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Gender and Free Movement: EU Migrant Women's access to Residence and Social Rights in the UK

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Abstract

This article examines the gendered effects of restricting EU migrants' access to rights to residence and to social benefits in relation to work, self-sufficiency and family. It draws on the findings of qualitative research on EU migrant women's access to social benefits in the UK on the basis of residence rights as an EU citizen-worker or family member of an EU citizen-worker. The research included qualitative interviews with providers of advice services on social benefits claims and with EU migrant women in the UK. The findings point to the ways in which the status of the EU citizen-worker is defined and implemented limits women's access to and ability to maintain that status and, at the same time, their reliance on the status of family member of an EU citizen-worker. Both have gendered effects in terms of women's potential exclusion from access to residence and social rights as mobile EU citizens.

Introduction

Free movement is a critical issue regarding the withdrawal of the UK from the European Union, following the outcome of the 'Brexit' referendum. But it is, already, much less free for some than for others. All EU citizens have a right 'to move and reside freely within the territory of the Member States' (Article 21, Treaty on the Functioning of the European Union). However, they are not all equal in terms of their right to reside in another member state. EU citizens have different conditions attached to their right to reside depending on

their status as economically active, inactive, or family member of an EU citizen (Directive 2004/38)¹. Moreover, these statuses and conditions have consequences for the social rights of EU citizens. Free movement has been accompanied by attempts to re-border access to social benefits at the national level, in the UK and other EU countries (Ruhs 2015). A more restrictive approach to EU migrants' entitlement to social benefits has been evident, particularly in the UK, through the application of the conditions for residence rights (Dougan 2016, Thym 2015, O'Brien 2015). There has, however, been limited empirical analysis of the effects of those developments. Moreover, there has been limited attention to the gender implications of restricting access (Ackers 2004, O'Brien 2013).

Examining citizenship from a gender perspective brings to the fore questions concerning how rights and entitlements, and the conditions attached to those rights – to move, reside, work and access social provision – are underpinned by assumptions regarding gender roles and relations, with gendered effects in terms of access to rights (Lister 2003, Benhabib and Resnik 2009, Lewis 2002). At the same time, gender divisions in relation to paid and unpaid work/care fundamentally shape women's experiences as citizens and migrants, as workers and family members, and their access to rights that depend on work or family relations (Kofman 2007, van Walsum 2013, Anderson 2009). As such, free movement from a gender perspective raises questions regarding not only the gendered nature of free movement rights in terms of the categories and conditions attached to EU citizens, but the gendered effects in terms of access to rights to residence and entitlements to social benefits after moving to another country.

This article examines the gendered effects of restricting EU migrants' access to rights to residence and to social benefits in relation to work, self-sufficiency and family². It draws on the findings of qualitative research on EU migrant women's access to those rights in the UK, focusing on the interplay of work, care and family in their lives, and the implications for meeting the residence conditions. The article is structured as follows. First, it examines from a gender perspective the ways in which the rights of EU nationals to reside in another member state, under EU law, are conditional on being a worker/self-sufficient citizen or the family member of an EU worker/self-sufficient citizen, and how those conditions have been interpreted in the UK and other countries as a means of restricting EU migrants' access to

social benefits. Second, it draws on the findings of qualitative interviews in the UK with i) providers of advice services on social benefits claims and ii) EU migrant women (female nationals of other EU member states who had moved to the UK) regarding their access to social benefits in the UK. The findings point to the ways in which the status of the EU citizen-worker is defined and implemented limits EU migrant women's access to and ability to maintain that status and, at the same time, their reliance on the status of family member of an EU citizen-worker. Both have gendered effects in terms of women's potential exclusion from access to residence and social rights as mobile EU citizens.

With respect to the withdrawal of the UK from the EU, and the negotiation of free movement and residence rights in that context, the article underlines the importance of considering the gender dimensions of the conditions for access to legal residence and its associated rights for EU/UK citizens. Specifically, it points to the contradictions with gender equality in framing rights to residence and social protection on the basis of work, self-sufficiency or family, now and beyond Brexit.

Free movement and its residence conditions: gendering work, self-sufficiency and family

EU citizenship, which is premised on national citizenship of an EU member state, confers EU citizens the right to move and reside across the member states, the provisions of which are set out in the so-called Citizenship Directive (Directive 2004/38)³. While there are no restrictions on EU citizens' entry to another member state and residence for up to three months (Article 6, Directive 2004/38/EC), residence rights beyond this period categorise and differentiate EU citizens in relation to work, self-sufficiency and family (Article 7, Directive 2004/38/EC).

