(1)

PRIME MINISTER

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

You asked for a report on this.

There are really two ways to deal with it:

(a) Primary legislation to impose residence tests so that people cannot start claiming as soon as they get here. There are problems with this, but the option should be examined further.

(b) A 'non-tariff barrier' approach, i.e. just slowing down the procedures for paying benefit to foreigners. There cannot be another country which starts paying benefits in the first week.

Agree to ask DHSS to pursue both options and come up with recommendations?

CDP

Yes - I think we should need a) not

14 December 1984

FILE

DCAAKO

10 DOWNING STREET

From the Private Secretary

17 December 1984

Future Development of the Community: Payment of Supplementary Benefit to EC Nationals

Thank you for your letter of 13 December about the scope for restricting payment of supplementary benefit to EC nationals.

The Prime Minister is disturbed by the situation which your letter reveals. Her own view is that primary legislation to impose residence tests will be needed. The further work which your department is doing should therefore examine this option in greater detail, with the aim of producing a recommendation for Ministers to consider. In parallel there might also be further examination of a 'non-tariff barrier' approach, for instance the scope for slowing down the procedure for paying benefit to foreigners as well as speeding up curtailment action.

The Prime Minister would be grateful to have proposals for Ministerial consideration as rapidly as possible.

I am copying this letter to Colin Budd (FCO), Judith Rutherford (Department of Employment) and to Richard Hatfield (Cabinet Office).

C.D. Powell

S.H.F. Hickey, Esq.,
Department of Health and Social Services.

PP

EQO

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

Charles Powell Esq
Private Secretary
10 Downing Street
LONDON
SW1

7 February 1985

Dear Charles,

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

Further to Steve Godber's letter to you of 21 December I am writing to confirm that work is in hand on the paper requested by the Prime Minister. As a number of Departments are involved a paper is being tabled for discussion at EQO next week. Subject to the outcome of that discussion and our own Ministers' views we would hope to be able to let you have a paper later this month.

Yours sincerely,
Stephen

S H F HICKEY
Private Secretary

Euro
Budget
Pt 28

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

NRPM

Charles Powell Esq
Private Secretary
10 Downing Street

21 December 1984

Dear Charles

PAYMENTOF SUPPLEMNETARY BENEFIT TO EC NATIONALS

Thank you for your letter of 17 December. Attached. DHSS will produce as quickly as possible a paper for Ministers on what is involved in introducing a residence test for supplementary benefit.

I am copying this letter to FCO, Department of Employment and Cabinet Office.

Yours

Steve Godber

S A Godber
Private Secretary

CDP.

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

C D Powell Esq
Private Secretary
10 Downing Street

13 December 1984

Dear Charles,

FUTURE DEVELOPMENT OF THE COMMUNITY: PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

You asked in your letter of 24 September to Colin Budd for a note about the scope for restricting the payment of supplementary benefit to British nationals.

The legal and administrative background

An EC national has freedom of access to seek work under EC Regulation 1612/68 and is admitted to Britain in the first instance for six months. He will then be issued with a residence permit, either for the expected duration of his employment or for five years, as appropriate. Once in the UK, he has entitlement to social assistance (supplementary benefit) on the same terms as a UK national, both as an EC national and under the terms of the European Convention on Social and Medical Assistance 1953. So long as the EC national is lawfully in Great Britain, he cannot be excluded from supplementary benefit entitlement if he qualifies for it under the normal rules.

However, in accordance with the construction placed on EC legislation by Council Declaration 1451/68, if a person comes to another member state seeking work and becomes a burden on public assistance, he may be asked to leave. The procedure in Britain has been that if an EC national has claimed supplementary benefit for more than two weeks (reduced from eight weeks in 1981) the Home Office is notified and action is set in hand to curtail the person's stay. In 1983, 421 curtailment notices were issued as a result of DHSS action; and another 316 in the first seven months of this year. Unfortunately, this procedure is not always quick because there is a right of appeal. The number of cases may mean that it takes several months for an individual case to work its way through the system and during this period supplementary benefit is payable under the regulations governing people in urgent need.

