more: <<https://the3million.org.uk/>> accessed 27 November 2024.

¹¹⁰ T Bueltmann, 'Experiences and Impact of the EU Settlement Scheme: Report on the 3million Settled Status Survey' (the3million, 2020).

¹¹¹ Interview with Luca (Anonymous) Great Yarmouth, February 2022.

that those from the East Timorese community can be seen as ‘not really Portuguese, they just have the passport. Because they don’t even speak Portuguese’.¹¹² These experiences of racism and discrimination make integration to the wider community difficult in the context of free movement and further serve to marginalise the free movers.

And for those more vulnerable the EUSS posed particular challenges. Firstly, it was an online application system available only in English. For those in my research cohort, largely non-English speakers and non-digital users, the process of application in and of itself was a barrier. Those in low paid, precarious work and living arrangements faced additional challenges. In order to evidence life in the UK, applicants needed to be able to prove their residential footprint through tenancy agreements, payslips, HMRC records, health appointments and other ‘official’ documentation. As discussed above (and is common throughout the portfolio of work), one aspect of precarity that low paid migrant workers faced is that of informal work and rent arrangements. For example, in the HMO which features in *Low Paid EU Migrant Workers, The House, The Street, The Town*,¹¹³ none of the residents had a tenancy agreement and all paid their rent in cash. This is a common arrangement for migrant accommodation in the town (see 3.3.b). This lack of documented residence in the UK resulted in additional hurdles to prove five years of residency.

This led to many of those more vulnerable accepting the more precarious pre settled status. Those with pre settled status have access to fewer rights particularly in the context of accessing welfare benefits, so this significantly aggravates the precarity these individuals and families experience.

Post Brexit settled status gives entitlement to benefits on the same basis as British nationals. For EU citizens status means that they have the right to reside for benefit purposes, although they still need to show they are habitually resident. However, applicants with pre-settled status cannot rely solely on their status. They must also demonstrate an independent qualifying right to reside for benefit purposes. This means they must have a qualifying right under what were the Immigration (European Economic Area) Regulations 2016, so they must show that they are a worker, self-employed or have retained worker/self-employed status, or are family member of an EEA citizen in one of those categories.¹¹⁴ For those not in work, or in more precarious work this can cause difficulties.

¹¹² Interview (Anonymous) Great Yarmouth, August 2022.

¹¹³ Fn 75.

¹¹⁴ Immigration (European Economic Area) Regulations 2016.

This precarious position (of those with pre settled status) has been highlighted by two recent cases brought before both the EU courts and domestic courts (respectively)- *CG*¹¹⁵ and *AT*¹¹⁶. In both cases applicants had been refused access to universal credit as they held pre settled status and had no other ‘qualifying’ right to reside. Both *CG* and *AT* were victims of domestic abuse, neither were in work and both had recently moved into a women’s refuge for protection. In *CG* the Court of Justice of the European Union found that before refusing social assistance benefits, the relevant authority had to satisfy itself that the refusal would not expose the claimant to an actual and current risk of violation of their fundamental rights under the Charter of Fundamental Rights (‘the Charter’)¹¹⁷ (this case took place before the end of the transition period). In particular the protection of such an EU citizen’s rights under article 1 (human dignity), article 7 (respect for private and family life) and article 24(2) (rights of the child) of the Charter. Similarly in *AT* The First Tier Tribunal had said that without UC *AT* could not live in ‘dignified conditions’, therefore breaching her (and her child’s) relevant Charter rights. The SSWP (Secretary for Work and Pension) appealed this decision on the basis *CG* referred to those with pre settled status *before* the end of the transition period (December 2020), that the Charter only applied to Member States when they are implementing EU law and this was not the case for the UK after the transition period. The Upper Tribunal held that *AT* could rely on the EU Charter of Fundamental Rights after the end of the transition period.¹¹⁸ These cases highlight the impact the conditionality of rights can have on more vulnerable groups (here, those with pre settled status), particularly women who are victims of domestic abuse. The impact of these conditional rights can be to push/retain people in exploitative and abusive working conditions (such as those outlined above) as such work is their only means of income or way of meeting the threshold for these conditional rights.

