

<b>Institution:</b> University of York		
<b>Unit of Assessment:</b> 18 – Law		
<b>Title of case study:</b> The Rights of EU Nationals in the UK		
<b>Period when the underpinning research was undertaken:</b> 2013-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Charlotte O'Brien	<b>Role(s) (e.g. job title):</b> Professor	<b>Period(s) employed by submitting HEI:</b> 2009-present
<b>Period when the claimed impact occurred:</b> 2014-2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Charlotte O'Brien's 'EU Rights Project' has seen a broad range of impacts concerning the rights and welfare of EU nationals living in the UK. The project, first, has shaped legal and policy debates about the meaning of equal treatment under EU law. Second, it has directly affected the welfare of EU nationals in the UK by supporting them in disputes with government agencies about their legal entitlements. Third, with similar effect, the project has indirectly assisted a much wider group of EU nationals by training and educating networks of UK advisors. Fourth, it has indirectly assisted additional EU nationals through knowledge exchange with advisors, equipping them to advise their clients about how to prevent the emergence of future disputes about their entitlements. And fifth, it has indirectly assisted a much wider group of EU nationals in the UK by influencing administrative practices within the government agencies that determine all entitlement claims.</p>		
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>The EU Rights Project was a legal action research project undertaken by Charlotte O'Brien. It was funded by an ESRC 'Future Leaders' Fellowship (2013-2017 - ES/K000993/1). The project focused on the right to equal treatment enshrined in EU law, particularly with respect to women, older people and those with disabilities. O'Brien set up a specialist advocacy service with Citizens Advice Bureaux to work closely with EU nationals. Her project offered direct assistance and support with respect to individual claims. It also ran a programme of skills and capacity building for networks of advisors so that they could offer similar support and assistance to a much wider group of affected individuals.</p> <p>Through these action research methods, O'Brien compiled an ethnography of the problems EU nationals faced when making welfare claims. The research showed that migrants from the EU were treated differently from UK nationals. O'Brien's work thus revealed injustices that would otherwise have gone unnoticed and provided the basis upon which they might be challenged. Such 'advice-led ethnography' offers a highly novel way of interrogating EU law, blending socio-legal studies with doctrinal, philosophical and historical work on EU social law.</p> <p>The key research findings were as follows:</p> <ul style="list-style-type: none"> <li>• EU nationals within the UK face administrative, political and legal obstacles when claiming entitlements, particularly welfare benefits: e.g., language demands; extra evidential burdens; and coordination problems amongst different national benefit offices. These obstacles combine to render equal treatment an illusion. EU nationals in the UK suffer systemic disadvantage in accessing justice and in the associated recognition and enforcement of their rights. <b>[A-F]</b></li> <li>• In periods of legal transition, risks of administrative injustice increase as a result of changes in practice and guidance, confusion among decisions makers, and the congestion of communication channels. <b>[A][F]</b></li> </ul>		

- Some groups are especially adversely affected. Although legal protections exist for EU migrants facing certain social security risks (Article 7(3) of 2004 Directive 38), these provisions are better suited to risks experienced by men. Moreover, they have been interpreted by both UK courts and UK administrative decision-makers in a restrictive manner in which proportionality plays very little role. Equally, they do not allow children an independent right to reside, making them dependent upon the status of their parents. Accordingly, free movement and equal treatment frameworks, as implemented in the UK, contain very significant gaps through which women and children are likely to fall – particularly women who have caring responsibilities, who have children with disabilities, or who have been the victims of domestic abuse. **[A][D][E]**
- By working with representational agencies, such as Citizens Advice offices, it is possible to improve significantly the support and protection of individual rights through: (a) improved information gathering and provision; (b) a more detailed and thorough knowledge of the law; and (c) increased confidence to challenge decisions of central government agencies. **[A]**

### 3. References to the research (indicative maximum of six references)

**[A]** Charlotte O'Brien, *Unity in Adversity: EU Citizenship, Social Justice, and the Cautionary Tale of the UK*, Hart (2017) <https://doi.org/10.1080/09649069.2016.1183556> (submitted to REF 2021)