Residence rights are granted primarily on the basis of economically active mobility (O'Brien 2013), requiring the EU migrant to assume the category of worker/self-employed person (Article 7, 1 (a), Directive 2004/38/EC). In recognition of the impact of family on economically active mobility (Ackers 2004), residence rights are also granted to the family members of the EU citizen-worker, including spouse/civil partner and dependent children (Article 7, 4, Directive 2004/38/EC). While the introduction of EU citizenship extended rights

to free movement (originally exclusive to workers) to the economically inactive (including students) and their family members, the residence conditions require them to be self-sufficient: to have 'sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State' and comprehensive sickness insurance (Article 7, 1 (b) and (c), Directive 2004/38/EC). After five years of continuous legal residence in another member state, EU citizens have a right to permanent residence, but this is on the basis of having been workers, self-sufficient individuals, or family members of the former, for this duration (Article 16, Directive 2004/38/EC).

EU citizens exercising free movement rights also have rights to social security (Article 48, Treaty on the Functioning of the European Union), which are entitlements to national social provision. Those entitlements, in terms of the equal treatment of EU citizens with nationals of a member state (Article 24, Directive 2004/38/EC), are implemented through the coordination of member states' social security systems (Regulation 883/2004/EC), and are determined by place of work or residence of the EU citizen, as well as type of benefit, with considerable variation in social security systems across countries (Pennings 2012). The implementation of the respective legislation is complex and has been shaped by various case rulings of the Court of Justice of the European Union (CJEU) (see O'Brien 2013, Dougan 2016). However, recent CJEU case law suggests a stronger link being made with the right to residence under free movement law – i.e. an EU migrant claiming social benefits in another country must have a right to reside (Dougan 2016). As the economically inactive migrant should meet the conditions of self-sufficiency for residence rights, in effect only EU migrants who are workers/self-employed, their family members, and those who have permanent residence, have equal access to rights to social security (Article 24, Directive 2004/38/EC, Dougan 2016).

In principle, the self-sufficiency requirements are not necessarily incompatible with seeking access to social benefits (Thym 2015). In assessing what constitutes an 'unreasonable burden' on the social assistance system, the member state is required to take into account individual circumstances (Article 8, 4, Directive 2004/38/EC). However, recent CJEU rulings indicate a move away from an assessment of individual circumstances towards applying the

residence conditions set out by the Citizenship Directive, and applied by the member state. The CJEU ruling on the case of *Dano v Jobcentre Leipzig* (C-333/13), with respect to the entitlement of an EU national, not in work, to social assistance in Germany, confirmed the national restrictions on access to social benefits on the basis that EU nationals can only claim equal treatment with nationals of the host member state if they have a right to reside in that member state under EU law (para 69), the conditions of which for economically inactive EU citizens are that they must 'have sufficient resources for themselves and their family members' (para 73) (see Verschueren 2015).

Analysis of EU migrants' residence and social rights from a gender perspective requires examining the ways in which these categories and conditions – in relation to work, self-sufficiency and family – are gendered, with gender implications regarding access to rights. While gender equality has been a core principle of the EU, attention to gender equality has varied across EU policy agendas, being dominated by economic concerns for women's increased employment (Rubery 2015a), and has been notably lacking with respect to free movement (Ackers 2004, Shaw 2000). As regards the category of 'worker', the definition of work, which rests on EU case law, is exclusive to those engaged in paid work (*Case 66/85 Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121) that is considered 'genuine and effective', excluding activities 'on such a small scale as to be purely marginal and ancillary' (*Case 53/81 Levin v Staatssecretaris van Justitie* [1982] ECR 1035). While unpaid care for family members strongly shapes migration decision-making within Europe (Ackers 2004, Ryan et al. 2009), free movement law has consistently disregarded unpaid care work as non-economic activity (O'Brien 2013). Unpaid care forms a very limited basis for the rights of EU citizenship (Ackers 2004). The status of carer is not included among the categories of mobile EU citizens who have residence rights (Article 7, Directive 2004/38). And unpaid care is excluded from the definition of work – the labour of those engaged in unpaid care activities is not recognised as 'genuine and effective work' – on which basis EU citizens can claim the status of worker. While the EU citizen may access residence rights as a primary carer of a child in education, those rights are derived from the rights of the child of an EU migrant worker to education in a member state (Article 10, Regulation 495/2011)⁴. EU citizens with younger children have no such rights. Furthermore, the primary carer does not have a right to permanent residence.