Finally, although the EUSS was set up to secure the rights of those already in the UK, the majority of those consulted in this research thought that the status did not offer equal security to that which they had (already) held under EU law¹¹⁹ and many did not trust the UK Government to protect their rights in the same way.

¹¹⁵ Fn 92.

¹¹⁶ *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307.

¹¹⁷ Available here: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12012P%2FTXT>> accessed 24 November 2024.

¹¹⁸ The decision reaffirmed the ongoing relevance of the Charter where EU law rights under the Withdrawal Agreement are engaged.

¹¹⁹ Catherine Barnard and Fiona Costello, ‘From EU Citizenship to British citizenship via the EU Settlement Scheme: Some Socio-Legal Reflections from the east coast’ (2024) University of Cambridge Faculty of Law Research Paper No. 19/2024, forthcoming in: *EU Citizenship as an Independent Status: Between Form and Substance* (edited by: Petra Minnerop, Volker Roeben, Robert Schütze and Jukka Snell. (OUP,

EUSS seems too good to be true. I fear that it could just suddenly end at some point.

(Polish national)

[I am] also stressed as I don't trust the Government to keep their word and not make any changes to our status or to the regulations that apply to our status. (French national)

This led to many suggesting that post Brexit the 'gold standard' of security would be to apply for British citizenship. For some EU citizens this led to difficulties when their original member state did not allow for dual citizenship.¹²⁰ However, due to the cost of making an application, as well as the requirement of passing an English language and a Life in the UK test (which also have additional costs) for those in low paid, zero hour work a citizenship application is often out of reach. Here we see a stratification of EU citizens: those who are able to secure their rights (via citizenship) and those who are not.

My work shows how immigration status, therefore, has also introduced precarity to the life of EU migrant workers post Brexit. It is equally the root of much other precarity which EU migrant workers face, for example in accessing welfare benefits or housing assistance. Their immigration status i.e. settled or pre settled status acts as a gateway to (most) help and support, particularly as they no longer live in an EU member state.

4. Summary of Portfolio Work

This work (legal needs research) sits broadly within the access to justice¹²¹ literature. The fact that my work focuses on EU free movers lends itself to a study of EU law in practice as outlined above, and for this reason my work sits too in EU law and scholarship particularly around free movement.¹²² Finally, the context of Brexit means my work also now sits in an emerging field of scholarship that of UK and EU Relations law or Withdrawal Agreement law.

under contract)), Available at SSRN:< <https://ssrn.com/abstract=4803136>> or <<http://dx.doi.org/10.2139/ssrn.4803136>>.

¹²⁰ Countries such as Lithuania, Poland, Austria, Germany and Bulgaria do not allow for dual nationalities or have stricter requirements around eligibility for dual nationality.

¹²¹ For more see: H Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing, 1999); R Sandefur, 'What we know and need to know about the legal needs of the public' (2016) 67 South Carolina Law Review 339, 443; P Pleasence and N J Balmer, 'Development of a general legal confidence scale: a first implementation of the Rasch measurement model in empirical legal studies' (2019) 16 Journal of Empirical Legal Studies 143; A Buck, P Pleasence and N J Balmer, 'Do citizens know how to deal with legal issues? Some empirical insights' (2008) 37 Journal of Social Policy 661; P.T. Pleasence and N J Balmer, 'Legal Confidence and Attitudes to Law: Baseline Measures and Social Patterning' (London: Legal Education Foundation, 2018);

¹²² Niamh Nic Shuibhne (ed), *Revisiting the Fundamentals of the Free Movement of Persons in EU Law* (OUP 2023); Niamh Nic Shuibhne, *Coherence, Fragmentation, and the Free Movement Case Law* (OUP

The research which makes up this body of work is all time- and place-bound. All the research took place in the period 2019-2024 and is based in the town of Great Yarmouth.