E.R.

Improving procedures

In the late summer there was extensive press coverage of Italian students coming to this country and claiming supplementary benefit as unemployed people when in fact they were on holiday and had no intention of taking work. A large number of MPs expressed concern. DHSS and DE have since been working together to grapple with this problem and DE have drafted new instructions for unemployment benefit offices which will tighten up procedures considerably. Under the new procedures a claimant will be interviewed by a more senior officer (an HEO) who will press him on the question of his intentions to seek work; inform him of the possible consequences of persisting with a claim for supplementary benefit; and alert the DHSS local office. If a claim is then made, the social security office will be able to notify the Home Office immediately instead of waiting for two weeks and the Home Office can start curtailment action straightaway, since the necessary warning would already have been given at the unemployment benefit office. DHSS officials are in contact with the Home Office about the scope for further improving the effectiveness of current procedures.

There is also the case of a person who has completed an initial six months in the country and has been granted a residence permit but then becomes unemployed. Where such people appear to settle down to live on public funds this will be treated similarly to a new arrival. However, the genuine worker who loses his job is clearly entitled to some opportunity to find a new one. In these cases a person will be sent a warning letter but no action will be taken until enough time has elapsed to establish whether or not he is likely to return to employment.

Access to social assistance in the UK and other EC countries

The Prime Minister also noted that the UK is the only country which makes supplementary benefit available on a national scale. This is true in the sense that the UK scheme is administered centrally. We understand, however, that some other countries (such as Germany) also have national schemes but they are administered with less central control and much greater local discretion. This greater local discretion makes it possible to operate the system in such a way as to restrict access to benefit: in Italy, for instance, we understand that it can be very difficult not only for foreigners but also for Italian nationals to obtain benefit. In this country we have sought to limit discretion in the supplementary benefit scheme (particularly in the 1980 legislative changes) as a means of achieving tighter financial control and reducing unfairness in administration.

Residence tests

One possible means of restricting access to benefit might be to impose a residence test so that benefit would be refused to people for the first few weeks or months of arriving in this country. Neither national assistance nor supplementary benefit has ever had such a test and to introduce one would require primary legislation. It would almost certainly have to apply equally to British nationals (eg those returning after some time abroad) and people such as political refugees. Other benefits (Child Benefit, Attendance Allowance, Mobility Allowance and Invalid Care Allowance) have residence tests

E.R.

but these are applied equally to British nationals and others; and this is easier to do because they are not maintenance or "safety net" benefits. Some other countries have residence tests for their equivalent of supplementary benefit and these are beginning to be challenged: we understand, for example, that Belgium is having to change its rule that five years' residence is needed to claim social assistance for the elderly; and Northern Ireland has recently been advised that its supplementary benefit residence test is not conssitent with the Treaty of Rome and will have to be amended.

Further action

DHSS is aware that the present situation has unsatisfactory features and is continuing to explore the scope for some test to exclude claims which are not appropriate to the supplementary benefit scheme. The aftermath of the current review of supplementary benefit would provide an opportunity to make legislative changes if these seem desirable. It will not, however, be easy to find legislative and administrative measures for tightening up on benefit payment to those who are not British nationals without putting ourselves at risk of challenge in the European Court, or of causing an undesirable row with our EC partners.

I am copying this letter to Colin Budd (FCO), Judith Rutherford (DE) and to Richard Hatfield (Cabinet Office).

