Neutral Citation Number: [2025] EWHC 1814 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT (BIRMINGHAM)

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 16/07/2025

Before :

MR JUSTICE CHAMBERLAIN

- -

Case No: AC-2024-BHM-000187

Between :

THE KING
on the application of
BZ **Claimant**

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Defendant**

Case No: AC-2023-BHM-000271

And Between :

THE KING
on the application of
BZ **Claimant**

- and -

SECRETARY OF STATE FOR WORK AND PENSIONS

Defendant

- -

Ranjiv Khubber and Darryl Hutcheon (instructed by the **Central England Law Centre**) for the **Claimant in Case No. AC-2024-BHM-000187**

Mathew Purchase KC and Darryl Hutcheon (instructed by the **Central England Law Centre**) for the **Claimant in Case No. AC-2023-BHM-000271**

Jennifer Thelen (instructed by the **Government Legal Department**) for the **Defendant in Case No. AC-2024-BHM-000187**

Alan Payne KC (on 12-14 November 2024 and in subsequent written submissions), **David Blundell KC** (on 8 April 2025) and **Jennifer Thelen** (in subsequent written submissions) (instructed by the **Solicitor for the Department of Work and Pensions**) for the **Defendant in Case No. AC-2023-BHM-000271**

Hearing dates: 12-14 November 2024 and 8 April 2025

- -

Approved Judgment

This judgment was handed down remotely at 10am on 16 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. The claimant came to the UK as a dependant of her adult son. She lived with him and his wife for a period, but suffered domestic abuse by him. She left his home and ceased to be dependent on him.

2. She brings two claims for judicial review. The first in time challenges the decision of the Secretary of State for Work and Pensions ("SSWP") to refuse her claim for universal credit ("UC"). The second challenges a policy of the Secretary of State for the Home Department ("SSHD") under which some, but not all, victims of domestic abuse can access an accelerated route to settlement (a status which carries with it entitlement to mainstream benefits) and support while the application is made and considered.

3. Both claims have at their heart the difference of treatment between two categories of victim of domestic abuse: spouses/partners, who are entitled to benefits, and other family members, who are not.

Facts

4. The claimant is a national of Bangladesh. Her evidence in these proceedings is that she married in Bangladesh and had a son, but the marriage ended. Her son went with his father to Spain. The son became a Spanish national and later moved to the UK, settling in Birmingham, where he found work, married and had children of his own. He was granted "settled status" in the UK in 2019. This confers a form of indefinite leave to remain ("ILR") and, with it, access to mainstream benefits. In the meantime, the claimant married again and had a daughter. This marriage also ended. She received financial support from her son and she and her daughter "relied on this as we had no other income or support from other sources". However, she found it difficult to support her daughter.

5. In April 2021 she applied for entry clearance under Appendix EU (Family Permit) to the Immigration Rules ("IRs") as a dependant of her son. This was in due course granted. In December 2021, the claimant left her daughter in the care of another family member and came to live with her son and his wife and family in Birmingham. In April 2022, she was granted "pre-settled status" ("PSS") under Appendix EU to the IRs.

6. On the claimant's account, her son and his wife soon began to control every aspect of her life. He locked her in the house and stopped her from speaking to anyone. He did not allow her to cook or prepare her own meals. Sometimes, she was left without food for days. He shouted at her and prevented her from seeing her GP or accessing other health services. He and his wife threatened to send her back to Bangladesh. She wanted to get out, but had no money and, speaking no English, did not think she would be able to find work.

7. On 20 January 2023, the claimant's son put all her belongings into a suitcase, threw it down the stairs and said she must leave. She initially refused. He hid the suitcase. On the following morning, she left the house while her son and his wife were sleeping, with no belongings. She has not been in contact with him or his family since, save for on one occasion, which I shall describe.

8. From the end of January until 5 September 2023, the claimant was accommodated and supported by payments of £65 per week from Birmingham and Solihull Women's Aid, a charity. With the help of her support worker, she applied for UC. Although the application mentioned that she had been "thrown out" of her son's home, it did not mention domestic abuse. The application was refused on 11 July 2023 by SSWP, because she did not meet the "habitual residence" test.

9. On 7 September 2023, with assistance from the Refugee and Migrant Centre (another charity), the claimant sought reconsideration of the refusal of UC. This time, the grounds included that she was a victim of domestic abuse. SSWP rejected the application on 18 September 2023 and, on 25 September 2023, sent a mandatory reconsideration notice with a more detailed explanation of the reasons. These are the two decisions challenged in the proceedings against SSWP.

10. Meanwhile, at the start of September 2023, Women's Aid told the claimant that they could not continue to accommodate or support her. She sought assistance from a Birmingham homelessness charity, SIFA Fireside. She was briefly accommodated in a hostel and then in emergency accommodation arranged by Birmingham City Council ("the Council"). She was referred to the Salvation Army, who provided her with a room funded by the Council at the William Booth Centre and two meals per day. She felt uncomfortable there, as many of the residents were men with mental health or drug abuse problems.

11. With assistance from her support worker, the claimant applied to the Home Office for a grant. The application was successful and, in February 2024, she received £2,500 in two instalments. The grant enabled her to buy essential items like food and to pay for travel. On one occasion, she met her son in the street. He forced her to transfer £400 of this money to his account, using a mobile banking app. They have not been in contact since.

12. The claimant remained at the William Booth Centre until 19 April 2024 because the funding agreement with the Council had come to an end. She contacted distant family members in Luton, who accommodated her for a short period. Then, in June 2024, she moved to a rented room with one of their friends in London.

Proceedings

13. The claim against SSWP was filed on 15 December 2023. Permission was granted on the papers by Sheldon J on 18 April 2024. It was listed to be heard on 10 and 11 July 2024. The hearing was adjourned on the SSWP's undertaking to pay the claimant a sum equivalent to what she would have received if her claim for UC had been allowed (£90.80 per week) up to the date of the relisted hearing.

14. Meanwhile, on 2 July 2024, the claimant had filed separate proceedings against SSHD. The target of this challenge was the Migrant Victims of Domestic Abuse Concession ("MVDAC") and Appendix VDA to the IRs. These had for some time offered an accelerated route to ILR, and access to public funds while the application was considered, for spouses, civil partners and durable partners whose relationship has broken down permanently because of domestic violence. It had been amended with effect from 4 April 2024 to cover spouses, civil partners and durable partners with PSS under Appendix EU.

The amendment did not, however, cover other family members who were victims of domestic violence, so the claimant could not benefit from it.

15. On 16 July 2024, Eyre J directed that the two claims should be heard together. They were listed for hearing before me on 12-14 November 2024 in Birmingham. Ground 1 in each claim is that the claimant's exclusion (in the claim against SSWP, from entitlement to UC; in the claim against SSHD, from access to accelerated settlement under Appendix VDA) was contrary to her rights under Article 14 read with Article 1 of Protocol 1 and/or Article 8 ECHR. As against SSWP, the claimant argues under ground 2 that her exclusion was irrational. As against SSHD, she argues under ground 2 that her exclusion frustrated the legislative purpose of Appendix EU. The bulk of the oral argument at the hearing was also directed to these arguments.