The conditions for retaining worker status also privilege a particular type of worker who is disencumbered (or less encumbered) by care. The EU citizen who leaves work under certain circumstances, including if they are made 'involuntarily unemployed', retains worker status on condition of registering as a job-seeker (Article 7, 3, Directive 2004/38). They continue to have a right to reside as long as they can provide evidence that they are continuing to seek employment and have a 'genuine chance of being engaged' (Article 14, 4, Directive 2004/38). Leaving the labour market in order to care is not, however, listed among the circumstances for retaining the status of worker. Nor is the impact of care on subsequent job-seeking recognised. While the CJEU ruling on the case of *Saint Prix v Secretary of State for Work and Pensions* (C-507/12) recognised the rights of EU citizens to retain the status of worker during periods of time not in work due to childbirth, this was on the basis of returning to work within a 'reasonable period' of time. That period is defined as a maximum of twelve months without affecting the five-year period of continuous legal residence required for permanent residence (paragraph 45, C-507/12). The EU citizen who leaves work to care is thus at risk of exclusion from residence rights unless they return to work within a year, have other sources of income to be self-sufficient, or are able to derive residence rights as the spouse/civil partner of an EU citizen-worker. The 'key to citizenship' (Pateman 1989) for EU migrant women – that is, equal access to social security granted to nationals of a country, and access to permanent residence – is thus work, a relationship to an EU citizen in work or, conversely, wealth.

The exclusion of unpaid care from free movement rights is gendered in itself in terms of its under valuation (Ackers 2004). However, it also has gendered effects regarding women's access to those rights. In spite of a shift towards an 'adult-worker model' of households in Europe, with both women and men conceptualised as citizen-workers, and care assumed to be de-familialised through childcare provisions, the relationship of women and men to the labour market is not 'the same' (Lewis 2002). The mobility of women in and out of work, and their participation in work, is affected by their involvement in care-related activities, with greater employment gaps in the case of women with children aged five and younger (European Commission 2015). Those gaps are more pronounced in the case of lone parent households, the vast majority of which are headed by women (Ruggeri and Bird 2014). They

are also affected by variation in childcare and parental leave provision. Countries with longer periods of parental leave (up to three years) and high levels of publicly funded childcare for very young children show higher employment rates for women with young children (Pettit and Hook, 2005). At the same time, a snapshot picture of women's status as citizen-workers fails to reflect inequalities within work and over time in terms of gender pay gaps and women's greater risk of unemployment and so-called atypical employment, such as part-time and temporary work (Schwander and Häusermann 2013).

Residence conditions that require work or self-sufficiency mean that 'Union citizens with scarce resources or with an instable employment position live in a grey zone with a precarious residence status and without much legal certainty' (Thym 2015: 41). While the conditions have implications for both migrant women and men in low-paid and insecure work, the gendered interplay of work/care shapes their relationship to the labour market. Women are more likely to experience periods of time out of work (or reduced working hours) due not to 'involuntary unemployment' (or underemployment) but care, are more likely to be in lower paid work and, relatedly, are more likely to rely on social benefits as a relative share of income (Bennett and Daly 2014): work and self-sufficiency are gendered. At the same time, women are more likely to be lone parents, who may or may not be able to rely on the status of (former) wife/civil partner of an EU citizen-worker. Family change is also more likely to impact on women's employment and income as lone parents, who are at greater risk of living in poverty cross-nationally (Misra et al, 2007). Gender inequalities in relation to work, care and family, as well as considerable diversity at the national and local levels in childcare provision and parental leave policies (Lewis 2009), thus have significant implications for migrant women's access to residence rights that depend on continuity of labour market participation, self-sufficiency or family status.

Restricting access to social benefits on the basis of the residence conditions: the case of the UK

The impact of EU free movement law on the regulation, at the national level, of access to residence based social benefits has varied in terms of the restrictions imposed in different European countries. However, the residence conditions have become central to attempts at

the national level to control EU migrants' entitlements (Erhag 2016). In Denmark, entitlement to social assistance, which was originally provided for all people in need who were legally resident in Denmark, was amended to exclude EU nationals who are short-term residents or jobseekers – on the basis that they should be self-sufficient according to the Citizenship Directive and thus not entitled to support (Jacqueson, 2016). In Sweden, legal residence of one year is required to be eligible for social benefits. Initial registration of residence, which is needed in order to demonstrate legal residence, has been amended to require EU citizens who are not a worker or jobseeker to prove that they have sufficient resources and comprehensive sickness insurance for the duration of their stay (Erhag, 2016). In the Netherlands, entitlement to social assistance on the basis of legal residence excludes EU citizens who are jobseekers who have not previously worked in the country (Pennings 2016). Those applying for social assistance as workers are required to have been working at least 16 hours a week. Unless they are a worker, EU citizens applying for social assistance may have their residence permit terminated if the claimant is considered to have become an 'unreasonable burden' on the system (Pennings 2016). The implementation of the residence conditions thus privileges the EU citizen-worker in terms of access to both social benefits and permanent residence.

