Neutral Citation No: [2024] NICty 6	*Ref:*	**[2024] NICty 6**
	ICOS No:	**24/84314**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**23/12/2024**

IN THE COUNTY COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

IN THE MATTER OF A STATUTORY APPEAL UNDER THE HOUSING (NORTHERN IRELAND) ORDER 1998

XY

Appellant

v

NIHE

Respondent

Mr A Beech BL (instructed by James Strawbridge solicitors) for the Appellant
Mr S McTaggart BL (instructed by NIHE legal) for the Respondent

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HER HONOUR DEPUTY JUDGE MURRAY

Introduction

[1] This is a statutory appeal against two decisions of the respondent whereby it refused to consider the appellant for homelessness assistance under the Housing (Northern Ireland) Order 1988 having decided that the appellant was ineligible for housing assistance. It involves an analysis of the interplay between provisions in immigration legislation and housing legislation in light of the provisions of the Withdrawal Agreement legislation, associated EU Treaties, EU Directives and the EU Charter of Fundamental Rights (the Charter).

Anonymity

[2] As this case involves a child these proceedings are anonymised, and nothing must be reported which might identify the child. This is in accordance with Article 170 of the Children (NI) Order 1995.

The evidence

[3] It was agreed by the parties that no oral evidence would be called. The court therefore had before it the affidavit of the appellant and two affidavits from the ultimate decision maker together with a bundle of documentation within which was the first impugned decision. An agreed bundle of authorities was provided.

[4] Skeleton arguments were provided by both counsel shortly before the hearing and this was supplemented by oral submissions in the hearing. The court is very grateful indeed to both counsel for their detailed submissions on what everyone agreed is a complex legislative framework.

[5] This judgment does not record all the evidence to which the court was referred, nor does it refer in detail to all the authorities. All of the relevant evidence and relevant authorities have however been considered by the court in reaching its conclusions.

The appeal

[6] By the respondent's decisions of 11 July 2024 and 5 September 2024 the appellant was refused homelessness assistance on the basis that she was deemed ineligible for consideration for housing assistance due to her immigration status.

[7] The appeal to this court is on a point of law under the Housing (NI) Order 1988 ("the 1988 Order") and is a judicial review. It was agreed by the parties that the court does not conduct its own assessment but reviews the decisions made by the respondent on the information available to it. (Articles 11C and 11D of the 1988 Order).

[8] The remedies available to the court are to affirm the decision, to quash the decision, or to vary it. (Article 11D(4) 1988 Order). In this case the remedy sought was that the decision be quashed. Whilst in skeleton argument the appellant sought an order of mandamus requiring the respondent to deem the appellant as eligible, this remedy was not pursued. In considering whether to confirm or quash the decision the court must apply the principles applied by the High Court in an application for judicial review.

The grounds of appeal

[9] One of the grounds of appeal was that the respondent had fettered its discretion. That ground was abandoned in the hearing. This appeal, therefore, rests on two grounds as follows:

Ground 1: The wrong legislation was used to determine whether the appellant was eligible for consideration for housing assistance and thus the decision should be quashed on grounds of illegality as there was an error of law.

Ground 2: In reaching the decisions that the appellant was ineligible for housing assistance the respondent did not make appropriate enquiries and did not take account of relevant considerations to the extent that the respondent's actions were unreasonable and irrational in the *Wednesbury* sense. In particular, the respondent did not consider: firstly, the appellant's eligibility under Article 7A(1)(b) of the 1988 Order; secondly, did not consider the Charter rights of the appellant and her child; and, thirdly, did not consider the child's homelessness status.

Factual circumstances

10] The factual circumstances were summarised and agreed as follows:

(a) The appellant is a Sudanese national born on 14 February 1991 who resides in the United Kingdom with her British citizen child born on 9 September 2022.

(b) The appellant is in receipt of Universal Credit and Child Benefit.

(c) The appellant entered the United Kingdom on 19 November 2021 on an EU Family Permit based on her relationship with her husband, a Swedish/Sudanese national.

(d) The appellant was granted Pre-Settled Status (PSS)/Limited Leave to Remain under Appendix EU on 21 March 2022.

(e) The appellant was subjected to domestic abuse by her husband whose control she escaped on 8 May 2023 when she was taken to hospital.