Yours sincerely,

S Hickey

S H F Hickey
Private Secretary

Euro Pol: Budget A21

cc D/W

HOME OFFICE
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Telephone 01-686 0333 ext

CDP 15/1

J. Sprague Esq
UBS(1)
Department of Employment
Room 109
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Please reply to The Under Secretary of State
Your reference

Our reference
IMG/84 36/161/6

Date
14 January 1985

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

We spoke recently about my letter of 4 January to Stephen Bowen in the Cabinet Office which set out the procedural changes which we have made in the handling of routine DHSS notifications of Supplementary Benefit claims by unemployed EC nationals. I am sorry that my letter did not make it clear that the new procedures are without prejudice to any action we might be able to take in connection with the "warning" procedure which I understand you are hoping to have in place by the Summer of 1985 to cope with the expected influx of Italian and other EC holidaymakers. No doubt we shall be able to discuss this further when we see what your proposals are. In any event our new procedure is subject to review in the Summer of 1985 and again at the end of the year.

2. I believe you have seen my letter of 1 November to HeatherGwynn in DHSS (copies to Mrs Wiles and to Julian Mackenney (Cabinet Office)) in which I confirmed that we would hope to be able to take action fairly quickly where a claim was being pursued by an EC holidaymaker following a warning given by DE. I should, however, make it clear that this must be read in conjunction with the final paragraph of David Waddington's letter of 31 August to Rhodes Boyson. We still, of course, accept the Parliamentary commitment as set out by Mrs Chalker in 1980 which makes Home Office action dependent on evidence that an EC claimant came to this country with the "deliberate intention" of relying on Supplementary Benefit for his support. In the recent past, we have been more helpful than this and have taken curtailment action on every claim notified to us regardless of the fact that no such evidence has (usually) been available. DHSS know, however, that a number of appeals have gone against us in the past year which have cast doubt on the curtailment procedure. Curtailment of leave, essentially, consists in telling a foreign national to leave the country with the threat that his departure may be enforced if he does not go voluntarily. EC nationals have argued with some success before the appellate authorities that we have no right to curtail their stay regardless of the fact that they may have been a charge on public funds, since they are exercising free movement rights under the Treaty of Rome. Following the European Court's judgement in Pieck (1980) EC nationals seeking to exercise their Treaty rights have a right to enter a Member State and it follows, according to this line of argument, that leave to enter can neither be given nor curtailed. The precise implications of this vis a vis the appellate authorities have not yet been fully clarified but it seems fairly clear that, to succeed in future curtailment cases, we should need to be able to show that an EC claimant had come here with the deliberate intention of abusing the Supplementary Benefit system and could certainly not claim to have come here for a purpose connected with the Treaty of Rome. If we had evidence e.g. that a claimant was a holidaymaker on the scrounge, we feel that we would have a better chance of justifying an attempt to curtail his leave and even, possibly, deporting him subsequently as an overstayer if he did not go. Deportation would not be easy (see paragraph 5 below) but we should be prepared to consider it if we thought that we could succeed.

/3. I hope that

3. I hope that what I have said will shed a little light on the reasons for the changes of procedure outlined in my letter of 4 January. The desirability of avoiding further adverse immigration appeal decisions (which in effect weaken what little power we have to impose an after-entry control on EC nationals) must weigh more heavily with us than the continuation of a procedure which, at its most effective, was little more than a bluff to enable DHSS to stop paying public funds to EC nationals. As far as we are concerned even this rationale has disappeared since DHSS now propose to pay foreign nationals on an urgent needs basis (including EC nationals) until they actually leave the country. We could previously justify the time and effort devoted to curtailment work on the grounds that there was a tangible saving to public funds but any saving on Supplementary Benefit will now, presumably, be eaten up by indefinite urgent needs payments in cases where we are not able to effect deportation. And this, of course, is irrespective of the legal difficulties outlined above.

4. I am grateful for Lesley Richards' letter of 10 January on this subject which has just reached me and which is also copied to you. Perhaps I might pick up one or two of her points now in a preliminary way. I hope that I have said enough about our legal difficulties with the curtailment procedure to make it clear why action on our part could not possibly wait any longer given the necessity of keeping procedures in line with decisions of the appellate authorities. The background to all this was set out in some detail in my correspondence with her predecessor, Miss Gwynn. We are not just talking about manpower and costs, although it would be useful to have DHSS's response to my point about the effect of their own new system for urgent needs payments on the Supplementary Benefit and other savings which she has identified. The final sentence of her penultimate paragraph seems to confirm that urgent needs payments would continue until deportation.