In the UK, an increasingly restrictive approach has been adopted over recent years to limit EU migrants' access to social benefits on the basis of the residence conditions (O'Brien 2015, Harris 2016). Since EU enlargement in 2004, EU nationals have been required to demonstrate that they have a 'right to reside' in the UK under EU law when applying for means-tested social benefits (SI 2004/1232)⁵. This requires EU citizens to comply with the residence conditions – to be a worker/self-employed, job-seeker or self-sufficient person – or family member of the former (SI 2006/1003). In 2014, the conditions for demonstrating the status of worker with a right to reside when claiming social benefits became more restrictive through the introduction of a minimum earnings threshold. This requires the unemployed EU citizen-worker to provide evidence of previous earnings of at least £155 a week over a three-month period, equivalent to working twenty-four hours a week at the national minimum wage (the level at which national insurance contributions are paid) (Department for Work and Pensions 2015; cf. O'Brien 2015 on the incompatibility of this measure with EU law). Those who do not meet the minimum earnings may be subject to an

additional assessment as to whether the work in which they were engaged can be considered 'genuine and effective' under EU law, though what counts as 'genuine and effective' is subject to interpretation at the national and local levels, in terms of guidance provided to those assessing a claim (HM Revenue and Customs 2014, Department for Work and Pensions 2015). At the same time, the status of jobseeker with a right to reside is limited to three months (previously six months) unless there is 'compelling evidence' of 'a genuine chance of being engaged' in work, such as a job offer (SI 2013/3032 Regulation 6, Memo DMG 2/15).

The conditions for access to social benefits thus exclude those not in work, with gender implications regarding, not least, gendered employment rates (74% for EU-born women compared to 85% for EU-born men in the UK) (Rienzo 2016). But they also potentially exclude EU migrants in work that is insecure and/or limited in hours and earnings. EU migrants from Central and Eastern Europe are disproportionately employed in low-paid work, despite some having relatively high levels of educational attainment (Drinkwater, Eade, and Garapich 2009, Johnston, Khattab, and Manley 2015), and are among the lowest income groups in the UK (Rienzo 2016). At the same time, the conditions potentially exclude women whose employment is impacted by care.

The access of EU citizens to social benefits in the UK is, of course, to a national system which has been subject to reforms that have also restricted the entitlements of UK citizens, underpinned by assumptions regarding not only the potential for all citizens to be workers (women and men), but for those in low-paid work to be increasingly self-sufficient workers. These reforms include cuts to the level of benefits, as well as work-related conditions attached to benefits receipt. Entitlement to means-tested social assistance on the basis of caring for children (Income Support) is restricted to caring for children up to the age of five (for both partnered and lone parents)⁶. At the same time, the labour market participation of partnered and lone parents has been affected by reductions in publicly funded support for low-income households, including childcare support (Stewart and Obolenskaya 2016). While these shifts have gender implications overall (Bennett 2015), for EU citizens additional restrictions are imposed through the conditions attached to EU citizens' residence rights in

the UK. Moreover, those conditions have implications for access not only to social benefits but continued legal residence in the UK.

Data and methods

The following sections examine the gendered effects of the residence conditions in the UK context. The analysis focuses on EU migrant women's experiences of access to rights to residence and to social benefits, and how those experiences are shaped by the interplay of work, care and family in their lives. It draws on the findings of qualitative interviews with i) staff of providers of advice services on social benefits claims and ii) EU migrant women (users of these providers' services) regarding their experiences of access to means-tested social benefits in the UK. The interviews were carried out in 2015 in London [thirty five per cent of EU nationals in the UK are living in London (Migration Observatory 2016), while the UK, after Germany, has the highest absolute number of EU nationals (Eurostat 2016)].

The interviews with providers comprised twelve members of staff from ten third sector organisations whose services included advice and assistance with social benefits claims (the services of one of the providers were administered within a local authority). Their services were either targeted at migrants more generally, EU migrants specifically, or particular user groups that included EU migrants (parents of pre-school children, homeless people). Interviews with staff examined their experiences of EU migrants' access to rights to residence and to social benefits in the UK. The interviews with EU migrant women comprised fifteen service users of these organisations. Interviewees were selected to target those who had been living in the UK for less than five years (who were not yet permanent residents); who had been in work since coming to the UK; and who had tried to claim social benefits since coming to the UK. The interviews examined their experiences of access to rights to residence and social benefits, including how their experiences of work, care and family shaped access. Some of the interviews with EU migrant women were carried out with an interpreter if needed; all interviews were recorded with consent and transcribed (except two where written notes were taken), and analysed through a coding scheme that identified the interactions between experiences of work, care and family and the implementation of

the conditions for rights to residence and social benefits. The names of interviewees cited in this paper have been changed and details omitted (e.g. nationality) to protect anonymity.