As outlined above, my work uses various lenses (immigration, employment, housing, welfare benefits (and relatedly debt)) to examine the experiences of EU migrant workers in the UK and the legal problems they face. First and foremost, there is the issue of the changed migration status for EU migrant workers. My paper 'The changing status of European Union nationals in the United Kingdom following Brexit: The lived experience of the European Union Settlement Scheme'¹²³ published in 2021, provided an in-depth overview of the changing immigration status of EU migrant workers in Great Yarmouth. It examined the experience and perceptions of those navigating the European Union Settlement Scheme and how they feel about life in the UK post-Brexit. This work also raised questions about identity and belonging. It highlighted how the impacts of Brexit and European Union Settlement Scheme were unevenly felt and experienced by different European Union national groups; some quotes from this work have been included in the text above. The article concludes that it is likely that we will be able to measure the true extent of the 'success' of the European Union Settlement Scheme only by learning what happens to those who fall between the gap, especially those more vulnerable.

Migration does not occur in a vacuum. By definition it comes to (a) place(s). For my research this place was Great Yarmouth. Up until now very little research has been done on the effect of migration on the local population on an already very deprived town. My article 'When EU Migration came to Great Yarmouth',¹²⁴ tries to address this. The article shows that Great Yarmouth has always been a town of migration, but that the sudden arrival of large numbers of EU nationals, exercising their free movement rights, in a relatively short space of time, created divisions in the town, divisions which may take decades to heal. Using legal geography as a prism, it offers an insight into the complex and evolving realities of European integration – and resistance to it. It argues that because EU free movement is a process, not an event, it has long-term effects, effects which have not, to-date, been fully recognised and explored. This article concludes that only by understanding the experience of migration on a particular community over time can the impact of free movement be properly understood, its consequences continuing long after Brexit.

2023); Acosta Arcarazo, 'Is Free Movement Fully Emancipated from Migration Law?' in Catherine Barnard and Steve Peers (eds), *EU Migration Law: Legal Framework and Challenges* (CUP, 2022).

¹²³ Fn 107.

¹²⁴ C Barnard, C and F Costello, 'When EU Migration came to Great Yarmouth', (2023) 18 (2) *Contemporary Social Science*, 150.

Most of the EU migrant workers came to Great Yarmouth to work. However, chicken factories are not great working environments. My article '(Legal) assistance in employment matters to low-paid EU migrant workers in the East of England',¹²⁵ considers the legal problems EU migrant workers face in the workplace and how those problems may be resolved. Using quantitative and qualitative research this paper looks at the working life of those in chicken factories and how, if at all the workers resolve their employment law problems. This paper also introduced the developing theory of 'pragmatic law' (PL). The research shows that most legal issues (at least with the groups in this research) do not enter any formal legal resolution pathway at a community level (more below). The workers do, however, seek help from GYROS whose approach to resolution is pragmatic and does not involve the courts.

The housing conditions of EU migrant workers in Great Yarmouth are generally poor in a town which suffers generally from poor quality housing stock. The chapter entitled 'The darker side of the internal market ideal: EU free movement and migrant workers living in a coastal town'¹²⁶ details the history behind the housing provision in the Worker's Regulation and highlights the experiences of migrant workers in the private rented sector. In examining the dichotomy of the law on the books and the law in action,¹²⁷ this chapter argues that the requirement of equal treatment, the key right under EU law, means little in practice for the day-to-day experience of migrant workers because there is little social housing available. Yet the equal treatment principle creates tensions within the local community who believe that EU migrant workers are getting access to social housing.

My monograph, *Low Paid EU Migrant Workers, the House, the Street, the Town*,¹²⁸ provides a fuller and more considered consideration of some of the themes and issues identified above. Thus, it draws on a longitudinal study focusing on the legal problems migrant workers face. It devotes a chapter to each of these enquiry lines (immigration, employment, housing, welfare benefits (and debt) and health) to explore the lives and legal problems faced by EU migrant workers in low paid work. The book also develops the concept of pragmatic law as it examines the role of community-based advice within the wider legal advice eco system. This book explicitly references the precarity migrant workers are experiencing and the impact this has on their everyday.

¹²⁵ C Barnard, F Costello, and S Butlin, '(Legal) assistance in employment matters to low-paid EU migrant workers in the East of England' (2022) *Legal Studies*, 1.