16. There was, however, another potentially relevant legal provision which had been referred to at the directions hearing before Eyre J. It was in fact the defendant who had first raised it. This was Article 23 of the Withdrawal Agreement between the EU and the UK ("WA"). One of the recitals to Eyre J's order recorded an agreement between the parties that SSWP could rely on this provision "on the understanding that the Claimant reserves the right in response to contend at trial that she falls within the scope of Article 23 and is entitled to Universal Credit on this basis". Mathew Purchase KC for the claimant availed himself of this right, though it was hardly at the forefront of his submissions, the first reference to it appearing in para. 89 of his skeleton argument.

17. Noting the potential significance of this argument, I invited the parties to address the point in greater detail. There were some submissions at the oral hearing. I also gave directions for the parties to file post-hearing notes. They did so. The claimant's note was filed on 21 November 2024, the defendant's on 28 November. Both referred to *R (Ali) v Secretary of State for the Home Department* [2023] EWHC 1615 (Admin), [2024] 1 WLR 1409, a decision of Lane J which was then subject to appeal.

18. Shortly after these notes were filed, on 10 December 2024, the Court of Appeal allowed the appeal in *Ali*: [2024] EWCA Civ 1546. I invited the parties to file further notes addressing the judgments in this case. The claimant's further note was filed on 9 January 2025, the defendant's on 20 January 2025. On 11 February, I informed the parties that I had reached the following provisional view:

> "(i) the correct interpretation of Article 17(2) of the Withdrawal Agreement is not clear; (ii) therefore the question arises whether to request a preliminary ruling from the CJEU [the Court of Justice of the European Union] under Article 158(1) WA; (iii) the answer to the question of interpretation is likely to be material to the justifications advanced by SSWP and SSHD in response to the Article 14 claims against them; (iv) therefore, the jurisdictional conditions for the making of a request under Article 158(1) appear to be satisfied."

19. However, since the parties had not had the opportunity to make written submissions on whether a request for a preliminary ruling should be made, I indicated that I would list a further hearing, unless the parties agreed that a reference should be made. The claimant's solicitors indicated in an email of 18 February 2025 that she did not oppose a reference.

The defendant sought additional time to consider the matter and the hearing was in due course fixed for 8 April 2025. In the meantime, I indicated to the parties the question I was considering referring:

> "Does Article 17(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') apply to a person who, at the end of the transition period, was a 'family member' of a Union Citizen as defined in point (2) of Article 2 of Directive 2004/38/EC but resided outside the host State, and who later enters the UK as a dependant, thereby falling within the personal scope provision in Article 10(1)(e)(ii) of the Withdrawal Agreement? If so, does it follow that, if such a person leaves the home of the person upon whom they were dependent as a result of domestic abuse and as a result ceases to be a dependant, they continue to fall within the personal scope of the Withdrawal Agreement, and thus entitled to rely on Article 23 thereof?"

20. At the hearing on 8 April 2025, Mr Purchase supported the proposal to refer a question in these or similar terms to the CJEU. David Blundell KC for the SSWP (who appeared in place of Alan Payne KC, who had appeared at the main hearing and signed all of the post-hearing notes) opposed a reference on the basis that the claimant's dependency at the end of the transition period had not been accepted or established, so a decision on the proper interpretation of Article 17(2) WA was not necessary to enable the court to give judgment within the meaning of Article 158(1).

21. On 14 April 2025, I gave directions for the parties to file evidence on the question whether the claimant was dependent on her son at the end of the transition period. Time for compliance with these directions was extended by agreement. The claimant filed evidence on 9 May 2025. On 23 May 2025, the Secretary of State indicated that she accepted on the basis of this evidence that the claimant was dependent at the end of the transition period.

22. By this time, however, the Independent Monitoring Authority for the Citizens' Rights Agreements ("the IMA") had applied for permission to make submissions, noting that it should have been notified that a point under the WA had arisen. That was granted. The IMA filed submissions on 13 June 2025. Responses were filed by the claimant on 23 June 2025 and the defendant on 2 July 2025.

Law and policy

Rights of residence under EU law

23. The free movement of persons is one of the fundamental freedoms of the internal market, central to the acquis communitaire. The freedom was vouched by successive treaties and is now guaranteed by Article 21 of the Treaty on the Functioning of the EU, which provides:

> "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect."

24. The principal legislative measure now in force is the Citizens' Right Directive 2004/38 ("the Directive"). It sets out the "limitations and conditions" to which the right to reside is subject. These have been the subject of negotiation and agreement between Member States.

25. The recitals to the Directive set the scene:

> "(1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.
>
> …
>
> (5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality.
>
> …
>
> (9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.
>
> (10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.
> …
>
> (15) Family members should be legally safeguarded in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. With due regard for family life and human dignity, and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis."

26. "Family member" is defined in Article 2(2) as:

> "(a) the spouse;
>
> (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
>
> (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
>
> (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)".

27. Thus, while some relationships (spouse, registered partner, direct descendants under the age of 21) give rise automatically to the status of "family member", others (direct descendants aged 21 or over, direct relatives in the ascending line) give rise to that status only if the relative is dependent on the EU citizen.

28. The substantive rights conferred by the Directive include:

(a) an initial, unconditional right of residence for up to 3 months for EU citizens (Article 6(1)) and family members (Article 6(2));

(b) a right of residence for longer than 3 months for EU citizens who are workers or self-employed persons or have sufficient resources not to become a burden on the host State's social assistance system and comprehensive sickness insurance cover (Article 7(1)) and for family members "accompanying or joining" the EU citizen, provided that the EU citizen continues to satisfy the conditions in Article 7(1) (Article 7(2));

(c) a continuing right of residence for family members who have been resident for at least a year if the EU citizen dies, provided that they can show that they are workers or self-employed persons or that they have sufficient resources not to become a burden on the host State's social assistance system and comprehensive sickness insurance cover (Article 12(2)); and

(d) a continuing right of residence for family members after divorce or termination of a registered partnership, in certain circumstances, including those where "this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting" (Article 13(2)(c)).

29. Article 14(2) provides that EU citizens and their family members retain the right of residence provided for in Articles 7, 12 and 13 "as long as they meet the conditions set out therein".

30. Article 16(1) provides that EU citizens who have resided legally for a continuous period of five years in the host Member State have the right of permanent residence there; and the right is not subject to the conditions in Chapter III (Articles 6-15). Article 16(2) provides that this applies to non-EU citizen family members who have resided legally with the person with the primary right of residence for a continuous period of five years.

31. Article 17(1) confers the right of permanent residence in less than five years in cases where the person with the primary right of residence reaches retirement age or becomes incapable of work. Article 17(3) and (4) make provision for the family members of those who acquire permanent residence under Article 17(1) or who die while working towards it.

32. Article 18 confers a permanent right of residence on family members of an EU citizen to whom Article 12(2) or 13(2) apply and who have resided legally for a period of five consecutive years in the host State.

The UK's exit from the EU and the Withdrawal Agreement

33. The UK left the EU at 11pm on 31 January 2020. The exit arrangements were set out in the WA. It provided for a "transition period", which ended at 11pm on 31 December 2020, during which most of EU law continued to apply, and for what was to happen after the end of that period.

34. Section 7A(1) and (2) of the European Union (Withdrawal) Act 2018 as amended ("the 2018 Act") gives legal effect in domestic law to "all such rights, powers, liabilities, obligations and restrictions … created or arising by or under [the WA]… as in accordance with the withdrawal agreement are without further enactment to be given legal effect or used in the United Kingdom". Section 7A(3) provides that every enactment is to be read and have effect subject to this. The consequence is that provisions required by the WA to have direct effect have such effect in domestic law and prevail over other domestic law.