EU migrant women interviewees were nationals of other EU member states (mainly Central and Eastern European states) who had predominantly migrated to the UK over the previous five years. Two interviewees had been resident in the UK for more than five years but had experienced difficulties in claiming permanent residence (for reasons examined below). As regards their work-related circumstances, all were of working age and had been in work during the time in which they had been living in the UK, though their work circumstances had changed over this period, with some not in work due to care-related reasons. Most had been working in relatively low-paid work (including cleaning and paid care work); one had been employed in a higher paid area of work related to her qualifications. As regards the family circumstances of interviewees, these had also changed since coming to the UK. At the time of interview, some were lone parents; some were partnered/married to men who were EU citizens or UK citizens, with dependent children; while one interviewee was single with no children. The discussion focuses on EU migrant women's access to residence rights and to social benefits, first, as EU citizen-workers and, second, as the family members of EU citizen-workers. It then addresses the implications of exclusion from the status of worker or family member in terms of the requirement of self-sufficiency for residence rights.

Access to rights as mobile EU citizen-workers

Despite participation in the labour market, work in itself was not necessarily enough for EU migrant women to access rights to residence and entitlement to social benefits as 'workers'. Women who had been working in the UK and had subsequently applied for social benefits after becoming unemployed were in some cases unable to claim the status of worker. Gendered inclusion within the labour market – in so-called atypical work (e.g. temporary casual work, part-time work involving a limited number of weekly hours, working without a written contract) in low-paid jobs such as care and cleaning work – potentially excluded them from the status of worker as applied in assessing their right to reside in the UK. Work that did not involve sufficient or regular weekly and monthly hours of work and earnings – for example, with respect to the experiences of women working as cleaners for agencies on

'zero-hours' (temporary casual) contracts – limited their ability to meet the minimum earnings criteria applied in the UK for assessing the status of 'worker'⁷. At the same time, work which was temporary or involved a limited number of hours appeared to be discounted as 'genuine and effective work' and interpreted as 'marginal and ancillary'.

I had notice from the DWP [Department for Work and Pensions] last week [regarding a client's benefits claim] that just said 'zero-hours contract is not genuine and effective work'. There was no consideration of how many hours [of work] she was doing – it was a blanket assertion that zero hours is not 'genuine and effective work'. Typically I see people in a situation where they are earning under the minimum earnings threshold, and there doesn't tend to be, you can't really see a decision-maker looking at personal circumstances to see if they might be 'genuine and effective workers'. (provider 9)

What you often find is that somebody is told that the work you do is 'marginal and ancillary', based around the fact that, for instance, somebody is either in part-time work or is not doing sufficient hours or is not earning sufficient income. (provider 5)

Women working in informal types of work, including cleaning/domestic work, where they did not have a written contract and were paid 'cash-in-hand', were, as a result, less able to provide evidence of being engaged in 'genuine and effective work'. For example, they did not have a contract, pay slips or a bank account to be able to prove their work or earnings over a three-month period, thus excluding them from the status of worker. At the same time, the irregular earnings of those who had been self-employed excluded them from claiming this status.

They tell me I can't register [apply for means-tested benefits] because they don't believe I'm self-employed as I don't have enough salary from my account. I have three months when I don't sell anything and don't have anything so I have to find another way. (Maria)

The difficulties of providing evidence of 'genuine and effective work' were compounded where this evidence was required over a five-year period in order to claim the status of permanent resident, and entitlement to social benefits on this basis.

A lot of the time when we look if people have gained permanent residence we are going quite far back so we don't have the pay slips as they wouldn't think they would need them from five/six/seven years ago, and I know a lot of people that would be working under the minimum earnings threshold so there is no national insurance contribution, so they won't have permanent residence. (provider 3)

While these conditions had implications for both women and men in insecure types of work, those types of work, and experiences of low-paid work, such as paid care work, were at the same time gendered.

The exclusion of care as a basis for claiming residence rights also had implications for EU migrant women's ability to retain those rights over time. As noted previously, the status of carer is excluded from the categories of EU citizens who have residence rights, except in the case of the primary carer of a child in education. Care is also excluded from the definition of 'work'. However, the interrelations of work and unpaid care in the lives of EU migrant women impacted on their ability not simply to claim the status of worker but to maintain that status, and thus their access to residence and social benefits. With respect to women who had migrated to the UK to work, had been working and had then had children in the UK, caring for young children affected their subsequent participation in the labour market. Difficulties in returning to work included the conflicting demands of hours of work – particularly shift work – and caring for children, in circumstances where not simply childcare services but the informal support of other family members was limited.