5. At the risk of making this letter very long it may help if I say a little more about the difficulties of deporting EC nationals. Our legal advice is that an EC national exercising Treaty rights cannot be removed from a Member State on public policy grounds (which together with public security and public health are the only grounds permitted under Council Directive 64/221/EEC) solely because he has drawn public funds and this means that we cannot deport him under the Immigration Act 1971. It is arguable that work-seekers do not have the same protection as workers and, as you know, Council Declaration 1451/68 specifically provides that an EC national seeking work may be asked to leave a Member State if he becomes a charge on public funds within three months of his entry. This, however, is only an entry in the Council Minutes and does not in itself confer a deportation power on Member States. If we wished to deport such a person we should have to justify it on the grounds that the person's presence was not conducive to the public good (section 3(5)(b))of the 1971 Act). Again, our legal advice is that merely drawing Supplementary Benefit would not constitute "non-conducive" ground. Section 3(6) of the Act deals with recommendations for deportation following a criminal conviction, which leaves us with the "overstayer" provisions of section 3(5)(a). This is difficult in the case of an EC national because we have to be able to show that, "having only a limited leave to enter or remain", he did not observe a condition attached to the leave or remained beyond the time limited by the leave. The difficulties as regards "leave" for EC "workers" have been described above and it follows that, in practical terms, an EC national who can claim to be a "worker" cannot be deported as an overstayer. To bring him within section 3(5)(a) we should need to be able to show (as with curtailment action) that he had no claim to remain under the Treaty of Rome. We should then need to show that he had in fact overstayed his leave (since we maintain that leave to enter and remain may be imposed on EC nationals who are outside the Treaty of Rome) and he could easily counter this assertion (given the absence of landing and embarkation information about EC nationals) by claiming to have left the country on a day trip and obtained fresh leave to enter for a further six months on his return. Incidentally, Lesley Richards raised the question of calculating the six month leave period. This is done through form IS120 which is given to EC nationals on arrival and which shows the date of entry. A stamp is not put in EC passports since EC nationals may travel on their identity cards and it was found most practicable to give each of them a form. They frequently present this form to DHSS when claiming benefit. If they do not we are rather in the position of having to take their word for their most recent date of entry. As far as Supplementary Benefit cases are

/concerned we should

concerned we should have to calculate six months from the date of their first claim but for obvious reasons the absence of firm information about their travel could make deportation action under section 3(5)(a) potentially difficult to substain even where there was evidence of an intention to abuse the Supplementary Benefit system.

6. I should also, perhaps, take up Lesley's point about appeal rights. Essentially, all "workers" have to be regarded as having rights of appeal whenever they entered the country (this is one effect of one of the adverse curtailment decisions which I mentioned above). However, in our view, EC nationals outside the Treaty of Rome have only the same appeal rights as other foreign nationals, that is if they make an application for variation of their leave to enter or remain within the currency of that leave. We would argue that an EC national who has drawn Supplementary Benefit for six months after entry was not a "worker" and must have outlived the six months leave given to him on entry. Unless he had made an application for an extension of his leave (or for a residence permit as a "worker") we would feel justified in offering him no right of appeal when we wrote to remind him that his leave had (surely) expired although it would be open to him to challenge us on that and on his status under the Treaty of Rome. I should say that writing these letters to claimants after six months is undertaken with some reluctance on our part. Lesley is right in assuming that it will not leave us free of all challenge (although we hope that it will help the workload of the EC Group which is extremely high at present). We still question the savings to DHSS in our taking even this much action given that, as I have explained, we shall be no nearer to enforcing departure in the majority of cases and DHSS will presumably go on paying out public funds in the form of urgent needs payments. This aspect of our procedures will therefore be particularly subject to review in the course of 1985 to see if it serves any useful purpose. From the immigration point of view it serves little if any. Whether it helps DHSS will depend on the extent to which they are able and willing to stop paying public funds to EC nationals who cannot be deported.