35. Title II of Part Two of the WA is entitled "Citizens' Rights". It sets out the rights of EU citizens in the UK and of UK nationals in the EU. Chapter 1 concerns rights related to residence. Article 9 provides that the scope of Part Two includes "family members" of EU (and UK) citizens, as defined in Article 2(2) of the Directive. This includes spouses and civil partners, whether or not they are dependent. It also includes children aged 21 or over and "direct relatives in the ascending line", but only if they are dependent.

36. Article 10 is headed "Personal scope". Article 10(1) provides that, without prejudice to Title III (which is not said to be material here), Part Two applies to:

> "(a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter"

and

> "(e) family members of [such persons], provided that they fulfil one of the following conditions:
>
> (i) they resided in the host State in accordance with Union law before the end of the transition period and continue to reside there thereafter;
>
> (ii) they were directly related to [such a person] and resided outside the host State before the end of the transition period, provided that they fulfil the conditions set out in point (2) of Article 2 [the Directive] at the time they seek residence under this Part in order to join [that person]…"

37. Article 13 is headed "Residence rights". Article 13 provides materially:

> "(3) Family members who are neither Union citizens nor United Kingdom nationals shall have the right to reside in the host State under Article 21 TFEU and as set out in Article 6(2), Article 7(2), Article 12(2) or (3), Article 13(2), Article 14, Article 16(2), Article 17(3) or (4) or Article 18 of [the Directive], subject to the limitations and conditions set out in those provisions.
>
> (4) The host State may not impose any limitations or conditions for obtaining, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned."

38. Article 15 WA ("Right of permanent residence") confers a right of permanent residence on EU citizens and their family members who have resided legally in the host State in accordance with EU law for a continuous period of five years or for the period specified in Article 17 of the Directive.

39. Article 17 WA is headed "Status and changes" and provides as follows:

> "1. The right of Union citizens and United Kingdom nationals, and their respective family members, to rely directly on this Part shall not be affected when they change status, for example between student, worker, self-employed person and economically inactive person. Persons who, at the end of the transition period, enjoy a right of residence in their capacity as family members of Union citizens or United Kingdom nationals, cannot become persons referred to in points (a) to (d) of Article 10(1).
>
> 2. The rights provided for in this Title for the family members who are dependants of Union citizens or United Kingdom

> nationals before the end of the transition period, shall be maintained even after they cease to be dependants."

40. Article 18 allows the UK to require EU citizens and family members to apply for a new residence status which confers the rights under Title II and a document evidencing such status, which may be in digital form.

41. Article 23 is headed "Equal treatment" and provides as follows:

> "1. In accordance with Article 24 of Directive 2004/38/EC, subject to the specific provisions provided for in this Title and Titles I and IV of this Part, all Union citizens or United Kingdom nationals residing on the basis of this Agreement in the territory of the host State shall enjoy equal treatment with the nationals of that State within the scope of this Part. The benefit of this right shall be extended to those family members of Union citizens or United Kingdom nationals who have the right of residence or permanent residence.
>
> 2. By way of derogation from paragraph 1, the host State shall not be obliged to confer entitlement to social assistance during periods of residence on the basis of Article 6 or point (b) of Article 14(4) of Directive 2004/38/EC, nor shall it be obliged, prior to a person's acquisition of the right of permanent residence in accordance with Article 15 of this Agreement, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status or to members of their families."

42. Article 24 of the Directive is in very similar terms, save that its personal scope extends to all EU citizens residing on the basis of the Directive (rather than those residing on the basis of the WA), and its material scope was that of the Treaty (rather than Part Two of the WA).

The EU Settlement Scheme

43. The EU Settlement Scheme ("EUSS") enables EU, other EEA and Swiss citizens living in the UK before the end of the transition period, and their family members, to obtain the UK immigration status they need to remain in the UK. It is intended to implement the UK's obligations under the WA and similar agreements between the UK and other EEA Member States and with Switzerland, but in some respects it goes further. It makes provision for two forms of status: first, PSS, which carries with it a grant of limited leave to remain for those with less than five years' continuous residence; second, settled status, which is available to individuals with at least five years' continuous residence and carries with it the grant of ILR and access to mainstream benefits.

The effect of PSS under the Immigration Rules

44. In her skeleton argument for SSHD, Jennifer Thelen describes the policy intention behind the introduction of PSS as follows (omitting footnotes):

> "15. In broad terms, where a person in scope of the WA has been granted PSS under the EUSS, their right to reside in the UK under the WA is essentially subject to the same conditions that applied before the end of the transition period (see Article 13 of the WA). Thus, to continue to benefit from a right to reside until the right of permanent residence is acquired (see Article 15 of the WA), an EEA citizen must be engaged in a qualifying activity – such as working. Rights under the WA attach to EEA citizen and (in the case of the Claimant) non-EEA citizen family members, by virtue of being a family member of an EEA citizen engaged in a qualifying activity (or who has acquired the right of permanent residence). One exception to this is where the right to reside is considered to be retained by a family member following the breakdown of the family relationship, on the basis set out in Article 13 of the [Directive], as applied by Article 13(2) and (3) of the WA…"

45. Outside the context of the EUSS, the rights of adult dependent relatives to enter and reside in the UK are set out in Appendix Adult Dependent Relative to the IRs ("Appendix ADR") and reflect the UK Government's understanding of the scope of the right to family reunification under Article 8 ECHR. Appendix ADR imposes "dependency requirements" which are couched in strict terms:

> "ADR 5.1 The applicant, or if the applicant is applying as a parent or grandparent, the applicant's partner, must as a result of age, illness or disability require long term personal care to perform everyday tasks.
>
> ADR 5.2 Where the application is for entry clearance, the applicant, or if the applicant is applying as a parent or grandparent, the applicant's partner, must be unable to obtain the required level of care in the country where they are living, even with the financial help of the sponsor because either:
>
> (a) the care is not available and there is no person in that country who can reasonably provide it: or
>
> (b) the care is not affordable."

46. Under the EUSS, however, "dependent" is defined more broadly. In this context, it means:

> "(a) having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in

> whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen or of the relevant sponsor) or of their spouse or civil partner; and
>
> (b) such support is, or (as the case may be) was, being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen or by the relevant sponsor) or by their spouse or civil partner; and
>
> (c) there is no need to determine the reasons for that dependence or for the recourse to that support".

47. As to the duration of the right to reside conferred by PSS, the EUSS originally tracked the contours of Article 13 of the Directive and of Article 13 WA. So far as material to the present case, this meant that the right to reside continued despite divorce or annulment of marriage or termination of a civil partnership even if the marriage had not lasted for the time required by Article 13(2)(a) of the Directive and there was no agreement or court order giving custody of the EU citizen's children to the non-EU national spouse, where the marriage or partnership ended because of domestic violence.

48. However, in February 2019, the EEA Citizens' Rights & Hong Kong Unit began reviewing the provision for victims of domestic violence in the light of wider work in the Home Office in the context of the then draft Domestic Abuse Bill (which became the Domestic Abuse Act 2021). The Unit received representations that the lack of a retained right to reside where the relevant family relationship which had broken down was a durable partnership rather than a marriage or civil partnership was causing hardship. Officials spoke to officials at the DWP and were assured that it would have no implications for entitlements to benefit.