It's very difficult if they don't have childcare and they have to look for a job. [One of our clients] had a job but she lost it after her maternity leave, but because she couldn't offer full-time hours and shift hours, late afternoon, night shifts, she was basically dismissed, she couldn't go back, she couldn't find anything else. So I think women in these agency jobs, jobs that aren't exactly nine-to-five hours, are going to

struggle to go back to work because of childcare. And if we don't have families for the single mums, that is one of the biggest problems because the nursery stops at six o'clock and if the job is night shift how is she going to cope. (provider 1)

Carers of young children (aged up to four years) not yet in school were not able to derive residence rights as the 'primary carers' of children in education under EU law. Women who had previously been in work but had stopped work due to pregnancy/caring for their child were thus obligated to seek work in order to maintain residence rights as a worker, particularly if they were unable to rely on the status of family member of an EU citizen (as examined in the following section). Lone parent interviewees referred to the practical difficulties of finding work and childcare as well as the emotional difficulties of being forced to consider alternative care arrangements for very young children. Those pressures intensified with the introduction of restrictions on the time in which they were required, as 'jobseekers', to find work (six months, which was subsequently reduced to three months) before losing their benefits entitlement.

Anna had done a series of different low-paid jobs since coming to the UK. While finding work had not been difficult initially, although she had been restricted by limited spoken English, she emphasised the difficulties of earning an adequate income due to irregular and insufficient hours from week to week. While she had been able to access income related benefits in work (Working Tax Credits), she relied on informal sources of support during short periods out of work between temporary jobs. After becoming pregnant and having her baby, Anna stopped work and received Maternity Allowance. She then tried to claim social assistance (Income Support) after Maternity Allowance payments ended, on the basis of being a lone parent of a child under five. But her claim was refused as she was told she was only entitled to benefits on the condition of 'registering as a jobseeker'. The conditions attached to this type of benefit do not require parents caring for young children under five to be seeking work. However, the conditions for residence rights require the EU citizen-worker whose productive labour is 'temporarily' halted due to childbirth to return to work or actively seek work after a twelve-month period. Those conditions in effect excluded her from entitlement to social assistance as a lone parent of a young child.

With the support of one of the providers, Anna successfully made a claim for unemployment benefit as a jobseeker (Jobseekers Allowance) instead – the conditions of which required her to be seeking work. Payment of Jobseekers Allowance ended after a short period (due to the introduction of the time limits on being a jobseeker with a right to reside). Anna had participated in English language classes, which offered childcare provision, but had received no other support in accessing childcare and found it very difficult to find work during this period. Moreover, she found the pressures to find work very stressful, and wanted to be able to focus on caring for her child. She continued to rely on the support of a friend after the benefits payments were stopped, sleeping in the living room of her friend with her child. Anna had taken up a cleaning job, but this was a temporary job that ended after three months, hoping it would be easier for her to find another job once her child started school.

The requirement of the jobseeker to demonstrate a 'genuine chance of being engaged' in work within a limited timeframe thus placed EU migrant women caring for young children at risk of exclusion from access to social benefits. At the same time, women who sought recognition as carers by claiming Income Support as lone parents with young children risked non-recognition of their residence rights by not registering as a jobseeker.

You lose your worker status when you go on Income Support as you aren't a worker [seeking work]... There are five categories [of EU citizens with a right to reside] but being a mum of small children is not an exercising of Treaty rights so you need to get into a category.

(provider 6)

The obligation to meet the conditions for 'getting into' the category of worker placed EU migrant women and their children in circumstances that were considered by some of the providers interviewed to be of risk to their safety and well-being. Those circumstances included a reliance on precarious, private care arrangements for young children.

It is very difficult because obviously you need to be actively seeking work but what it means is that lots of these women are taking dreadful jobs, they are doing shift work, relying on friends, it's not really adequate childcare... so we have concerns as an

organisation about that, the safety of the child, as they are very informal agreements, and leaving your child with someone you don't know very well, overnight, while you do care work is pretty dreadful. A lot of these people are support workers or care workers and fitting those kind of hours around childcare is very problematic, zero hours etc., it's very stressful. (provider 6)

Access to rights as the family member of the mobile EU citizen-worker

EU migrant women who were not able to claim the status of worker were reliant on the status of family member (wife/civil partner) of an EU citizen-worker to have a right to reside and entitlement to means-tested social benefits. A reliance on this status, which required evidence of their partner's status as a worker/self-employed person, thus placed them in relations of dependence on their husband/partner. Women with children who were partnered to an EU citizen in work were able to continue to access means-tested housing and child-related benefits while they were out of work on the basis of their husband's status. However, where relationships had ended and women (with children) had made a claim for social benefits, interviewees referred to the difficulties of providing evidence of a former partner's status as a worker – such as national insurance contributions and income tax payments or employer details. This was particularly difficult where that evidence depended not simply on the work-related circumstances of a former partner but his cooperation in supplying that evidence.

The main problem that we have is in evidencing that the partner is exercising Treaty rights [a right to reside in another member state] and quite often it's the case that the relationship has broken down, they are still married but not together, and so often you do have to try hard to be able to get them to provide evidence. (provider 7)

While some providers indicated that, in principle, EU migrant women should be able to request assistance from the relevant administrative authorities (e.g. tax authorities) in obtaining this evidence, in practice this assistance was not forthcoming.