7. To sum up, cessation of routine curtailment of the leave of EC Supplementary Benefit claimants is necessary because:

1. the appellate authorities have questioned our legal right to do it under EC law;

2. the appeal rights built in to the curtailment procedure left us too exposed to challenge both before the appellate authorities and, ultimately, in the European Court;

3. even if we curtailed the stay of an EC claimant DHSS would not now stop his access to public funds entirely but would pay him on an urgent needs basis until he left the country, thus removing the justification for our undertaking this work in the first place (which was to help DHSS to protect public funds). If the claimant did not leave we could not easily deport him because of the constraints of the deportation provisions of the Immigration Act 1971, so that any cost savings to DHSS on the Supplementary Benefit side are reduced to nothing, ultimately, by their own commitment to making urgent needs payments, presumably for an indefinite period;

4. the old system frequently took the best part of six months to complete anyway so that the new system will make little if any practicable difference to the point at which we attempt to "guillotine" the claimant;

5. the new procedure is, however, subject to review and our involvement may diminish further over 1985 if it appears that DHSS are not able to cut off public funds to EC nationals at some point;

6. this does not necessarily mean that your joint effort with DHSS to tighten up the handling of claims by holidaymakers is rendered nugatory but it does mean that our ability to take effective action will depend

/on our being

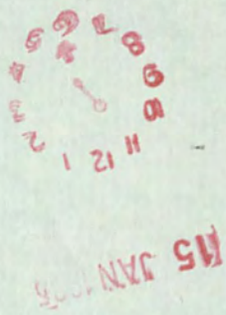
on our being able to deploy evidence of deliberate intention by the claimant to abuse the Supplementary Benefit system. If this evidence is forthcoming we should attempt speedy curtailment action followed, if appropriate, by deportation. If we could not deport it would be up to DHSS to take responsibility for taking any further action to protect public funds.

8. I am sorry to have written at such length. I am afraid that I have not as yet found a way of explaining the difficulties both legal and procedural, in which the Home Office finds itself by virtue of its "DHSS work" in a way both short and lucid. Both you and Lesley will appreciate, I am sure, that a simple return to routine curtailment is not practicable. It remains to be seen whether a better system than that set out in my letter of 4 January to Stephen Bowen can be devised. Our view remains that the only satisfactory solution rests with DHSS and a change in their policy of making Supplementary and other public funds payments to EC nationals.

9. I am copying this to the recipients of my previous letter, plus Charles Powell at No. 10.

MRS. C. A. L. KELLAS

Euro-Pol. Budget '78



15 JAN

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RESTRICTED

CCDW.

CDP

Department of Health and Social Security
New Court Carey Street London WC2A 2LS

Telephone 01-831 6111 ext

Mrs C A L Kellas
Home Office
Lunar House
Wellesley Road
CROYDON
CR9 2BY

Your reference
IMG/8436/161/6
Our reference
EUN 1/4
Date
10 January 1985

attached

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

You copied to me your letter of 4 January to Stephen Bowen, in which you asked for copies of the final version of DHSS's note for No 10 and their reply. These I enclose.

I was surprised to see that you had made the decision to change, from 2 January, the system for dealing with EC nationals who claim supplementary benefit. You will recall that my predecessor Miss Gwynn wrote to you on 25 June explaining that removal of the routine curtailment procedure would cause problems for DHSS and asking for further consultation. After David Waddington wrote to Rhodes Boyson on 31 August, there was a meeting here, chaired by Alan Turner, at which I understand it was agreed that the Home Office would not pursue its proposals further at that time. On 9 November I wrote to you, enclosing the first draft of the note for No 10, asking that you let us see your figures on the numbers and costs of routine curtailments, and suggesting a meeting to discuss the possibility of improving the effectiveness of current procedures. As you know, the note for No 10 referred to the fact that we were in touch about this.