¹²⁶ Fn 70.

¹²⁷ Fn 27.

¹²⁸ C Barnard, F Costello and S Fraser Butlin, *Low Paid EU Migrant Workers, The House, The Street. The Town* (Bristol University Press, 2024).

All of my works include detailed explanations of the methodologies used and the appropriateness of the methodology to answer the research questions involved. This has required me to be trained in both quantitative and qualitative methodologies and to reflect on the methodologies used. This is reflected in one further work included in this collection of works, '(Facilitated) Conversations from the frontline: qualitative multilingual research with EU Migrant Workers'.¹²⁹ It examines the use of qualitative interviews and focus groups in the context of understanding employment experiences of migrant workers. A strong argument (and theme) across all my work is that of the benefit of examining EU law in action through empirical work and this paper (as well as others) helps to amplify that argument and commitment to the value of empirical work in this context while being conscious of the risks involved. The empirical approach of my work has allowed a more holistic picture of free movement experiences to develop, particularly in the context of precarity experiences by (low paid) EU free movers, largely absent from the literature to date.

5. Conclusion

With this PhD I have been able to look beyond the individual papers and chapters presented here and examine (and reflect upon) in more detail the overarching theme which speaks so loudly in these works: the precarity this group are facing, the role of the law in this precarity and how the benefits of the internal market are unevenly spread amongst those accessing their free movement rights under EU law. And now further, how this precarity has been 'baked in' to the post Brexit arrangements with, for example, pre settled status as limited leave to remain leaving many (as we saw in the case law outlined above) with more fragile access to their rights.

Although my work focuses on EU workers in low paid work, my examination of their experiences goes beyond solely their experiences in their employment. My work also catalogues experiences of immigration applications (the EU Settlement Scheme), housing matters and access to social assistance in the host member state. This holistic approach is important as my work shows these aspects of worker's lives are often intertwined. For example, many experience tied accommodation utilising informal agents to arrange their 'free' movement. These informal agents are overseeing both work shifts and sleeping arrangements. To date these types of arrangements and their use in internal market free movement has been less known. This might be changing and recent work in Germany shows the experiences of Romanians and

¹²⁹ C Barnard and F Costello, '(Facilitated) Conversations from the frontline: qualitative multilingual research with EU Migrant Workers' in *Handbook on Research Methods in Labour Law*, Edited by Alysia Blackham and Sean Cooney (EE, 2024).

Bulgarians in a small district in Germany to be strikingly like those I have catalogued in Great Yarmouth- including tied accommodation and the intermingling of work life and home life which the authors conclude creates a “double invisible exploitation”¹³⁰ for these workers.

The overarching theme of this work is precarity and its related outcome, vulnerability. I hope my work has contributed to a more holistic examination of the lived experience of free movement for those in low paid work across Europe (in my work in the UK). This is important because 14 million EU citizens have moved to another EU country¹³¹ coupled with the reality that almost one in every six employees in the European Union is a low-wage earner.¹³² To claim true success all EU citizens must be able to access their supranational rights equally. My work shows currently this is not the case. Recent case law such as *CG*¹³³ might offer some hope, with the Court of Justice recognising that, at a minimum, citizens should be able to live in ‘dignified conditions’. Perhaps dignity is the antithesis of precarity for low paid EU migrant workers across the internal market. To ensure the rights of *all* their EU citizens are upheld within their territories will require commitment (and resources) from member states and bravery from the CJEU in setting out what ‘dignified conditions’ might look like day-day. In the meantime, my work shows, rather starkly, that for some EU migrant workers free movement comes at a great (personal) cost.

¹³⁰ Fn 62, 8-9.

¹³¹ For more: <https://european-union.europa.eu/principles-countries-history/facts-and-figures-european-union_en#:~:text=Multicultural%20societies%3A%20around%2041%20million,one%20in%20which%20they%20reside> accessed 24 November 2024.

¹³² For more: <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Earnings_statistics#General_overview> accessed 24 November 2024.

¹³³ Fn 92.