49. On this basis, with effect from 4 June 2020, SSHD decided to go beyond what was required by the Directive and WA. This was set out in the Explanatory Memorandum for the Statement of Changes in Immigration Rules CP 232 as follows:

> "To extend the scope for victims of domestic violence or abuse to apply for status under the EUSS. In line with the Withdrawal Agreement and the Free Movement Directive, this is currently limited to a former spouse or civil partner whose marriage or civil partnership has been legally terminated and who is a victim of domestic violence or abuse while the marriage or civil partnership was subsisting. Consistent with the Government's wider commitment to tackling domestic violence or abuse and protecting victims of it, the changes will mean that any family member within the scope of the EUSS (a spouse, civil partner, durable partner, child, dependent parent or dependent relative) whose family relationship with the relevant EEA citizen (or with a qualifying British citizen) has broken down permanently as a result of domestic violence or abuse will have a continued right of residence where this is warranted by domestic violence or abuse against them or another family member. They will be able

> to rely on this, together with their own continuous residents in the UK, in applying for status under the EUSS."

Domestic violence/domestic abuse

50. Since 1999, the Secretary of State has operated a concession to the IRs, known as the "DV Rule concession". This entitled a spouse or partner of a person present and settled in the UK, who has limited permission to enter or remain, to apply for ILR where the relationship has broken down as a result of domestic violence. The rationale for this concession is described by Nicholas Wood, Senior Policy Adviser on Domestic Abuse Migrant Policy in the Home Office, in his witness statement as follows:

> "…individuals who come to the UK as the spouse or partner of a person who is present and settled in the UK will have come to the UK in the knowledge that their UK-based partner already has a right to live permanently in the UK. It is therefore reasonable for them to expect to have their future and their permanent home with their spouse or partner in the UK, so from the outset they may well loosen or cut their ties with their country of origin. This DV rule concession meant that someone who had come to the UK on this basis and who was then the victim of domestic violence should not feel compelled to remain in the abusive relationship for the sake only of qualifying for indefinite immigration permission. They should also not feel compelled to leave the UK when the reason for being here (to live here permanently with their British or settled partner) fell away through no fault of their own."

51. In 2002, this was codified as paragraph 289A of the IRs. However, evidence showed that victims of domestic violence still felt unable to leave to their abusive spouses or partners because, until their application for ILR was granted, their immigration leave remained subject to a "no recourse to public funds" condition and they had no access to accommodation or support. This led to a pilot project, the Sojourner Project, which was introduced in 2011 and provided refuge places for 50 days to victims of domestic abuse. When this came to an end, the Destitution Domestic Violence Concession was introduced, which allowed spouse/partner victims of domestic violence to access public funds over a short period while they make the application for ILR. This was effected by a grant of 3 months' immigration permission outside the IRs under Appendix FM (DVILR).

52. Since January 2019, amendments have been made to allow certain other groups to obtain ILR as a result of domestic violence. These include: (i) the spouse or partner of a person with limited immigration permission as a refugee; (ii) a spouse or partner with limited immigration permission under Appendix FM of an EEA national with PSS; (iii) a spouse or partner under Appendix EU with PSS and their dependent children. Mr Wood explains:

> "These are cohorts who have limited immigration permission in the UK on a route to settlement and who have a legitimate expectation of settling with their spouse or partner, and they

> should not be obliged to remain in an abusive relationship for that expectation to be met."

53. New category (i) was added as a result of a Court of Session judgment to the effect that the exclusion of spouses/partners of refugees was incompatible with Article 14 ECHR: *A v Secretary of State for the Home Department* [2016] CSIH 38, [2016] SC 776.

54. With effect from the end of the transition period, a further category was added: spouses or partners with limited immigration permission under Appendix FM of EEA nationals with PSS, granted on the basis of their residence at the end of the transition period.

55. Section DVILR of Appendix FM was replaced by a new Appendix VDA with effect from 31 January 2024. Certain substantive changes were made, but they are not relevant to these claims. A further change which is relevant was made with effect from 4 April 2024. It has the effect of including a spouse, civil partner or durable partner under Appendix EU with PSS and their dependent children. Mr Wood says that this ensured that a spouse or partner with PSS of an EEA national would be treated in the same way, whether the relationship was formed before or after the end of the transition period. The changes reflected the outcome of a review conducted pursuant to a consent order in a settled judicial review claim, *R (GN) v SSHD*.

56. As part of this review, SSHD considered the expansion of what had now become known as the Migrant Victim of Domestic Abuse Concession ("MVDAC") to include family members other than spouses, civil partners and durable partners. Mr Wood describes the reasons for not doing so as follows:

> "24. To have included that cohort – who were outside the scope of Appendix FM and Appendix Adult Dependent Relative – in the MVDAC and Appendix VDA would have involved adding to those domestic abuse provisions – that were otherwise aligned with the scope of the family routes – non-partner family relationships that went beyond the Article 8 case law (see paragraph 42 below). Such an expansion of the MVDAC and Appendix VDA was not required to resolve the unlawful discrimination as existed between partners with limited immigration permission under Appendix FM and Appendix EU which had been identified in *GN v SSHD*.
>
> 25. To have made equivalent provision under Appendix EU for other family member victims of domestic abuse - whose retained right of residence, as described in paragraph 38, below, went beyond the scope of the UK-EU Withdrawal Agreement - would have treated them more favourably in terms of access to welfare benefits (including by way of an accelerated route to settlement) than other family members with retained right of residence under Appendix EU - as per the definition of' family member who has retained the right of residence' in Annex 1 to that Appendix, e.g. following the death of the relevant EU citizen – whose retained right of residence was within the scope of the Withdrawal Agreement. It would also have treated them more favourably

> than other vulnerable groups who might argue that they should be given better access to welfare benefits than the Withdrawal Agreement required."

57. At para. 38, Mr Wood explains that Annex 1 to Appendix EU reflects Article 13 of the Directive and Article 13(2) and (3) WA, save that it applies to "durable partners" as well as spouses and civil partners. The significance of Article 8 ECHR is explained in para. 42 as follows:

> "For the purposes of the immigration rules and in accordance with Article 8 of the ECHR, family life is not normally engaged by relationship between adult family members unless they are partners. Other relationships and the concerns and affection that ordinarily go with them are, by themselves or together, not enough to constitute family life for the purposes of Article 8; there has to be something more. An adult living independently of their relative may well not have a family life for the purposes of Article 8. Therefore, the decision to restrict access to the MVDAC and Appendix VDA is, in this way, justified by the legitimate aim of maintaining and effective immigration and border control."

58. Further detail as to the rationale for the exclusion of non-partner family members from the scope of the MVDAC and Appendix VDA is given in the witness statement of Bethan Schofield, Senior Policy Adviser on EUSS policy in the EEA Citizens' Rights & Hong Kong Unit of the Migration and Borders Group in the Home Office.

Universal credit

59. UC is a taxpayer-funded income-related benefit administered by SSWP and the main source of income for people out of work or on a low income. It includes elements for children, housing and disability.

60. Entitlement to UC is established by the Welfare Reform Act 2012. Section 3 provides that a single claimant is entitled to UC if he meets the "basic conditions" and the "financial conditions". One of the basic conditions is that the person "is in Great Britain": s. 4(1)(c). Regulations may specify circumstances in which a person is to be treated as being or not being in Great Britain: s. 4(5)(a).