The UK authorities don't readily highlight this obligation that they have and it is often surprising to second tier advice agencies and individuals that actually the UK authorities have these obligations. The UK authorities are not bending over backwards when they are confronted with somebody who is claiming a right to reside as a family member through separation by identifying ways in which they may be able to assist that EU family member. (provider 5)

Dependence on their husband/partner affected not only women's ability to access rights to residence and social benefits after leaving a relationship but, as a result, their ability to exit a relationship. In relationships that involved domestic violence, a reliance on the status of family member of a worker in effect constructed dependence on abusive partners to access rights. As emphasised by providers, this placed women in circumstances where they needed to document the work history of partners with whom no contact was in the interests of their safety.

Domestic violence is clearly a situation in which the person has had to flee a potentially life threatening situation and wants confidentiality and anonymity and has not left forwarding addresses to the abuser and well, because of the type of situation they are in, will be very unaware of what their EU national partner may or may not have been up to in terms of work. (provider 5)

By contrast, where women were in relationships with men who were UK citizen-workers – who did not fit the category of the *mobile* EU citizen-worker – they were unable to access rights on the basis of family status. As their partners were not EU citizens exercising free movement rights by moving from one member state to another – they were UK nationals living in the UK – women could not derive rights under free movement law as their family members. Women who had been out of work caring for young children were thus excluded from both the status of EU citizen-worker and family member of a mobile EU citizen-worker, and thus from access to social benefits on this basis. Instead, they had to be 'self-sufficient'. This not only excluded them from access to social benefits but to permanent residence, having to demonstrate work/self-sufficiency over a five-year period in which care 'interrupted' their status as workers. Moreover, it affected their ability to exit a relationship.

If something happens to the relationship they are not entitled to anything [...], if they are not working, they don't have children in school, then that means they are not really existing here which means they are not entitled to anything, so they are stuck in their relationships that they would leave if they had any other option.
(provider 1)

Matilda had come to the UK with her husband, a UK national. She worked for a period of time in the UK before having her children, having received Maternity Allowance and subsequently Child Benefit. While she wanted to claim permanent residence in the UK, having lived there for just over five years, she had been unable to do so as she had been advised by the relevant UK authorities that she would have to demonstrate that she had been 'self-sufficient' during the periods when she had not been working (while caring for her children). As she had not had private health insurance during this period (a requirement as evidence of 'self-sufficiency'), she indicated that she would have to 'start over' again in order to get five years of 'continuously working, applying for a job or supporting myself' – i.e. being a worker, job-seeker or self-sufficient individual. While Matilda had been thinking about ending her relationship with her husband, she felt unable to do so as she would be unable to financially support herself as a 'self-sufficient' individual, although she was hoping to get back into the work that she had been doing previously. Moreover, she feared that by leaving her husband she would not have a right to reside in the UK and, until her children were in school, was worried that she risked being 'sent back' to her country of origin and losing her children: 'any time I feel like they could send me home, if something happens with my marriage then I could be sent home. It makes me feel trapped.' Family status for EU migrant women in relationships with the 'wrong' category of citizen thus brought with it no access to rights to move, to stay, or to social provision on this basis, while at the same time reinforcing family dependency.

Self-sufficiency and permanent residence

Women who were excluded from the status of worker, for doing the unpaid work of caring for children, and who were unable to rely on the status of family member of an EU citizen,

were placed in precarious circumstances not only with regard to their right to reside and to social protection in the short term. They faced the prospect of disentanglement from permanent residence in the long term, which depended on five years of 'continuous legal residence' as a worker, family member or self-sufficient person.

Their previous work history counts for nothing unless they have got five years of work history, so essentially the clock is reset in terms of their ability to claim permanent residence. (provider 8)

To have a continued right to reside in the UK, periods out of work (for more than 12 months after childbirth) required them to be either in a relationship with an EU citizen in work or self-sufficient – to have 'comprehensive sickness insurance' and sufficient resources not to be a 'burden on the social assistance system'. One provider indicated that demonstrating self-sufficiency was particularly difficult as it required not only evidence of sufficient resources retrospectively, during periods out of work over the past five years, but evidence of comprehensive sickness insurance. Although EU citizens are entitled to use the National Health Service in the UK, if temporarily resident, if they wished to apply for permanent residence in the long term, they needed evidence of having held comprehensive sickness insurance for themselves and family members (European Operational Policy Team 2011).

Almost any access to NHS services means that they do not think that you meet the criteria of comprehensive sickness insurance. (provider 8)

Use of healthcare services by women with young children – when out of work, not partnered to an EU citizen-worker, and required to be self-sufficient – thus acted as a potential penalty for future security of residence.