**[B]** Charlotte O'Brien, 'The ECJ sacrifices EU citizenship in vain: *Commission v UK*' (2017) 54(1) *Common Market Law Review* 209-243  
<https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/54.1/COLA2017007>

**[C]** Charlotte O'Brien, 'Civis capitalist sum: class as the new guiding principle of free movement rights' (2016) 53(4) *Common Market Law Review* 937-977  
<https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/53.4/COLA2016089>  
(submitted to REF2021)

**[D]** Charlotte O'Brien, 'Hand-to-mouth' citizenship: decision time for the UK Supreme Court on the substance of Zambrano rights, EU citizenship and equal treatment' (2016) 38(2) *Journal of Social Welfare and Family Law* 228-245 <https://doi.org/10.1080/09649069.2016.1183556>

**[E]** Charlotte O'Brien, 'The pillory, the precipice and the slippery slope: the profound effects of the UK's legal reform programme targeting EU migrants, (2015) 37(1) *Journal of Social Welfare and Family Law* 111-136 <https://doi.org/10.1080/09649069.2015.1005997> (submitted to REF2021)

**[F]** Charlotte O'Brien, 'I trade, therefore I am: Legal personhood in the European Union', (2013) 50(6) *Common Market Law Review* 1643-1684  
<https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/50.6/COLA2013162>

**Quality indicators:** **[A]** won 2019 Socio-Legal Studies Association book prize and was shortlisted for a BBC's *Thinking Allowed* 'Award for Ethnography'. **[B] [C] [D] [E] [F]** are in major peer-reviewed journals.

### 4. Details of the impact (indicative maximum 750 words)

O'Brien's research has seen a broad range of impacts concerning the rights and welfare of EU nationals living in the UK. She employed a number of techniques to facilitate this impact: establishing herself as an authoritative voice in legal and policy debates; providing direct support to advisors working with EU nationals in entitlement disputes; sharing expertise and building

capacity amongst a nationwide network of advisors; advocating directly with government agencies to change problematic administrative practices.

### Shaping Legal & Policy Debates

O'Brien established herself as the leading expert on the meaning of equal treatment under EU Law for EU nationals who were resident in the UK [10e], particularly with regard to welfare benefits. She wrote articles in practitioner journals [5a-5g], gave research briefings to parliamentarians and civil servants [2a], gave presentations to groups of lawyers, judges, civil servants and NGOs, with outstanding feedback [9][10], and made media appearances [7]. Her scholarship won awards and was published in major legal journals (section 3). As a result, she became an authoritative and highly influential voice in legal and policy debates.

O'Brien advised welfare organisations in strategic litigation in the senior courts. For example, her academic output [D] was adopted by counsel in a UK Supreme Court case and cited in the subsequent judgment [1]. Advocate General Szpunar quoted and relied upon her academic output [C] in the Court of Justice of the European Union [3]. Her evidence to the London Assembly was quoted at length in the Assembly's letter to the Mayor of London [6]. Her evidence to the House of Commons Select Committee for Exiting the EU (2017) was drawn upon heavily in the Committee's report (eight references; 58 lines of text in total) [2b]. It was also cited by several MPs in the Commons Debate on the EU (Withdrawal) Bill [2c][2d]. Her written evidence to a later Select Committee inquiry (2018) was used explicitly to formulate a specific objection to government proposals regarding the rights of EU nationals post-Brexit. Drawing directly on O'Brien's argument that vulnerable groups would fall through the gaps left open by government policy proposals, the Committee demanded that:

*"the Government must ensure that there are specific provisions and flexibility for such people to ensure eligibility for Settled Status that will cover vulnerable children and adults, particularly women who have had caring responsibilities or have been temporarily unable to work because of domestic abuse."* [2e]

The Home Office reversed its policy ten weeks later. As the Assistant Counsel for the Justice Committee in the House of Commons noted:

*"[O'Brien's] evidence represented a compelling contribution to the arguments for changing government policy on citizens' rights. I have no doubt that her arguments were extremely influential in setting the agenda for how the Government should approach policy in this area."* [10e]

At the supra-national level too, O'Brien's work impacted on legal and policy debates. O'Brien was appointed as an analytical expert on the EU Commission's *Free Movement of Workers and Social Security Coordination Network* (FreSsco), as a member of its successor expert network (MoveS), and co-authored three research reports [4a-4c]. Her FreSsco report on definitions of a worker under EU Law [4b] was, according to an EU Commission lawyer, considered both 'influential' and a 'game-changer' [10b], informing the work of the Commission when considering litigation to set standards and precedents that govern rights:

*"[It] gave lawyers in the commission evidence and continues to give us a basis for discussion with member states, and amongst ourselves."* [10b]

### Direct Assistance in the Resolution of Disputes Over Entitlements

The EU Rights Project, in its advocacy work, directly supported disputes that represented a recurrent problem encountered by legal advisors. From 2014-2017, 42 of the project's 53 case studies involved direct legal action research work: advice, drafting, representation and advocacy. These featured clients from 15 EU member states. There were immediate benefits for claimants relating both to housing (e.g., preventing evictions; getting housing assistance) and finances (e.g.,

writing off overpayments; accessing benefits, including back payments). Some outcomes were worth tens of thousands of pounds and feedback was that “*we would not have achieved this result without [O’Brien’s] help*” [8]. The advisors supported by O’Brien in these disputes attest to the central significance of her input:

*“[O’Brien] made a real difference to the outcomes, particularly of those clients with really technical cases.”* [10d]

*“[O’Brien] had a huge impact on my clients... She had so much expertise and knowledge that these decisions were often positive.”* [10a]

*“[O’Brien’s] project actually helped people at the same time as studying them – that’s what’s really unique about it.”* [10b]

#### Indirect Assistance in the Resolution of Disputes Over Entitlements

In addition to direct advocacy support, O’Brien’s research also engaged in considerable knowledge exchange in order to build the capacity of others to reproduce her expertise for the benefit of the wider body of EU nationals in the UK. For example, she wrote articles for publications with wide circulation amongst advisor audiences to inform the advisory networks supporting EU nationals (e.g., *Advisor*; *Poverty: Journal of the Child Poverty Action Group*). She also contributed to briefing documents for the *Public Law Project*, subsequently circulated to a broad range of advice organisations, including Citizens Advice Bureaux, housing lawyers’ advisory groups, Greater Manchester Welfare Rights Advisors Groups, the Brexit Civil Society Alliance, and the Birmingham Welfare Rights Advisors [10c]. She convened knowledge exchange events with advice organisations around the country, gathering data on problems they had encountered and offering training at the same time. Feedback from these events was excellent and demonstrates the significance of their impact in terms of knowledge exchange and capacity building:

*“I have a much clearer understanding of those rules and can therefore do a better job for my clients, [with] lots of useful stuff I can take away and use.”* [9]

*“[O’Brien] encouraged me to learn more and to understand the residency rules for EU nationals, allowing me to do more and more on my own... I became the person that people would come to for advice ... I was a bit of a champion for challenging negative decisions instead of accepting them.”* [10a]

#### Indirect Assistance in the Prevention of Disputes Over Entitlements

Whereas the support of dispute resolution is essentially backwards-facing – challenging a decision that has already been made – O’Brien’s work also had forwards-facing impact in the prevention of disputes. The capacity-building aspect of her action research project enabled advisors to give advice to clients about how to take steps to *avoid* negative decisions and disputes in the future. As one advisor noted:

*“I also used this knowledge to give preventative advice ... I would tell [clients] what documents to keep, just in case they needed to make a claim in the future.”* [10a]

#### Indirect Assistance by Influencing the Decision-Making Practices of Governmental Agencies

A second preventative form of impact relates to O’Brien’s influence over routine decision-making practices within the governmental agencies responsible for determining welfare claims. O’Brien’s advocacy work changed the ways in which entitlement decisions were made in the first place. In relation to a number of her case studies, she reported the problematic nature of decision-making directly to the UK government agencies concerned: the Department for Work and Pensions and HMRC. Among the responses received, recorded on the case files, was an undertaking to train all

helpline advisors on a specific point about claimants' rights: specifically, that they were entitled to keep an appeal live whilst making a new claim based on different circumstances [under the terms of the ethical permission to conduct this research, all file note evidence had to be destroyed].

