IN THE UPPER TRIBUNAL **Case Nos:** CF/393/2016
ADMINISTRATIVE APPEALS CHAMBER CF/1375/2016

Before UPPER TRIBUNAL JUDGE WARD

Attendances:

For the Appellant: Ms Galina Ward, instructed by Solicitor, HMRC

For the Respondent HD: Mr Adrian Berry, appearing pro bono

For the Respondent GP: Mr Desmond Rutledge, instructed by Central England Law Centre

Decisions:

CF/393/2016 (Interim Decision)

The appeal is allowed. The decision of the First-tier Tribunal sitting at Wolverhampton on 29 September 2015 under reference SC053/15/00639 involved the making of an error of law and is set aside. Acting under section 12(2)(b)(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007 with a view to remaking the decision I find that the claimant Ms HD's self-employed activity was from 22 July 2014 no longer genuine and effective.

The question thus arises whether she, as a person formerly engaged in genuine and effective self-employment, is in a position to take advantage of the decision of the Court of Justice of the European Union ("CJEU") in C-507/12 *Saint-Prix*. The parties shall, within 28 days of the date of the letter issuing this decision, file a submission as to whether or not further consideration of that point should be stayed pending the decision of the CJEU in C-442/16 *Florea Gusa v Minister for Social Protection, Attorney General*.

CF/1375/2016 (Final Decision)

The appeal is allowed. The decision of the First-tier Tribunal sitting at Birmingham on 8 January 2016 under reference SC024/15/03333 involved the making of an error of law and is set aside. Acting under section 12(2)(b) of the Tribunals, Courts and Enforcement Act 2007 I remake the decision in the following terms:

The appeal by the claimant Ms GP against the decision of 28 April 2015 is allowed. The claimant remained engaged in genuine and effective self-employed activity at the date of that decision. Consequently, she was not disqualified from child benefit on the ground that she lacked a qualifying right to reside.

REASONS FOR DECISION

1. These cases are test cases examining whether EU national women who were engaged in self-employed activity until some point in their pregnancy and who returned to economic activity reasonably soon after their child's birth have a right to reside and, if so, on what basis. At least 8 other cases in the Upper Tribunal (AAC) are stayed behind them, some involving HMRC, others the Department for Work and Pensions.

2. In CF/393/2016 the respondent claimant, HD, is a Lithuanian national. She had appealed against HMRC's decision of 1 February 2015 to refuse her child benefit on the ground that she lacked the right to reside. In CF/1375/2016, the claimant GP is a Romanian national. She had appealed against HMRC's decision of 28 April 2015 to like effect. The relevant provisions may be found in s.146 of the Social Security Contributions and Benefits Act 1992 and reg. 23 of the Child Benefit (General) Regulations 2006. Both appeals to the First-tier Tribunal ("the FtT" or "the tribunal") succeeded and HMRC appealed to the Upper Tribunal, in both cases with permission given by a District Tribunal Judge.

3. As found by the FtT in CF/393/2016:

> a. HD was employed from 2011 as a warehouse operative;
> b. from 25/12/2013 she became a self-employed beauty therapist;
> c. she became pregnant in December 2013 and her son was born on 8 August 2014;
> d. she "took maternity leave" from 11/05/2014 until 7/02/2015, during which time she was in receipt of maternity allowance;
> e. she claimed child benefit on 27/8/2014; and
> f. from 1/4/15 HD "was forced to give up her self-employment due to lack of work having moved house and therefore, needed new clients, and consequently took up employment as a warehouse operative."

The tribunal concluded that HD retained her self-employed status throughout her maternity leave, but "in any event" could rely on the decision in C-507/12 Saint Prix.

4. As found by the FtT in CF/1375/2016:

> a. GP commenced self-employment on 15/3/2012. This was (as was conceded) genuine and effective;
> b. some time around May 2014 she became pregnant;
> c. in December 2014 she "took maternity leave and ceased activity as a cleaner";
> d. her son was born on 18/2/2015;
> e. she claimed child benefit on 27/2/2015;
> f. she maintained her registration as self-employed and paid £24.75 in NI contributions in July 2015; and

g. she resumed her activity as a self-employed cleaner on 14/9/2015.