I am sure you will appreciate that cessation of routine curtailment will make a nonsense of the joint DE/DHSS initiatives to tighten up the handling of claims from EC nationals who may in fact be on holiday in this country, and I understand that John Sprague at Employment has already pointed this out. (By the way, I see that your letter was not classified: the issue is a very sensitive one and it would cause both DE and my Department considerable embarrassment if your plans were to be leaked to the press).

I have attempted a very rough costing of the change, on the basis of the latest figures available (316 curtailment notices in the first 7 months of this year - say 540 in a full year). If the £300 you quote per appeal (I take it that means a completed appeal) does not include staff costs and if about a quarter of an EO is costed in as well as the two COs, I calculate your total savings at something under £110,000. This would assume that the appeals procedure is expedited for every case, though I gather that only four hearings had been completed in 1984 by the end of October, compared with 68 in 1983. A conservative estimate of the costs of paying supplementary benefit and housing benefit to those who otherwise might not have claimed because of the proposed UBO action, and those who would not have appealed against curtailment, suggests a cost exceeding £175,000. A good many guesses are obviously involved but, as I say, I consider the estimate conservative: nor does it take account of the fact that the problem is growing, since in 1983 there were only 421 curtailments.

As well as the political difficulties for DE and DHSS, and the question mark over costs and savings, there seem to me to be some problems of principle. I am not sure whether we could regard someone who has been on supplementary benefit for 6 months as having had their 6 months' leave to find work, since they would not have been given a piece of paper at the outset which stated a date from which the 6 months was to run; I am surprised that you say there would be no right of appeal, since I should have thought there must be appeal rights at least against refusal of an application for extension of leave; and I am by no means certain that we could stop urgent needs payments on expiry of a period of leave, before actual deportation was effected (indeed there is a relevant case before the Commissioner at this moment).

I am copying this to those who received your letter and to Charles Powell at No 10.

MRS L M RICHARDS

EUN 1/1/2 CCDW.

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Please reply to The Under Secretary of State
Your reference
QS/03026
Our reference
IMG/84 36/161/6
Date
4 January 1985

PAYMENT OF SUPPLEMENTARY BENEFIT TO EC NATIONALS

Thank you for copying to me your letter of 19 December to Lesley Richards in which you asked Departments to keep you in touch with their work on this subject. I have also seen Lesley's reply of 21 December. We do not appear to have seen a copy of the final form of the DHSS note of 13 December (although I have it in draft) or of No 10's reply of 17 December. Perhaps, in view of our interest, Lesley could let me have copies for our papers?

We would certainly endorse what you say about the necessity for continuing interdepartmental contact on this matter. Whenever this subject hits the newspapers pressure inevitably comes to bear on the Home Office to remove the EC nationals concerned. The practical difficulties of doing so were set out in the attached letter which David Waddington sent to Rhodes Boyson on 31 August 1984. We estimate that processing DHSS notifications of EC claimants requires, in manpower terms, two full-time clerical officers (who could be better employed on other EC casework) and is a considerable burden to the executive officers in the EC Group. From a sample taken during three months of 1984 it appears that well over 50 per cent of those whose stay we attempt to curtail make use of the appeal procedures and each appeal, at 1982/83 prices, is reckoned to cost over £300. As you know we see no justification for continuing to involve ourselves in the routine curtailment of stay of EC claimants now that DHSS have decided to continue to pay them, albeit on an urgent needs basis, rather than cut off their funds once they no longer have leave to remain. From 2 January 1985 we are proposing to hold all notifications in respect of EC nationals claiming Supplementary Benefit within six months of arrival. After six months a check will be made with DHSS to see if the claim is continuing and, if it is, the EC national will be told that he should leave the country as he has not established a right of residence as an EC "worker" and his leave has expired. He would have no right of appeal. We will inform DHSS when this has been done but will take no further action except in those cases, which we expect to be very rare, in which it subsequently appears that we have a chance of successful deportation action. This would be deportation as an overstayer under section 3(5)(a) of the 1971 Immigration Act and could only succeed where we could show that the person had not acquired fresh leave to remain e.g. by taking a day trip to France (difficult in practice as details of landing and embarkation by EC nationals are not kept) and where the EC national could not show that he had in fact acquired a right of residence as a "worker".