(f) The domestic abuse was investigated by the police and the appellant received homelessness support in Birmingham from 16 May 2023.

(g) Due to her fear of being discovered by her husband, the appellant moved to Belfast on 27 November 2023.

(h) The appellant presented herself to the respondent who agreed to provide: "emergency non-standard temporary accommodation" to her and her child pending inquiries. The appellant was accommodated at a hotel until 5 December 2023 before moving to accommodation at a hostel in Belfast.

(i) On 27 June 2024 the appellant made an application for settlement in the UK as a Victim of Domestic Abuse. That application is yet to be determined by the Home Office.

(j) On 11 July 2024 the appellant received notification that while the respondent was: "satisfied that you are homeless/threatened with homelessness and in priority need it has been decided that you are to be treated as not eligible for homelessness assistance." This is the first impugned decision.

(k) On 17 July 2024 a request to review that decision was lodged by the appellant's caseworker in the hostel, with submissions also being raised by the appellant's solicitor on 23 July 2024.

(l) On 5 September 2024 the respondent's review decision upheld the decision of 11 July 2024. This is the second impugned decision.

The legal framework

Homelessness

[11] The respondent's obligations in relation to the provision of housing assistance are outlined in the 1988 Order.

[12] Article 3(1) provides:

> "a person is homeless if he has no accommodation available for his occupation in the UK or elsewhere."

[13] Article 5(1) provides that certain classes of persons have a priority need for accommodation including:

> "(b) a person with whom dependent children reside or might reasonably be expected to reside
>
> …
>
> (e) a person without dependent children who satisfies the Executive that he has been subject to violence and is at risk of violent pursuit or, if he returns home, is at risk of further violence."

[14] In this case the respondent accepted that the appellant was both homeless/threatened with homelessness and in priority need. In the normal case

this would be sufficient, in accordance with Article 10(2) of the 1988 Order for the appellant to secure accommodation. However, in this case the respondent found the appellant to be ineligible for consideration for housing assistance. The provisions on eligibility are set out below.

Eligibility for consideration for housing assistance

[15] Article 7A of the 1988 Order states where relevant as follows:

> **"7A. Persons not eligible for housing assistance**
>
> (1) A person is not eligible for assistance under this Part –
>
> (a) If he is a person from abroad who is subject to immigration control and is ineligible for such assistance by virtue of section 119 of the Immigration and Asylum Act 1999;
>
> (b) If he is any other person from abroad who is ineligible for such assistance by virtue of regulations made under paragraph (2); or
>
> …
>
> (2) The Secretary of State may, for the purposes of paragraph (1)(b), make provision by regulations as to other descriptions of persons who are to be treated as persons from abroad who are ineligible for assistance under this Part.
>
> …
>
> (3) A person from abroad who is not eligible for assistance under this Part shall be disregarded for the purposes of this Part whether [a person falling within paragraph (4A)] –
>
> (a) Is homeless or threatened with homelessness, or
>
> (b) Has a priority need for accommodation.

(4A) A person falls within this paragraph if the person –

(a) Falls within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999; but

(b) Is not a person who, immediately before IP completion day, was –

(i) A national of an EEA State or Switzerland, and

(ii) Within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999 which had effect at that time."

[16] The Immigration and Asylum Act 1999 provides where relevant as follows:

"118. Housing authority accommodation

(1) Each housing authority must secure that, so far as practicable, a tenancy of, or licence to occupy, housing accommodation provided under the accommodation provisions is not granted to a person subject to immigration control unless –

(a) he is of a class specified in an order made by the Secretary of State; …

119. Homelessness: Scotland and Northern Ireland

(1) A person subject to immigration control –

(a) Is not eligible for accommodation or assistance under the homelessness provisions, and

(b) Is to be disregarded in determining for the purposes of those provisions, whether a person falling within subsection (1A) –

(i) Is homeless or threatened with homelessness,
(ii) Has a priority need for accommodation,

unless he is of a class specified in an order made by the Secretary of State.

(1A) A person falls within this paragraph if the person –

(a) Falls within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999; but

(b) Is not a person who, immediately before IP completion day, was –

(i) A national of an EEA State or Switzerland, and

(ii) Within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999 which had effect at that time.

(2) An order under subsection (1) may not be made so as to include in a specified class any person to whom section 115 applies.