61. Regulation 9(1) of the Universal Credit Regulations 2013 (SI 2013/376) provides, subject to exceptions that are not material, that a person is to be treated as not being in Great Britain if the person is not "habitually resident" in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. Regulation 9(2) provides that a person must not be treated as habitually resident unless he or she has a "right to reside" in one of those places. By reg. 9(3), a right to reside does not include rights existing by virtue of, or in accordance with, specified provisions of domestic law. By reg. 9(3)(c), one of the excluded cases is:

> "a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—
>
> (i) Appendix EU to the immigration rules made under section 3(2) of that Act;
>
> (ii) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act; or
>
> (iii) having arrived in the United Kingdom with an entry clearance that was granted under Appendix EU (Family Permit) to the immigration rules made under section 3(2) of that Act."

SSWP's account of the policy rationale for the restricted scope of UC

62. In his first witness statement, Jonathan Harris, Head of the Migrants' Access to Benefits Team at the Department of Work and Pensions, explains that a "right to reside" test was first introduced in 2004. On 30 April 2004 (Report of the Social Security Advisory Committee and statement by the Secretary of State for Work and Pensions, Cm 6181), the then Secretary of State explained its rationale as being "to safeguard the UK's social security system from exploitation by people who wish to come to the UK not to work but to live off benefits". He added:

> "The Government has been concerned for some time that some current EEA nationals have taken advantage of free movement with the European Economic Area to become an unreasonable burden on our benefit system, even though this negates their right of residence in the UK. We believe that it is reasonable to expect people to have a right to reside in the UK before they can have access to the income-related benefits, particularly as support may last for many years. These proposals should bring the UK more into line with the broad approach of policy and practice in Europe."

63. Further changes, to the same end, were made in 2014 following a political statement by the then Prime Minister, David Cameron.

64. The EUSS made provision, in the light of the UK's exit from the EU, for two forms of status: first, PSS, which carried with it a grant of limited leave to remain for those with less than five years' continuous residence; second, settled status, which was available to individuals with at least five years' continuous residence and carried with it the grant of ILR and access to mainstream benefits.

65. Mr Harris sets out excerpts from a number of policy documents dating from between 2017 and 2019 indicating that the purpose of these new statuses was to guarantee EU citizens and their family members who were resident on exit day broadly the same rights as they had under EU law. It was against this background that, in 2019, reg. 9(1)(c) was

added to make clear that PSS was not itself to count as a "right to reside" for the purposes of UC. The intention was set out in a letter by the then Secretary of State to the Chair of the Social Security Advisory Committee on 15 April 2019, in these terms:

> "The regulations amend a number of income-related benefit regulations to clarify that an EEA national who has been granted limited leave to remain in the UK under the EU Settlement Scheme must also be exercising a qualifying right to reside in the UK in order to be eligible for these benefits. This ensures we deliver the stated policy intent: that this cohort is able to access benefits on the same basis as they would now if they were exercising Treaty Rights, and do not have more favourable access as a result of EU exit".

66. At paras 56-58, Mr Harris says this:

> "56… EU law facilitates the freedom of movement for those exercising EU law free movement rights such as being a worker. As explained above in order not to inhibit the exercise of free movement rights by EU citizens, they are also permitted to have their close family members join them and live with them provided they are and remain part of their household. However, the right of those close family members to reside derived from their EU citizen family member, does not extend to a right to reside if the relationship breaks down. This is because they are no longer part of the EU citizen's household and so their presence in the host country is not required in order for the EU citizen to effectively exercise their free movement rights.
>
> 57. If family members who were no longer part of the EU citizen household were entitled to claim income-related benefits, this would be inconsistent with the system of freedom of movement because : - (i) the presence of the family member is no longer required in order to avoid inhibiting the EU's citizen's ability to exercise their free movement rights, and (ii) access to benefits should be limited to those who are sufficiently economically integrated into their host country and have made an economic contribution to it, and their family members.
>
> 58. In addition, if the family member of an EEA worker could still derive a right to reside even though the relationship with the EEA national had ended there is, as this case demonstrates, the risk of an increased burden on the social assistance system, if those family members are able to become reliant on welfare benefits for subsistence."

67. Mr Harris points to Article 13 of the Directive, which makes specific provision for spouses and civil partners whose marriage or partnership is dissolved. This, he says, shows that, outside these specified exceptions, "there is and was no EU right to claim UC

or other similar benefits where an individual is not an EEA worker or a family member of an EU worker".

The Withdrawal Agreement point

68. I deal with Mr Purchase's point on the WA first. If correct, it will be unnecessary to consider the other bases for challenging the SSWP's decision. If not, the reasons why not are likely to be highly material to the assessment of other arguments raised in both claims.

Relevant case law

69. In Case C-709/20 *CG v Department for Communities in Northern Ireland* EU:C:2021:602, [2021] 1 WLR 5919, an EU citizen who had been granted PSS, but then left her abusive partner and was no longer complying with the conditions in the Directive, was refused UC during the transition period. The Grand Chamber of the CJEU held that she could not rely on the non-discrimination provisions in Article 24 of the Directive. She could, however, rely on the rights conferred by the EU Charter of Fundamental Rights, because – having moved to the UK in exercise of her rights as an EU citizen – her situation fell within the material scope of Article 21 TFEU. The reasoning in *CG* about the applicability of the Charter was applied to a case where the application for benefits fell to be decided after the end of the transition period in *AT v Secretary of State for Work and Pensions* [2023] EWCA Civ 1307, [2024] 2 WLR 967 (upholding a decision of the Upper Tribunal to the same effect). The claimant in the present cases does not rely on any rights under the EU Charter.

70. In *R (Independent Monitoring Authority) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), [2023] 1 WLR 817, Lane J upheld a challenge by the IMA to SSHD's then policy of requiring those with PSS to make a fresh application for ILR before their five years' limited leave to remain had expired. If they did not, they would lose their residence right. This was held to be unlawful. Article 18(1) WA permitted the UK to implement a "constitutive scheme", under which an application is a necessary precondition for the enjoyment of the residence right. However, once the application was granted, the grant had to confer *all* the rights in Title II. This included the right to permanent residence after five years under Article 15. That right could not be made conditional on a further application. At [151], Lane J referred to the right conferred by Article 13 as a "conditional right to reside". At [156], he said this:

> "A person with article 13 residence rights falling short of permanent residence is entitled to reside in the United Kingdom for as long as the relevant limitations and conditions in the Directive are satisfied. That is an inherent feature of the rights conferred by article 13(1) to (3)."

71. In *Fertré v Vale of White Horse District Council* [2024] EWHC 1754 (KB), [2024] 1 WLR 5453, the appellant was an EU national who had moved to the UK in November 2020, before the end of the transition period, and was granted PSS a few weeks later. In 2021, she applied to the local authority for housing assistance. The local authority refused on the basis that she was economically inactive and therefore not residing in the UK on the basis of the WA. On appeal to the High Court, she argued that the right to equal treatment under Article 23(1) WA precluded the court from giving effect to any domestic

rule requiring those with a "new residence status" to fulfil requirements for eligibility for social assistance which would not apply to a UK national with habitual residence. Jay J dismissed the appeal, holding that, although the appellant was residing in the UK on the basis of PSS, which was a residence status issued under Article 18 WA, she was not complying with the limitations and conditions set out in the relevant provisions of the Directive and so was not residing "on the basis of" the WA. Therefore, Article 23 WA did not apply: see [67]-[76]. The judgment in this case is under appeal. The appeal was heard in May 2025 and judgment is pending.