#### 5. Sources to corroborate the impact (indicative maximum of 10 references)

[1] UK Supreme Court case: judgment quoting a substantial extract and Counsel's adoption of O'Brien's arguments: *R (on application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents)* [2017] UKSC 73

[2] (a) UK Parliament: Oral evidence to the House of Commons Exiting the EU Committee inquiry into the EU (Withdrawal) Bill, 11 October 2017, Questions 1-68; (b) UK Parliament: House of Commons Exiting the EU Committee, *First Report on the EU (Withdrawal Bill)* HC 373, 15 Nov 2017; (c) UK Parliament, House of Commons debates, *EU Withdrawal Bill*, 21 Nov 2017, vol 631, cols 911-921, 934; (d) UK Parliament, House of Commons debates, *Leaving the EU – Data Protection*, 12 Oct 2017, vol 629, col 521; (e) UK Parliament: House of Commons Exiting the EU Committee, Report on the Progress of Negotiations on EU Withdrawal: Dec 2017 – March 2018 HC884, 13 Mar 2018, [31]-[33]

[3] Opinion of Advocate General Szpunar, case C-483/17 Neculai Tarola v Minister for Social Protection (November 2018)

[4] (a) 'The Notions of Obstacle and discrimination under EU law on free movement of workers', VC/2013/0300 (December 2014); (b) Comparative Report 2015, 'The concept of worker under Article 45 TFEU and certain non-standard forms of employment', (April 2016); (c) Comparative Report 2017, 'National employment services: registration and access to assistance by EU citizens from other member states' (October 2017)

[5] (a) Charlotte O'Brien, publications in practitioner journals and blogs: '[The rights of EU nationals in the UK post-Brexit – five pessimistic predictions](#)' *Free Movement*, Feb 2018; (b) '[Brexit, free movement and welfare: we must bring evidence back into fashion](#)', *UK in a Changing Europe*, 11 Nov 2016; (c) '[Settled status scheme for EU citizens risks being next Windrush](#)' *UK in a Changing Europe*, 8 April 2019; (d) '[A failed duty of care? The draft EU-UK Withdrawal Agreement denies unpaid carers key rights](#)' *UK in a Changing Europe*, 8 April 2019; (e) '[EU Free Movement Law in 10 Questions & Answers](#)' *EU Law Analysis Blog*, 2 Nov 2016; (f) '[Expert Reaction: Article 50](#)', University of York, Media Unit, 28 March 2017; (g) '[EU: In or out](#)', Positive News, 6 May 2016

[6] Letter from the London Assembly to the Mayor of London, July 2017

[7] Charlotte O'Brien on: [BBC Breakfast](#), BBC 1 television, 2 Nov 2015; [BBC Breakfast](#), BBC 1 television, 1 Oct 2014; [BBC Today Programme](#), BBC Radio 4, 24 Nov 2014.

[8] [Correspondence with Advisors from Citizens Advice Bureaux](#), and Dr O'Brien's anonymised field notes documenting outcomes of cases, lodged on UK Data Service

[9] Feedback and participant evaluations from knowledge exchange events.

[10] **Testimonials** from: (a) Former Advice Session Supervisor & Outreach Adviser, Citizens Advice [April 2020]; (b) Lawyer working on free movement issues in the EU (anonymous) [September 2020]; (c) Fellow in Brexit, Parliament and the Rule of Law, Public Law Project [May 2020]; (d) Advice Session Supervisor, Citizens Advice [April 2020]; (e) Assistant Counsel to the Justice Committee, House of Commons [July 2020].