(3) 'the Homelessness provisions' means –

(a) In relation to Scotland, Part II of the Housing (Scotland) Act 1987; and

(b) In relation to Northern Ireland, Part II of the Housing (Northern Ireland) order 1988.

(4) 'Persons subject to immigration control' has the same meaning as in section 118."

[17] The Immigration and Social Security Co-Ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations

2020 (the 2020 Regulations) bear on the question of whether the appellant is a Person Subject to Immigration Control ("a PSIC").

[18] Schedule 4 of the 2020 Regulations is titled:

> 'Saving provision in relation to benefits and services.'

[19] Para 5 of Schedule 4 states:

> "a member of the post-transition period group is not to be treated as "a person subject to immigration control" within…(b) the meaning of section 118 of the Immigration and Asylum Act 1999 (housing authority accommodation) for the purposes of the exercise of the functions specified in paragraph 7."

[20] The definition of a "member of the post-transition period group" is at para 1(b) of schedule 4 which states that such a person is:

> "a person who has limited leave to enter, or remain in, the United Kingdom granted by virtue of residence scheme immigration rules within the meaning given by section 17 of the European Union (Withdrawal Agreement) Act 2020."

[21] Section 17(1)(a) of the European Union (Withdrawal Agreement) Act 2020 ("the Withdrawal Agreement") states that:

> "residence scheme immigrations rules" means "Appendix EU to the Immigration Rules."

[22] It was not in dispute in this appeal that the appellant had Pre-Settled Status (PSS)/Limited Leave to Remain under Appendix EU; the issue is whether the appellant in this appeal was a PSIC.

[23] Para 5 of Schedule 4 to the 2020 Regulations applies as the functions specified at para 7 include:

> "determining whether a person is ineligible for assistance under Part 2 of the Housing (Northern Ireland) Order 1988 (persons not eligible for housing assistance," (paragraph 7(b)).

[24] Whether the appellant fell within para 5 of Schedule 4 is the precise issue for determination in this appeal. As set out below the court finds that the appellant fell within this exception and was thus not ineligible for consideration for housing assistance.

Consideration

Was the appellant a person subject to immigration control (PSIC)?

[25] The first question is whether the respondent applied the correct legislation so as to conclude that the appellant was a PSIC. A subsidiary question was whether the respondent considered whether the appellant came within one of the classes set out in the 2000 Order so as to be eligible for consideration for housing assistance.

[26] As a person with PSS the appellant was a member of the Post-Transition Group referred to. I find that membership of the group did not depend on previous access to treaty rights as contended by the respondent.

[27] I conclude from an analysis of the legislation that the appellant being a person with PSS status, was wrongly considered to be a PSIC as no consideration was given to whether she could avail of the exception in the 2020 Regulations whereby she could be deemed not to be a PSIC for the purposes of the 1988 Order. The wrong provision was therefore applied, and this amounted to an error of law.

[28] A subsidiary argument by the appellant was that even if the appellant had been properly considered to be a PSIC, then the respondent did not consider whether she fell within class N of The Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 ("the 2000 Order").

[29] This legislation applies to those who are PSICs and sets out classes of persons who are PSICs but nevertheless are not ineligible to be considered for housing assistance. If class N applied to the appellant this would have meant that she was someone who was not to be deemed ineligible for consideration for housing assistance.

[30] As I consider that the appellant was a member of the Post-Transition Group then it would appear that the appellant would have been within class N and was thus not ineligible even if she had been correctly considered to be a PSIC. However, given my conclusion that the wrong legislation was applied as regards the decision on whether she was a PSIC then no more need be said about this aspect of the appellant's argument.

The duty to make enquiries and the burden of providing evidence

[31] Under the 1988 Order there is a duty placed on the respondent to make such enquiries as are necessary to satisfy itself as to whether a person is homeless and has a priority need. (Article 7 of the 1988 Order).

[32] The appellant's submission was that this shows the positive obligation on the respondent to make enquiries and by analogy to make such enquiries as are necessary in relation to the issue of eligibility particularly when read with Article 7B referred to below.

[33] Article 7A outlines the categories of persons not eligible for housing assistance. Reading Article 7A as a whole it is clear that it is for the respondent to satisfy itself that the appellant was not eligible for housing assistance. It was not the case that the respondent had to satisfy itself that the appellant was eligible for housing assistance.