72. In *Ali*, the claimant was a national of Bangladesh who had come to the UK as a family member of her mother, exercising rights under Article 7 of the Directive, but by October 2019, when she made her application for PSS, she had begun to work and ceased to be dependent, so no longer satisfied the definition of "family member" in Article 2(2) of the Directive. At first instance ([2023] EWHC 1615 (Admin), [2024] 1 WLR 1409), Lane J held that she could not rely on the provisions of the Directive, because she was not residing in accordance with the limitations and conditions imposed by it. Nor could she rely on Article 17(2) because the words "before the end of the transition period" meant "immediately before the end of the transition period" and Ms Ali had ceased to be dependent (and so ceased to reside lawfully) by that time: see [82]-[87]. According to Lane J, the rationale for Article 17(2) was as follows:

> "90… When EU law applied in the United Kingdom and a person ceased to reside here in accordance with that law, they could, at some future point, resume their lawful residence. This was because EU law continued to apply in this country. Accordingly, a person who ceased to be dependent could later resume their dependency and so resume lawful EU residence.
>
> 91. That, however, is no longer the position. As from the end of the transition period, EU law no longer applies in the United Kingdom. Importantly, this means that rights held under the Withdrawal Agreement, once lost, cannot be regained. An example can be seen in article 39 (life-long protection), which provides that persons covered by Part Two shall enjoy the rights provided in the relevant Titles for their lifetime, unless they cease to meet the conditions set out in those Titles.
>
> 92. For this reason, article 17(2) protects anyone who would lose those rights under the Withdrawal Agreement by reason of ceasing to be a dependant. It ensures that such persons continue to enjoy rights under the Withdrawal Agreement (provided they meet other relevant conditions) after the end of the transition period."

73. The Court of Appeal allowed the appeal ([2024] EWCA Civ 1546). All three judges agreed as to the result, but Underhill LJ's reasons (with which Singh LJ agreed) differed from Green LJ's. At [137]-[152], Underhill LJ said that, on a natural reading of Article 7(2), the derivative rights accorded to third-country national family members would continue only so long as they satisfied the conditions in Article 2(2) of the Directive. Dependency was "a continuing requirement for the purpose of Chapter III and not a mere

gateway". This was reinforced by Articles 12 and 13 of the Directive, which make special provision for situations where the derivative rights of the family member would otherwise lapse (death of the person with the primary right of residence and divorce from that person), and by Article 14(2) of the Directive. Article 23 of the Directive confers a right to work or take up self-employment on family members "who have the right of residence". The natural meaning is to confine the personal scope of the right, where the right to reside depends on their continuing dependency, to those who remain dependent. However, at [153]-[156], Underhill LJ said that the reasoning of the CJEU in Case C-423/12 *Reyes v Migrationsverket* EU:C:2014:16, [2014] QB 1140 was to contrary effect and had to be followed. This meant that dependent children who exercised the right to take up employment or self-employment did not lose their residence rights under the Directive.

74. The appellant did not raise Article 17(2) WA on appeal, so the Court of Appeal did not have to consider the correctness of Lane J's conclusion on it. However, at [27], Green LJ noted that Article 17(2) had no analogue in EU law. At [103], he cited an EU Commission Guidance Note on citizens' rights under Part Two WA, which he said "makes clear that a person whose right of residence is derived from a state of dependency on a right holder does not cease to be covered by the WA '...when they cease to be' dependent".

Submissions for the claimant

75. In his first post-hearing note, Mr Purchase submitted that the claimant had lawfully entered the UK as a dependent family member within the meaning of Article 9(a)(i) read together with Article 10(1)(e)(ii) WA. Article 17(2) provides in terms that the Title II rights of family members who are dependants of EU citizens before the end of the transition period are to be maintained even after they cease to be dependent. The claimant needs to show only that she was dependent on her son before 11pm on 31 December 2020. She was. That being so, she retained her rights under Title II when she ceased to be dependent. These included her rights to residence under Article 13 and equal treatment under Article 23. The latter has direct effect. By virtue of s. 7A of the 2018 Act, the UC Regulations must be read subject to it. So, the dependency rule must be disapplied in the claimant's case.

76. In his second post-hearing note, Mr Purchase submitted that his interpretation of Article 17(2) is consistent with the Court of Appeal's decision in *Ali*; that *Fertré* does not assist with the interpretation of Article 17(2); and that, contrary to SSWP's case, on the interpretation which he advances, Article 17(2) would apply only to those family members who were dependent immediately before the end of the transition period and ceased to be dependent afterwards, and therefore would not afford "unfettered access to state benefits to all those with PSS".

Submissions for the defendant

77. In his first post-hearing note, Alan Payne KC for SSWP made five points. The thrust of the first and second was that the claimant did not reside in the UK before the end of the transition period. Accordingly, she did not become a "family member" until she applied to join her son in the UK. She cannot rely on Article 17(2) because that provision, read in context, requires dependency *in the UK* before the end of the transition period. Reliance is placed on Lane J's analysis of Article 17(2) in *Ali*. Thus, in terms of Article

23, the claimant is not residing in the UK "on the basis of" the WA. She is residing on the basis of her PSS, which is an immigration right introduced independently of the WA and does not provide for access to UC.

78. Mr Payne's third point was that Article 17(2) is concerned with the rights provided for by Title II of Part Two, which are conferred on those in the personal scope defined by Article 10. It must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (see Article 3(1) of the Vienna Convention). Family members who were resident in the UK before the end of the transition period in accordance with EU law and who thereafter continued to reside in the UK (those referred to in Article 10(1)(e)(i)) enjoy rights based on dependency before the end of the transition period. Their right of residence in the UK under the WA is based on being dependent in the UK on their sponsor at the end of the transition period. It is this cohort which Article 17(2) is intended to protect.

79. Mr Payne's fourth point was this:

> "Fourth, contrary to C's case, the issue of whether a joining family member such as C ~~who~~ was dependent on their sponsor before the end of the transition period [fn] is of no relevance. There is no requirement under [Article 10(1)(e)(ii) WA] for family members to establish dependency before the end of the transition period; the obligation is limited to establishing dependency after the end of the transition period when the application to join their sponsor is made. This is because the objective of the Provision, where EU citizens are concerned, is to enable an EU citizen resident in the UK before the end of the transition period to continue residing in the UK, knowing that they can at any point in the future be joined in the UK by their parent(s) if their parent(s) become dependent on them (as well as where they were already dependent on them before the end of the transition period and remain so)."

80. I have struck through the word "who" because Mr Blundell accepted at the hearing on 8 April 2025 that it must have been included in error. The footnote was in these terms:

> "Whilst it is not accepted that there is sufficient evidence to determine the issue of dependency prior to the end of the transition period for the purposes of this hearing it is accepted that the Court can proceed on the basis that such dependency existed."

81. There was an argument about whether this footnote communicated a concession that the claimant was dependent at the end of the transition period. I do not need to set out the details of this argument, because—as I indicated at the outset—I gave the parties permission to file evidence on that question, the claimant did so and SSWP now accepts that the claimant was dependent at that time.

82. Mr Payne's fifth point was that, on the claimant's analysis, the UK would be obliged to provide all those with PSS unfettered access to state benefits; and it is difficult to see why the drafters would have wished to bring about this consequence.