With regard to the registration, I note that HMRC's submission to the First-tier Tribunal explained that (my emphasis):

> "anyone over the age of 16 could declare to HMRC they are self-employed, which would generate a UTR [Unique Tax Reference], class 2 National Insurance liability and the issue of self-assessment forms. *No self-employed activity needs to take place though for any of this to happen."*

The tribunal concluded that throughout the period of her maternity leave GP was a self-employed person, but if that were to be wrong, she had retained her status as a self-employed person in accordance with Saint-Prix.

5. HMRC's position is that in neither case was there sufficient evidence to permit the FtT to conclude that self-employment persisted throughout the period of maternity and that as a result the respective FtTs erred in law; and that there is nothing in EU law equivalent to *Saint-Prix* in the case of workers which would allow any gap in self-employment there might have been to be bridged.

6. For HD, it was submitted that the tribunal was entitled to reach its conclusion on continuing self-employment, which was a conclusion of fact; and that the considerations which led the CJEU to the decision in *Saint-Prix* under Article 45 TFEU are equally apt to require Article 49 TFEU to be applied in a similar manner. It would be fair to say that Mr Berry's submission was almost exclusively directed to the latter point and that arguments that the tribunal's fact-finding was sufficient were not developed in the oral hearing or in his skeleton argument. However, Mr Holdcroft of Wolverhampton Welfare Rights Service had filed a submission going inter alia to that point before Mr Berry was instructed, and I deal with it at [15] below.

7. For GP, it was submitted that, though it was accepted there was an insufficiency of evidence which might otherwise have constituted an error of law, it was not material and so not an error of law, as GP could rely upon *Saint-Prix* to get her home.

8. Both claimants sought to submit further evidence on a provisional basis (in traditional legal terminology, *de bene esse*) so that if I were to find the respective FtT's decisions to be in error of law, I could make further findings of fact. HD attended to give evidence in person, with some assistance from a Lithuanian interpreter. GP was unable to attend as her child was ill. An attendance note was submitted, taken by Mr Ullah, her solicitor, the previous day, setting out GP's further evidence. No objection to the note was taken by HMRC and no application was made on behalf of GP for her to be allowed any further opportunity to give evidence in person. Some days after the hearing, Mr Ullah submitted a letter setting out GP's evidence on some

matters which had arisen at the oral hearing. HMRC indicated they had no objection to my treating that material as evidence either.

9. It is common ground that it is not necessary to be actively engaged in economic activity at every moment in order to maintain self-employment. As Judge Jacobs put it in *SSWP v JS (IS)* [2010] UKUT 240 (AAC):

> "5. I do not accept that a claimant who is for the moment doing no work is necessarily no longer self-employed. There will commonly be periods in a person's self-employment when no work is done. Weekends and holiday periods are obvious examples. There may also be periods when there is no work to do. The concept of self-employment encompasses periods of both feast and famine. During the latter, the person may be engaged in a variety of tasks that are properly seen as part of continuing self-employment: administrative work, such as maintaining the accounts; in marketing to generate more work; or developing the business in new directions. Self-employment is not confined to periods of actual work. It includes natural periods of rest and the vicissitudes of business life. This does not mean that self-employment survives regardless of how little work arrives. It does mean that the issue can only be decided in the context of the facts at any particular time. The amount of work is one factor. Whether the claimant is taking any other steps in the course of self-employment is also relevant. The claimant's motives and intentions must also be taken into account, although they will not necessarily be decisive."

10. I accept Ms Ward's submission that on occasion the period when no work is done, yet self-employment may be maintained, may be relatively lengthy, as in the case of a woman barrister on maternity leave who remains a member of her chambers, keeps her registrations up to date and so on. It is ultimately all a question of fact.