[34] The distinction is important in this case and is where the respondent fell into error in my judgment as the respondent proceeded to put the burden on the appellant to produce evidence of her eligibility for housing assistance despite the respondent's acceptance of her status as a victim of domestic violence. That approach also infected the process of weighing up the available evidence before the respondent in reaching its decision on whether the appellant was ineligible to be considered for housing assistance.

[35] Article 7B places a positive obligation on the Secretary of State for the Home Office, if requested by the respondent, to provide it with such information as the respondent may require to enable it to determine whether a person is eligible for assistance. In this case the respondent enquired of the Home Office about the appellant's status. No enquiry was made however in relation to the husband's status despite the fact that his status was relevant to the assessment of the appellant's status.

Eligibility under The Allocation of Housing and Homelessness (Eligibility) Regulations (Northern Ireland) 2006 ("the 2006 Regulations")

[36] The next question is whether the fact that the respondent did not consider the appellant's eligibility under the 2006 Regulations amounted to an error of law.

[37] The appellant's submission was that the appellant was not otherwise ineligible for assistance and for this reason the appellant's position under the 2006 Regulations was explored in evidence and submissions. Eligibility under the 2006 Regulations was also referred to in the decision maker's affidavit where she

averred that consideration had been given to eligibility under them. There was nothing, however, in the impugned decisions to indicate that this had actually happened, and I reject the respondent's contention that this was specifically considered at the time the decisions were made.

[38] This aspect of this appeal therefore involved consideration of whether the appellant's husband was a Qualified Person who was thus entitled to access Social Security benefits and by extension whether the appellant as his family member could be considered for such benefits in the form of housing assistance. An analysis of this legislation was therefore required as the appellant's submission was that the appellant was not otherwise ineligible under any applicable legislation. This analysis also bore on the issue of whether the appellant was ineligible even if she had been regarded as a PSIC.

[39] Under the 2006 Regulations, a consideration of the appellant's status is required, and this includes a consideration of the husband's status as the appellant relied on his status as an EEA national and her family connection to him, in order to deal with the habitual residence and Qualified Person aspects of the 2006 Regulations.

[40] Regulation 4 of the 2006 Regulations sets out:

> (i) The categories of ineligibility including a person from abroad who is not a PSIC and who is not habitually resident in the Common Travel Area. (Regulation 4(1)(a)).
>
> (ii) That a person from abroad is not to be treated as ineligible for housing assistance if she is the family member of an EEA national who is a worker/self-employed person (Regulation 4 (2)(a) and (b)).
>
> (iii) Regulation 4(1)(1A) referred to by the respondent does not apply to the appellant as it is limited to those who fall within Regulation 4(1)(b) and (c) neither of which categories applies to the appellant.

[41] In the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations") are defined:

(i) Who qualifies as a family member (Regulation 7) and,

(ii) Who is a Qualified Person. (Regulation 6). In summary, a Qualified Person is someone exercising EU Treaty rights as a worker for the prescribed length of time who is economically active which includes temporary incapacity. Someone who is unemployed is not a Qualified Person because member states are entitled to refuse Social Security benefits to economically inactive people.

[43] The following information was before the respondent in relation to consideration of the appellant's status as the family member of an EEA national and whether he was a Qualified Person. This information also relates to whether an individualised assessment was conducted in compliance with the respondent's obligations under the Charter of Fundamental Rights ("the Charter"). That information relates to the appellant's child's nationality, Universal Credit, the Home Office and the Birmingham housing authorities.

The child's nationality

[44] It was common case that the appellant's child has British citizenship and had a British passport having been born in the UK. It was agreed that this depended on the child's father's "settled status" (section 1 of the British Nationality Act 1981).

[45] The appellant argued that an inference can be drawn that the child obtained that citizenship due to her father's status and this was sufficient to allow the respondent to deduce his permanent resident status and the respondent could thus have weighed that in the balance to decide that the appellant was not ineligible for housing assistance.

[46] The respondent's submission was that the fact that the child is a British citizen is not conclusive evidence that the husband was a Qualified Person nor that he had permanent residence without more information as to how the husband obtained settled status.