83. In his second post-hearing note, Mr Payne pointed out that the Court of Appeal in *Ali* did not address Lane J's analysis of Article 17(2), which therefore remains good law. The claimant in *Ali* had been present in the UK before the end of the transition period. In this case, the claimant had not. Her rights arose after the end of the transition period, when she applied for and was granted entry clearance to join her son. It was only at that stage that she became a "family member" as defined in Article 10(1)(e)(ii) WA. In any event, the majority of the Court of Appeal in *Ali* would have decided the issues in that case in SSWP's favour had it not been for the CJEU's decision in *Reyes* (which is of no application here). Finally, the claimant has provided no plausible reason why the drafters would have wished to expand entitlement to state benefits to family members who had never resided in the UK prior to the end of the transition period after they have ceased to be dependants and, thus, ceased to have rights as such under the WA.

Discussion

The Directive

84. There are five key features of the Directive which form the starting point for the interpretation of the WA.

85. First, the Directive confers on EU citizens and certain of their family members rights of residence, subject to "limitations and conditions". These rights were implemented in UK law by domestic legislation and, to the extent that they were directly effective, could be relied upon directly in UK law pursuant to the European Communities Act 1972.

86. Second, the Member States and the EU legislator considered and addressed who would count as a "family member" for these purposes. Some types of relation (spouse, civil partner, direct descendants under the age of 21) have the status automatically. Other types (direct descendants aged 21 or over and direct relatives in the ascending line) are "family members" only if they are dependent on the EU citizen: see generally the judgment of Underhill LJ in the Court of Appeal in *Ali,* at [123]-[129].

87. Third, one "limitation or condition" on the right of residence of an EU citizen was that, after the first three months and until they qualify for a permanent right of residence under Articles 16-18, the EU citizen had to (i) be economically active or (ii) have the resources and medical insurance necessary to prevent them and their family members from being a burden on the social assistance system of the host State: Article 7(1). The right of residence of family members was dependent on the EU citizen satisfying these conditions: Article 7(2).

88. Fourth, there are special provisions about retention of the right of residence by family members in the event of death or departure of the EU citizen (Article 12) and, where the family member is a spouse or civil partner, in the event of divorce, annulment or termination of a civil partnership (Article 13). These provisions make sense only on the footing that, without them, the right to residence would *not* be retained: see Ali, [139] (Underhill LJ).

89. Fifth, after the first three months and until they qualify for a permanent right of residence under Articles 16-18, the rights of residence of EU citizens and their family members are retained only as long as they meet the conditions set out in Articles 7, 12 and 13: Article 14(2).

90. What happens to a family member whose status as such requires them to be dependent, when they cease to be dependent? The general answer is given by Case C-488/21 *GV v Chief Appeals Officer* ECLI:EU:C:2023:1013, [2024] 3 CMLR 9 ("GV") at [55]-[60] and summarised by Underhill LJ in *Ali* at [140]: dependency is "a 'condition' which requires to be continuously satisfied". However, a literal application of this principle in every situation might undermine the effectiveness of the other parts of the Directive. Thus, a family member continues to enjoy the rights that flow from that status even though they cease to be "dependent" (on its natural meaning) because they receive state benefits (Case 316/85 *Centre Public d'aide Sociale de Courcelles v Lebon* [1987] ECR 2811) or start to work, exercising their rights under Article 23 *(Reyes)*.

The Withdrawal Agreement

91. The WA has two key, relevant features.

92. First, "family members" are defined in Article 9 as including (materially) those falling within the definition in Article 2(2) of the Directive, who fall within the personal scope provided for in Article 10. This includes family members of EU citizens who exercised their right to reside in the UK in accordance with EU law before the end of the transition period and continue to reside in the UK thereafter, where (materially) "they were directly related to [the EU citizen] and resided outside the host State before the end of the transition period, provided that they fulfil the conditions set out in [Article 2(2) of the Directive] at the time they seek residence under this Part in order to join [the EU citizen]". Read together, and without reference to Article 17(2), the natural meaning of Articles 9 and 10 is that a relative who joins a family member after the end of the transition period must satisfy the definition in Article 2(2) of the Directive, including where relevant the requirement of dependency, both at the time of application and continuously thereafter until such time as they acquire the right of permanent residence under Article 15 WA. This is consistent with the ECJ's interpretation of the Directive – dependency is a condition that must be continuously satisfied: see para. 90 above.

93. Second, Article 13(3) makes the right to reside of non-EU citizen family members subject to the limitations and conditions set out in (inter alia) Article 7(2), 12(2) or (3), 13(2) and 14 of the Directive. In other words, until they acquire the right of permanent residence in accordance with Article 15, the family member's right of residence depends on the EU citizen from whom they derive their rights (i) being economically active or (ii) having the resources and medical insurance necessary to prevent them and their family members from being a burden on the social assistance system of the host State. The reference to the limitation or condition in Article 14 of the Directive makes clear that family members retain their residence right only as long as they meet these conditions.

Article 17(2)

94. The ratio of Lane J's judgment in *Ali* is that the words "before the end of the transition period" in Article 17(2) mean the same as "at the end of the transition period". Article 17(2) therefore provides no protection to those who, like the claimant in *Ali*, ceased to be dependants before the end of the transition period. On that point, Lane J's reasoning seems to me, with respect, to be sound. For most purposes, EU law continued to apply (through the WA) up to the end of the transition period. Part Two of the WA says what is to happen after the end of the transition period. As Lane J says, it is difficult to see why the drafters of the WA would have wished to confer, with effect from the end of the transition period, rights on persons who had no such rights under EU law immediately before that.

95. Lane J did not, however, have to grapple with the question which arises here. It follows that the statement at [86] of his judgment in *Ali* that Article 17(2) applies to family members who, in the words of article 10(1)(e)(i), "resided in the host state in accordance with Union law before the end of the transition period and continued to reside there thereafter" is of limited assistance, as can be seen by the qualifying words "for our purposes" in [87]. The question must therefore be approached from first principles.

96. In interpreting Article 17(2) in the present context, the starting point is that the WA is a bilateral international agreement. Article 31(1) of the Vienna Convention on the Law of Treaties applies. The WA therefore falls to be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose": see Lane J in *Ali* at [82].

97. Applying an "ordinary meaning" approach, both the claimant's and SSWP's interpretations are arguable. On the one hand, it may be said that a person in the claimant's position, who is not in the UK at the end of the transition period, does not (yet) fall within the definition in Article 9, because she has not (yet) sought residence and so is not (yet) within the personal scope in Article 10(1)(e)(ii). On this view, the phrase "the family members who are dependants of Union citizens… before the end of the transition period" refers to the cohort who are already residing in the UK qua dependant at the end of the transition period.

98. But this interpretation depends on reading the proviso in Article 10(1)(e)(ii) (continued satisfaction of the definition in Article 2(2) of the Directive at the point when they seek residence) as part of the definition of "family member", rather than as a precondition for the exercise of the rights conferred by Part Two. It would involve no distortion of the ordinary meaning of Articles 9 and 10 to say that a person who, at the end of the transition period, satisfies Article 2(2) of the Directive but is resident outside the UK already falls within the personal scope of the WA, because at that point she is entitled to seek residence here in the future, provided that she continues to fall within Article 2(2) of the Directive at the point when she does so.