11. In CIS/0610/2010, having reviewed the case law on "worker" status, Judge Jacobs observed:

> "That cannot all apply to the self-employed. The notion of acting under the direction of another is certainly not an essential feature of self-employment. However, most of it can safely be applied. It is, though, difficult to apply when there is a significant change. Is the claimant experiencing a temporary lull in work until more can be found, with self-employment surviving? Or is there a change to occasional and isolated pieces of work, which is insufficient to amount to continuing self-employment? So much depends on the circumstances and, therefore, on the evidence."

12. It can be seen from what follows that the fact-finding by both tribunals was inadequate to support a conclusion that self-employment continued throughout.

13. In the case of HD, there is no finding as to what "taking maternity leave" involved, or why it was taken unusually early (89 days before the child's birth); no details of her client base or what steps, if any, HD took to maintain it during that time; when she moved house, the anticipated implications for her customer base and the steps she took in consequence; and when self-employment ceased (beyond the fact that by 1/4/15 she was "forced to give up her self employment due to lack of work having moved house … and consequently took up work as a warehouse operative").

14. In the case of GP, there is no finding as to what "taking maternity leave " involved, nor as to her clients prior to going on maternity leave, or of what steps, if any, she took to maintain them during the period of maternity leave, nor as to the extent of her clientele when she resumed working. Mr Rutledge accepts that there is no basis in the FtT's decision on which it was entitled to conclude that GP continued to be "actively self-employed" but, he submits, it was not a material error because the benefit of *Saint-Prix* ought to be extended to her.

15. The paper trail for the evidence given in HD's case is not unambiguous. What is clear is that some points were raised in submissions by HD's representative. Whether or not these were supplemented by oral evidence given by HD (who attended the FtT with an interpreter) which did not find its way into the record of proceedings is not entirely clear. Mr Holdcroft in written submissions reminds me that a record of proceedings is not a verbatim note: see *JM v SSWP (IB)* [2010] UKUT 386 (AAC). However, if more evidence was given than is immediately visible, the tribunal still failed to make findings on it. If such further evidence was not given, then the tribunal needed, in the exercise of its inquisitorial jurisdiction to ask the questions necessary to ensure that it was in a position to make the requisite findings of fact.

16. GP attended the FtT unrepresented. There is some documentary evidence in the bundle, but no findings were made on it. Some oral evidence was given, but covering a range of topics that, for the reasons above, was insufficient. Once again, the findings were insufficient; if there was insufficient evidence to allow further findings to be made, then the relevant questions needed to be asked by the tribunal.

17. Ms Ward accepts that the respective tribunals will have derived little assistance from the original submissions by HMRC. This was unfortunate, particularly as HMRC elected not to send a presenting officer to either of the hearings.

18. In the case of HD, I set the tribunal's decision aside. I am therefore in a position to make further findings of fact. Having heard from HD, I make the following findings:

> a. the treatments offered by HD consisted of eyelash extensions, eyebrow treatment and waxing;

b. she had a certificate covering these treatments from her training in Lithuania;
c. she became pregnant in December 2013;
d. when previously employed, she had been working nights in a warehouse, during which time she had regrettably suffered two miscarriages;
e. she owned the range of products and equipment needed for the treatments she provided;
f. the various beauty therapies were provided to the customers using the couch in the living room of the shared flat where HD then lived;
g. she charged £15 for eyelashes, £8 for eyebrows and £7 for waxing and was paid cash-in-hand;
h. she advertised her business on Facebook and with business cards, placed primarily in bars and shops used by other Lithuanians, and hoped to benefit from recommendations by satisfied customers;
i. in the period between January and April 2014 she typically had at least 4 or 5 customers per week. Given that on 9 October 2014 she completed a claim form giving her annual earnings from self-employment as £7800, which would equate to 5 customers a week throughout the year even on an assumption (which may or may not be realistic) that each had one of each of the treatments she offered per week, but there had been a period between April and July when she had had fewer customers and a period from July to when she filed the form in when she had had none at all, it is clear that her business in the earlier part of the year must have involved significantly more customers, though it is not possible to say how many;
j. she found it increasingly hard to deliver the treatments as her pregnancy went on – she had a lot of stomach acid, she sweated more and the work took longer. Some of her customers went elsewhere. The number of customers reduced in around the fourth or fifth month of pregnancy. Although she did not stop entirely she saw herself as having been "on maternity leave" from 17 April 2014 (p34);
k. on 11 May 2014 she became in receipt of maternity allowance;
l. she continued to rely on the marketing methods set out at h. above. They required little or no further work as the Facebook page and the advertising materials had HD's phone number on them and no address, so she could simply advise people of her change of address if they rang her;
m. she moved home on 22 July 2014. Before her move she had been expecting her customers would continue with her. Her new home is about a 30 minute bus ride from her old one;
n. between the date of her move and when her son was born (27/8/14) and thereafter for a further 2 month period (i.e. to approximately the end of October) she treated no customers at all;
o. thereafter, she saw roughly two customers per week until just before she claimed JSA on 10/2/15, when she stopped. Some of those customers were from the area to which she had moved, others from the area near her previous home;