Universal Credit

[47] This relates to the fact that the appellant was in receipt of Universal Credit having been accepted as eligible for that benefit. It was uncontested that the test

for habitual residence for Universal Credit is largely the same as that for housing assistance. No enquiries were made by the respondent to the Universal Credit authorities.

The Home Office

[48] The respondent had enquired of the Home Office in relation to the appellant's status and had received a detailed answer. However, the respondent did not ask any question about the husband's status despite the obligation on it to enquire of the Secretary of State for the Home Office. (Article 7B of the 1988 Order).

[49] It was common case that information on the husband's status was relevant to the appellant's status. The respondent's submission was that they could not ask about third parties and made general reference to potential difficulties due to GDPR.

[50] As the question had not been asked of the Home Office by the respondent the respondent simply does not know what the response of the Secretary of State might have been to that enquiry. It may well be that information on the husband's status, perhaps redacted, would have been provided given its crucial relevance to consideration of the appellant's status for the purposes of access to benefits.

The Birmingham housing authorities

[51] The appellant had been accepted by the housing authorities in Birmingham as homeless. It was uncontested that the statutory scheme is the same in England as that applicable in Northern Ireland. The respondent asked questions of their counterparts in Birmingham but there was no follow-up question on why they had decided that the appellant was eligible for housing assistance.

[52] If that question had been asked it might have elicited more detail. Instead, the respondent put the burden on the appellant to provide evidence of her husband's status despite the fact that she was a victim of domestic violence. The respondent also concluded that it was open to the appellant to return to Birmingham despite her status as a victim of domestic violence and the respondent's apparent acceptance that she had fled Birmingham as a result.

[53] The fact that the appellant was a victim of domestic violence was not considered at all in reaching the decisions nor was it considered when deciding what enquiries were appropriate and necessary in the circumstances. The fact that the appellant was a victim of domestic violence also should have informed the respondent's consideration of the weight to be given to the evidence already before it.

[54] I conclude that the respondent's action in not making further enquiries of the Birmingham authorities, the Universal Credit authorities and the Home Office was irrational and unreasonable to the *Wednesbury* standard. Effectively the respondent put the full burden on the appellant to produce evidence as to her husband's status even though she was recognised as vulnerable being a victim of domestic violence with a young child.

[55] The respondent therefore did not take account of relevant considerations namely that she was a victim of domestic violence and of her child's position as a British national.

The appellant's status as a person with PSS

[56] The respondent relied heavily on the decision of *Fertre v Vale of White Horse* [2024] EWHC 1754 (KB) which is a decision of the High Court in England whereby an appellant who had PSS status failed in her bid to access housing assistance.

[57] In the instant case the respondent urged the court to follow that as persuasive authority on the issue of the effect of the appellant's PSS status on her eligibility for consideration for homelessness assistance. My conclusion is that *Fertre* is not helpful to the court in relation to the instant case for the following principal reasons.

[58] The *Fertre* case concerned an EEA national who was economically inactive and wanted to avail of the non-discrimination provisions in the Withdrawal Agreement (deriving from EU Treaty rights) to have the same access to benefits as UK citizens. That application was refused by Mr Justice Lane following an analysis of the Withdrawal Agreement and its application to her circumstances. The key finding was that, as an economically inactive EEA citizen, the appellant could not draw on EU treaty rights which specifically allowed for member states to exclude economically inactive citizens from Social Security benefits. This constitutes the ratio decidendi of this case.

[59] Reference was made at para 30 of the judgment to Ms Fertre's PSS status as this came up in the context of an amendment application that was made on the morning of the hearing and was refused. Mr Justice Lane nevertheless gave his view on the point which at first blush appears to support the respondent's argument in the instant case as the comment was that PSS status was no more than a gateway to benefits after which more information would be required to determine eligibility. Crucially, however, there was no reference whatsoever in *Fertre* to the specific exception relied upon in the instant case.

[60] The comments in *Fertre* in this regard are therefore obiter dicta and are of no authority persuasive otherwise in this court as regards the effect of the appellant's status as a person with PSS and whether she fell within the exception relied upon.

Arrangements before and after the Withdrawal Agreement

[61] I reject the respondent's key submission that the pre-Brexit and post-Brexit schemes must be assumed to have the same effect and that the legislation should be read with that in mind when interpreting it. The respondent's submission was that the legislation has to be interpreted in light of the pre-Brexit arrangements because the new arrangements for those in the Post-Transition Group cannot be found to be more generous than the old.