We hope that this change of procedure will provide some much needed relief in the EC Group and on the appeals front and enable our manpower resources to be used more efficiently. Given the length of time taken to process notifications under the old

/procedure, including

procedure, including warnings and appeals, we do not think that DHSS will be much worse off in terms of the Supplementary Benefit budget and we shall in future consider deportation action in appropriate cases. In any event, as you will appreciate, it was getting increasingly embarrassing for Home Office Ministers to be attempting to curtail the stay of EC nationals purely on the basis of their having exercised a legitimate entitlement to Supplementary Benefit.

I am copying this to the recipients of your letter.

MRS. C. A. L. KELLAS

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

31 AUG 1984

Dear Rhodes,

PAYMENT OF PUBLIC FUNDS TO EUROPEAN COMMUNITY NATIONALS

I have seen your reported public response to the articles of 21 and 22 August in the Daily Mail about the payment of supplementary benefits to EC nationals. Our officials have been in contact over this problem for some time. I thought that it might be helpful if I set out some of the difficulties from our point of view, so that they can be taken into account in your review.

Our chief problem is that the Immigration Act is not an efficient mechanism for protecting public funds from abuse by EC nationals. Both the Rules and our practice are designed to maximise free movement with the minimum of formality consistent with keeping a careful watch for such types of people as criminals, returning deportees, and those who threaten our security. Within this context immigration officers try to weed out those whom they can, at that stage, identify as likely to abuse public funds. But any further steps in this direction would conflict with our primary objective and rapidly clog some ports. In these circumstances, as drawing supplementary benefit is not grounds for deportation under the Act we have tried to help you instead by curtailing the stay of EC nationals who fall a charge on public funds since this, apparently, enables you to cut off their access to benefit. Curtailing stay requires the EC national concerned to leave the country and threatens him with prosecution if he does not comply. He must, however, be given a right of appeal and in the past year EC nationals have had some success before the appellate authorities in arguing that anyone who can claim to be an EC worker has a right to reside here which cannot be curtailed if he loses his job unless we can show that his unemployment is voluntary. We are not in a position to discover whether this is the case or not and nor, apparently, is the Department of Employment. It is therefore becoming increasingly difficult for us to curtail the stay of any EC national who has worked here even if he is now unemployed. Of course we should do our best to claim that he was no longer a worker and therefore no longer entitled to the protection of EC law, but our success is uncertain except perhaps in cases of obvious abuse of public funds extending over a period of years.

We have had better success, so far, in curtailing the stay of EC nationals who fall a charge on public funds within three months of their arrival having failed to establish themselves in employment. I am attaching a list of curtailments in 1983 and to July 1984. 400 curtailments per year seems to be about average but we estimate that this represents only about one quarter of the total number of claims notified to us. The others either get work, go home or win an appeal and the whole exercise is extremely cumbersome for us and costly in manpower terms. We have some doubts as to whether it will be any practical use to continue curtailments once your new system of continuing to pay them on an urgent needs basis until they leave the country is introduced. Since, for practical reasons, we cannot deport them the way will be open for unscrupulous EC nationals to remain here on public funds indefinitely.

/Cont...

Dr. Rhodes Boyson M.P.