99. Does the "object and purpose of the treaty" help? As to that, it is true that the interpretation contended for by the claimant would represent a greater inroad into the carefully calibrated "limitations and conditions", which are central to the scheme of both the Directive and the WA. On the other hand, it is important to note that Article 17(2) has no analogue in EU law, as Green LJ observed at [27] of his judgment in *Ali.* It must

therefore have been regarded by the parties as conferring some additional protection that was required in the unique legal situation created by the UK's exit from the EU.

100. Lane J thought that Article 17(2) could be explained by the fact that, from the end of the transition period, EU law had no further application in the UK. Without Article 17(2), he reasoned, someone who ceased to be dependent would lose their right of residence altogether, whereas under EU law they could resume their dependency and, with it, regain their right to reside: see his judgment in *Ali*, at [90]-[92], set out at [68] above. I am less confident than Lane J about this. It is not clear to me why a person who was a dependant at the end of the transition period, ceased to be dependent thereafter and then became dependent again would not simply come back within the definition of "family member" in Articles 9 and 10 WA even without Article 17(2). But even if Lane J was right, his rationale does not help to resolve the present issue: if without Article 17(2) a loss of dependency would have permanent legal effects after the end of the transition period, it would have those effects whether the family member is in the UK at the end of the transition period or not.

101. Another possibility is that Article 17(2) was intended to have the effect described in the EU Commission's Guidance Note (2020/C 173/01) cited by Green LJ at [103] of his judgment in *Ali*, i.e. to provide that family members whose status would otherwise require continued dependency "maintain the same rights even when they cease to be dependent, irrespective of the mode of loss of dependency". On this view, Article 17(2) avoids the need to ask whether the loss of dependency comes about through exercise of the right conferred by Article 23 WA (in which case residence rights would be preserved applying the ECJ's decisions in *Lebon* and *Reyes*) or otherwise. If that was the intention behind Article 17(2), it is difficult to see why the framers would have chosen to effect a change for the cohort of family members already in the UK as dependants at the end of the transition period, but not for the cohort of family members entitled to seek residence as dependants thereafter.

102. Accordingly, in my view, the proper interpretation of Article 17(2) WA is not clear.

Request for a preliminary ruling from the Court of Justice of the EU

103. Article 158(1) WA provides in material part as follows:

> "Where, in a case which commenced at first instance within 8 years from the end of the transition period before a court or tribunal in the United Kingdom, a question is raised concerning the interpretation of Part Two of this Agreement, and where that court or tribunal considers that a decision on that question is necessary to enable it to give judgement in that case, that court or tribunal may request the Court of Justice of the European Union to give a preliminary ruling on that question."

104. The jurisdiction to request a ruling from the CJEU on the proper interpretation of Article 17(2) arises if and only if a decision on that question is "necessary" to enable me to give judgment on these claims. At the hearing on 8 April 2025, the main argument advanced by Mr Blundell against making such a request was that this condition was not satisfied because SSWP had not accepted, and the evidence before the court did not enable me to

find as a fact, that the claimant was dependent on her son at the end of the transition period.

105. As I have indicated, SSWP now accepts, on the basis of her later evidence, that the claimant was dependent at the end of the transition period. It follows that the principal objection advanced on behalf of SSWP to the referral of a question to the CJEU has fallen away.

106. Since then, I have considered the IMA's submissions. The IMA considers that the claimant's interpretation of Article 17(2) is correct. However, it accepts that the point is not acte clair and that a reference is appropriate. The question proposed is very slightly different from mine. It is this:

> "Does Article 17(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') apply to a person who, at the end of the transition period, was a dependent direct relative in the ascending line of a Union citizen and accordingly a 'family member' of a Union Citizen as defined in point (2) of Article 2 of Directive 2004/38/EC but resided outside the host State, and who later entered the UK as a dependant, thereby falling within the personal scope provision in Article 10(1)(e)(ii) of the Withdrawal Agreement? If so, does it follow that, if such a person leaves the home of the person upon whom they were dependent as a result of domestic abuse and as a result ceases to be a dependant, they continue to enjoy rights of residence under Article 13 in Title II of Part 2 of the Withdrawal Agreement, and are thus entitled to rely on Article 23 thereof?"

107. The SSWP's submissions indicate that she continues to oppose the making of a reference because she considers her own interpretation to be clearly correct and suggests some modifications to the question. I have accepted some of these modifications.

108. Although I was not addressed on this point by Mr Blundell at the hearing on 8 April 2025, I turn next to the questions whether a decision on the proper interpretation of Article 17(2) WA is necessary for the resolution of the rest of the claims and whether, if so, I should make a reference.

109. I consider first the claim against SSWP. If the claimant is correct about the interpretation of Article 17(2), she retains a right of residence under Article 13 and continues to enjoy the protection of Article 23. In that case, she must be treated in the same way as a UK national and is therefore entitled to UC. This would make it unnecessary to consider her other grounds. If, on the other hand, the Secretary of State is correct about the interpretation of Article 17(2), then the claimant is not residing in accordance with the WA and has no right to social assistance under Article 23. That is an important building block in SSWP's justification for the difference in treatment between spouses and civil partners, on the one hand, and other family members, on the other.

110. So far as the claim against SSHD is concerned, the claimant in essence challenges the denial to her of access to (i) the accelerated route to ILR and (ii) UC while she makes the application. If her interpretation of Article 17(2) is correct, she will have (ii) but not (i). So, she may wish to continue with the claim against SSHD in any event. But SSHD's justification for excluding family members other than spouses, civil partners and durable partners from access to (i) was the additional cost that it would entail. It would be very difficult to assess the cogency of that justification without knowing whether persons in the position of the claimant are entitled to UC anyway.

111. In my judgment, the condition in Article 158 WA is therefore met: a decision on the proper interpretation of Article 17(2) is necessary to enable me to give judgment in these claims. Although Article 158 confers a power, rather than a duty, to request a preliminary ruling, I consider such a request to be appropriate here. In the first place, neither of the two competing interpretations is markedly more plausible than the other. Although I could in principle decide the point, an appeal would be very likely and the Court of Appeal or Supreme Court might decide itself to request a preliminary ruling. That would result in considerable delay. Although Mr Blundell said on 8 April 2025 that SSWP was not then aware of any others in the same position as the claimant, it is very likely that the claimant is not unique. That being so, there is a strong public interest in an authoritative decision on this point as soon as possible.

Conclusion

112. For these reasons, I shall request a preliminary ruling and stay the proceedings pending a judgment from the CJEU. The question to be referred has been refined by suggestions from the IMA. I have also accepted some of the modifications proposed by the SSWP. The question to be referred is:

> "Does Article 17(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') apply to a person who, at the end of the transition period, was a dependent direct relative in the ascending line of a Union citizen and accordingly a 'family member' of a Union Citizen as defined in point (2)(d) of Article 2 of Directive 2004/38/EC but resided outside the host State, and who later entered the host state as a dependant, thereby falling within the personal scope provision in Article 10(1)(e)(ii) of the Withdrawal Agreement? If so, does it follow that, if such a person leaves the home of the person upon whom they were dependent as a result of domestic abuse and as a result ceases to be a dependant, they continue to enjoy rights of residence under Article 13 in Title II of Part 2 of the Withdrawal Agreement, and are thus entitled to rely on Article 23 thereof?"

113. The parties are invited to agree the appropriate order.