[62] Allied to that point the respondent submitted that the appellant only falls within the Post-Transition Group (referred to in the 2020 Regulations) if she previously exercised EU Treaty rights. It appears that the basis for the submission was the general point that an assumption should be made in interpreting legislation that the pre-Brexit and post Brexit arrangements should have the same effect.

[63] I reject the respondent's submissions on this point particularly as in the case of *AT* (which endorsed the approach of the CJEU in the case of *CG*) it was recognised that the EU Settlement Scheme was a more generous scheme than the pre-Brexit scheme for those in scope. (See below).

The Charter of Fundamental Rights of the European Union ("the Charter")

[64] The UK left the EU on 31 January 2020 thereafter entering the transition period which continued until the 31 December 2020. After the transition period the status of EU citizens in the UK are governed by the terms of the Withdrawal Agreement which are incorporated into domestic law. EU law is defined in the Withdrawal Agreement to include the Charter of Fundamental Rights. (Withdrawal Agreement article 2(a)(i)).

[65] In this appeal the respondent agreed that the Charter applied to the appellant, was part of domestic law and that consideration had to be given to it by the respondent.

[66] The relevant instruments of EU Law are: The right to residence in another member state derived from article 21 of the Treaty on the Functioning of the European Union (TFEU); article 13(3) of the Withdrawal Agreement which provides:

> "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."

[67] The Charter states at article 1 that: "human dignity is inviolable. It must be respected and protected." Section 7A of the European Union Withdrawal Act 2018 enshrines the Withdrawal Agreement in domestic law giving it primacy even over primary UK legislation; (section 7A(3) and section 20(1)).

[68] Under article 4(3) of the Withdrawal Agreement the respondent must comply with the Charter when making decisions in relation to the eligibility of individuals for housing based upon a right of residence. The *AT* and *CG* decisions found that an individualised assessment is required in the social security context where benefits are being refused to someone with Pre-Settled Status/Limited Leave to remain in order to ensure rights under article 1 of the Charter are respected.

[69] Article 7 of the Charter states:

> "Everyone has the right to respect for his or her private and family life home and communications.

[70] At article 24 of the Charter are set out the rights of the child. Para 2 states:

> "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration."

[71] The appellant relied on *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307 where the English Court of Appeal endorsed the approach of the Court of Justice of the European Union (CJEU) in the case of *CG v the Department for Communities in NI* [2021] 1 WLR 5919 and confirmed that rights under the Charter in relation to access to benefits are continuing rights for those in the relevant cohort as they relate to the fundamental right of freedom of movement which is a continuing right and thus continues after the Withdrawal Agreement into the post-transition period.

[72] The *AT* case concerned a woman who had Pre-Settled Status/Limited Leave to Remain under Appendix EU and had to leave her family home due to domestic violence. AT's claim for Universal Credit was refused as a person with limited leave to remain under Appendix EU was not regarded as being *"in Great Britain"* by relevant regulations. The First-Tier Tribunal allowed *AT's* appeal by

referring to judgments of the CJEU. That decision was appealed to the Court of Appeal.

[73] The Court of Appeal held:

> "The Charter applies to article 13 of the Agreement and to article 21 TFEU which is made applicable by cross-reference. Those rights are directly effective. Both must be construed by reference to the Charter. Both have become part of domestic law through section 7A of European Union (Withdrawal) Act 2018 and this includes their application in conjunction with the Charter. The relevant provision of the Charter is article 1 as it applies to AT (in conjunction with articles 7 and 24 as it applies to her and her child). …
>
> The benchmark determining whether there is a breach of article 1 (alone and/or in conjunction with articles 7 and 24) is the approach taken by the CJEU in CG." (para 113)

[74] The reference to "the approach taken by the CJEU" is a reference to a decision of the CJEU in the case of *CG*.