Conclusion

EU migrant women may conform to a model of mobile EU citizens as workers on the basis of participation in the labour market across the borders of European countries. However, gender divisions in relation to paid work and unpaid care structure access to rights to

residence and to social benefits. Access to those rights privileges a particular type of EU citizen-worker – a worker who is ‘disencumbered’ in terms of care, with regular hours of work and earnings, and continuity of labour market participation. The findings point to the ways in which the inclusion of EU migrant women in gendered types of work – in temporary, low-paid work, including paid care work, and work with more limited hours – restricts them from claiming the status of worker, given the restrictive approach adopted in the UK to assessing worker status. At the same time, the non-recognition of unpaid care restricts them from maintaining the status of worker. To the extent that rights to residence recognise unpaid care, this assumes that EU migrant women not in paid work due to care are the family members of the EU citizen-worker/self-sufficient individual. Rights to residence thus privilege not only a particular type of migrant worker but a particular type of family – a mother who is married to an EU migrant worker and able to depend on her partner for rights and resources. Those sets of assumptions regarding work and family have implications for the greater risk of women with young children of exclusion from residence rights and access to social benefits – particularly women who are lone parents or not married/partnered to an EU citizen.

Both EU citizen women and men may, in principle, have a right to mobility in Europe, to move from one member state to another and to access the labour market and social benefits in another member state, irrespective of nationality or gender. However, mobility is a right and also a resource 'to which not everyone shares an equal relationship' (Skeggs 2004: 49). A static snapshot of EU migrants and their rights fails to reflect how gender divisions play out in the changing circumstances and relationships of mobile EU citizens relating to work, care and family. A more dynamic picture of mobile EU citizens is central to understanding how the gendered interrelations of work, care and family impact on access to rights to residence and to social benefits after moving to another country. A more dynamic picture points to the mobility of EU citizens, and of particular groups, not simply across national borders. It also points to mobility in and out of work, and within work, in terms of hours and earnings from one week to the next, as well as over the life course; mobility in terms of changes in family relationships; and the ways in which care profoundly shapes those patterns of mobility for women.

Wider debates with respect to citizenship and gender equality have pointed to the fundamental limits of subordinating care to paid work as a valued social activity and as the basis for claiming rights, and specifically rights to free movement (Ackers 2004). A more gender equitable approach requires facilitating a right to care, including time to care, as opposed to the assumption that all care can be de-familialised through childcare provisions (Lewis 2009, Knijn and Kremer 1997). It also requires access to social protection which is not conditional on labour market participation or family dependency (Rubery 2015b). Basing access to social benefits on work or marriage/partnership both limits women's access and contributes to women's greater risk of poverty (Bennett and Daly 2014). In the context of Brexit and the negotiation of UK/EU citizens' rights (inside and outside the UK), it is therefore critical that the gender implications of the conditions for acquiring legal residence and social rights are addressed. The findings indicate the difficulties that the approach taken in the UK already poses in terms of the requirements for demonstrating the status of worker, family member of an EU-citizen worker or, in the absence of work or marriage to an EU citizen, self-sufficiency. Women out of work with pre-school children, who are not in a relationship with an EU citizen-worker, face the double burden of proving 'self-sufficiency' through no access to social benefits *and* through comprehensive sickness insurance. That approach thus raises serious implications for the gendered impact of the residence requirements on who is able to secure rights. Making rights to residence and to social benefits contingent on the market or family dependency are likely to contribute to gender and class-based inequalities in access to residence and social rights – placing low-income migrant women with young children at particular risk of exclusion from those rights, while placing all EU citizens in precarious work in insecurity.

Endnotes

¹ Non-EU citizens who are family members of EU citizens also have free movement rights.

² The terms 'mobile EU citizen' and 'EU migrant' are used interchangeably in this article to refer to citizens of an EU member state who have moved to another member state. See Anderson for discussion of the social and political construction of certain types of movement as 'migration'. Notably, EU nationals moving within Europe are often defined as 'mobile citizens' at the EU level rather than as 'migrants' (Anderson forthcoming).

³ Those rights extend to nationals of all states within the European Economic Area and Switzerland.

⁴ The primary carer of a child in education has derivative rights to residence in order to facilitate the child's right to education and to residence (Case C-413/99 *Baumbast and R v SSHD* [2002] ECR I-07091; Case C-310/08 *London Borough of Harrow v Ibrahim and SSHD* [2010] ECR I-01065; *Teixeira v London Borough of Lambeth and SSHD* ECR I-01107).

⁵ The 'right to reside test' applies to means-tested benefits (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Housing Benefit, Pension Credit, Council Tax Reduction, Universal Credit, Child Benefit and Child Tax Credit).

⁶ <https://www.gov.uk/income-support/eligibility>

⁷ Zero hours contracts account for around three per cent of people in employment in the UK, with an increase over recent years. Women account for fifty five per cent of people reporting working on these contracts (Office for National Statistics 2016).

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