From our point of view it would be much more effective (and cheaper) to refuse payment to EC nationals rather than rely on the Immigration Act to put public funds out of their reach. You could not of course refuse benefit to someone who could claim an entitlement through having worked here but I wonder whether you could consider the possibilities of tightening up on your payments to people who claim within three months of their arrival i.e. those who are currently of concern to the Daily Mail? They do of course claim to be unemployed "work seekers" and I understand that your advice is that they are entitled to benefit on that basis. But Council Declaration 1451/68 entitles a Member State to require a work seeker to leave if he fails to find work within three months or becomes a charge on public funds. We take this as indicating a consensus within the Community that Member States are not obliged to maintain each other's "work seekers" and we are not aware of anything in the free movement of labour provisions of the Treaty of Rome which obliges Member States to extend supplementary benefits to work seekers as opposed to those who have actually taken employment. In any event, what is the need of an unsuccessful work seeker from abroad? His fare home, not permanent support here.

The other difficulty which we face under present arrangements is the nature of the procedures as not all claims are notified to us. We do not have figures but we hear of claims from other sources (e.g. anonymous letters or the claimant himself) which have not been notified to us by DHSS and which may have lasted for years. Claims are supposed to be notified to us within two weeks of the claim but often it has been as many months before we have received it. We then have to warn the claimant that he has no claim to remain if he continues to live off public funds and then check with you to see if the claim has ceased. Confirmation of a continuing claim can also take weeks and information as to the length of the claim is often incomplete. By the time we have issued a curtailment notice four months can have elapsed since the claim began. If the claimant exercises his right of appeal his stay on supplementary benefit is further prolonged. We try to expedite these appeals but they have to take their turn.

We would obviously prefer it if you were able to refuse benefit to "work seekers" whether genuine or otherwise. Failing that it would help if your staff could exercise some discretion when benefit was first claimed in deciding whether a claimant really was a genuine work seeker or just a holidaymaker hoping to sustain himself at public expense. We invite claimants to explain themselves to us when we warn them but a claim can already be two or three months old by that time. If it became known that DHSS officials would ask for evidence of work seeker status e.g. correspondence with employers and details of jobs actually applied for, some of these people might be deterred with consequent savings in time and money to both our Departments. It would also be useful to know

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whether there is any possibility of your assuming a level of personal funding for these claimants either from their own resources or from parents and deducting that from their benefit; it is not after all unreasonable to expect a work seeker with no job to go to to come with some funds to tide him over. Some "work seekers" claim within days of getting off the plane. I understand that an EC national would certainly need to fund himself in other EC countries. Perhaps you could decline to accept a claim for supplementary benefit within a certain period, say three months after arrival on the basis of Council Declaration 1451/68 and the notion that a work seeker should either find employment, fund himself or return home if he cannot do either? The Daily Mail of 22 August says that the FRG would give a destitute person just enough to get home. Could we not try that?

You will know that this is not the first time that this kind of article has appeared in the press and inspired Parliamentary interest. A similar exercise in 1980 led to a Written Answer from Lynda Chalker (OR 21 November 1980 Col 8) to the effect that Community nationals could not be denied access to the supplementary benefits scheme but that those who came here with the deliberate intention of relying on the scheme for support could be asked to leave by us. We have in fact continued to take action on all claims notified to us without regard to whether there was evidence of "deliberate intention" but our recent experience with the appellate authorities suggests that we shall have to be much more selective in the future. It is very difficult to explain to an EC national that the Home Office is taking action under the Immigration Act when the DHSS have told him that he is entitled to claim supplementary benefit. If you decide to continue paying them, and want us to continue to take what action we can, I rather fear that we shall need to ask in the future for evidence of that "deliberate intention" to rely on the supplementary benefit system to which Lynda Chalker referred. We cannot, of course, assess this ourselves and it is hard to see it merely in the fact of a person's having sought to exercise an entitlement.

I am copying this to Malcolm Rifkind and to Alan Clark.

Yours ever

David

(DAVID WADDINGTON)

E.R.

CURTAILMENTS 1983

Belgium	11
Denmark	12
France	96
Germany	42
Italy	245
Netherlands	15
Luxembourg	0
Other	0
Total	421

CURTAILMENTS TO JULY 1984

Belgium	8
Denmark	6
France	88
Germany	39
Italy	171
Luxembourg	0
Netherlands	4
Other (i.e. Greece)	0
Total	316

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