[75] The *CG* case concerned an EEA citizen who moved to Northern Ireland and was granted Pre-Settled Status/Limited Leave to Remain under Appendix EU and applied for Universal Credit. The CJEU held:

> "89. In particular, it is for the host member state, in accordance with article 1 of the Charter, to ensure that a Union citizen who has made use of his or her freedom to move and to reside within the territory of the member states, who has a right of residence on the basis of national law, and who is in a vulnerable situation, may nevertheless live in dignified conditions.
> …
> 92. In the present case, it is apparent from the order for reference that CG is a mother of two young children, with no resources to provide for her own and her children's needs, who is isolated on account of having fled a violent partner. In such a situation, the competent national authorities may refuse an application for social assistance, such as Universal

> Credit, only after ascertaining that the refusal does not expose the citizen concerned and the children for which he or she is responsible to an actual and current risk of violation of their fundamental rights, as enshrined in articles 1, 7 and 24 of the Charter. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and his or her children may actually and currently benefit…
>
> 93. …However, provided that a Union citizen resides legally, on the basis of national law in the territory of a member state other than of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in articles 1, 7 and 24 of the Charter. Where that citizen does not have any resources to provide for his or he own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned, and her children are actually entitled to benefit." [Emphasis added]

[76] The Court of Appeal therefore endorsed the approach that an individualised assessment must be conducted before the decision to refuse eligibility is made. This is particularly so when the rights of a child are involved given the positive obligation to consider the best interests of the child as a primary consideration.

[77] The Court of Appeal in *AT* also stated:

> "the relevant cohort which defines the scope of the duty are those with Pre-Settled Status who have applied for support, i.e. those at risk of not being able to reside in dignified circumstances." (para 45).

[78] In this appeal I conclude that, as regards access to housing assistance, what was required by the Withdrawal Agreement for the appellant as a vulnerable person, was an individualised assessment as to the risk that refusal of access to housing assistance might expose the appellant and her child to a position whereby they might not be able to live in dignified conditions. This would have involved consideration of the recourse the applicant had in practice to support or housing before her application was refused under Article 7A of the 1988 Order.

[79] It was accepted by the respondent that the appellant's Charter rights had to be considered and that this consideration had to take place before the impugned decisions. It was also accepted that Charter rights were not explicitly considered as part of the decision-making which led to the impugned decisions. The respondent's submission however was that it was implicit in the assessment leading to the impugned decisions that Charter rights were considered as evidenced by the actions of the respondent after the decisions had been made. Those actions were that once the appellant was refused on eligibility grounds, steps were taken in accordance with the respondent's duty to give advice, and a referral was made to the relevant Health Trust because a child was involved.

[80] I reject the respondent's submission on this aspect of the appeal. The import of the *AT* and *CG* decisions is, firstly, that there is a positive duty on the public authority to conduct an individualised assessment and secondly, that specific consideration of the appellant's Charter rights (where she falls within a vulnerable group) is required before any decision is made. This is particularly so where there is a child involved as there is a positive duty on the public authority to consider the best interests of the child as a primary consideration.

[81] These steps were not taken in this case. The obligations under the Charter arose due to the appellant's PSS status and the appellant was clearly within a vulnerable group due to her having being a victim of domestic violence and also as she is the carer of her young child.

[82] It is not for this court to conduct that individualised assessment. The fact that it was not considered and assessed in this way before the decision was made rendered the decision flawed. Failure to consider the appellant and her child's Charter rights therefore amounted to both to an error of law and to a failure to take account of a relevant consideration.

Disposal

[83] The decisions of the respondent are therefore quashed on the following bases:

(i) Due to an error of law because the wrong legislative provision was applied to determine if the appellant was a PSIC. Even if the respondent had been right to apply that provision, they had failed to consider whether Class N in the 2000 Order applied to her and thus failed to take account of a relevant consideration.

(ii) That the decision was *Wednesbury* unreasonable in terms of the enquiries made and in the assessment of the evidence before the respondent as the appellant's status as a victim of domestic violence was not taken into account in the decision-making.

(iii) That there was no consideration of the applicability of the 2006 Regulations, and this amounted to an error of law; and

(iv) Failure to consider the Charter rights of both the appellant and her child amounted both to an error of law and also to a failure to take account of relevant considerations as regards the appellant's status as a victim of domestic violence and the best interest of the child were not given primary consideration."

[84] The matter is therefore remitted to the respondent.

[85] Costs are hereby awarded to the appellant on the Equity scale in the County Court Rules at Appendix 2(Costs)at Part VIII in Table 1 at part (vii). I also certify for skeleton arguments at the maximum of £101 as set out in Appendix 2 at Part IX in Table 1 at part (iv).