p. her reason for stopping was that her profit was less than previously, and insufficient; and
q. When she stopped, she retained most of the equipment.

19. Ms Ward accepts that there is now enough evidence to make a decision. She makes no concession as to the substantive issues and invites me to rule on whether at any point HD ceased to be in "genuine and effective" self-employment. Mr Berry's submission was not addressed to whether genuine and effective self-employment continued but on the proposition that, whether it did or not, the principles of *Saint-Prix* should be applied so as to cover any period when self-employment was otherwise than genuine and effective.

20. In HD's case the gap between her claim and the date of HMRC's decision (1/2/15) is longer than that in GP and allows the luxury of a greater ability to have regard to events subsequent to the date of claim, while still being "circumstances obtaining" at the date of decision. I find some measure of self-employed activity continued throughout. Even once she saw herself as being "on maternity leave" she continued to see some customers. The amount of marketing undertaken can only have been small: HD's activity only functioned in the area immediately around where her home was from time to time and almost entirely among people of one nationality and there was no need to change marketing material to reflect her new address as her address was not shown on it. Nonetheless, the advertisements she had placed remained to be seen, her post-October 2014 customers included both new and old customers, consistent with the activity having continued with a lull, rather than with stopping and restarting.

21. However, it is also necessary to consider the extent to which the activity remained genuine and effective. Having already lost some customers owing to her pregnancy, HD then also under-estimated the effect of the house move on her customer base. There is no evidence going to what, or how many, treatments, the customers post October 2014 undertook but it seems unlikely that providing the treatment occupied substantial amounts of time or that, on the rates at [18g], it produced a significant return. Further, I note that what appears to have driven her to claiming JSA – and then subsequently to working – was economic need. It is in my view significant that the time when she stopped providing beauty therapies altogether was around 10/2/15, that is to say around the end of the 39 week period for which maternity allowance was paid from its original start date on 11 May 2014. It seems to me that the level of activity post October 2014 was one that was doubtless a welcome top-up to maternity allowance (albeit it risked a period of disqualification from it under reg 2 of the Social Security (Maternity Allowance) Regulations 1987) but was no more than that.

22. Taking all the circumstances into account, in my view it had ceased to be genuine and effective in July 2014 when the combination of pregnancy and its associated difficulties and the house move led to a loss of custom. When treatment activity came to be resumed at the end of October 2014, it was on a much-reduced scale and on economic grounds was not set to, and in the

event did not, continue except as a supplement to maternity allowance. From 22 July 2014, the activity was, rather, marginal and ancillary.

23. It is common ground that the findings in GP's case were inadequate. It seems to me that I cannot, or at any rate should not, proceed to determine whether *Saint-Prix* would in any event save GP's claim without a proper factual basis, insofar as I am in a position to make the necessary findings on the evidence I now have. If GP does not need to rely on *Saint-Prix*, whether she could do so would be purely hypothetical.

24. I am not persuaded by any of Mr Rutledge's submissions as to why I should decide GP's case on the basis of *Saint-Prix* rather than by finding whether self-employment continued. Whilst one can readily accept that the physical act of carrying out some cleaning tasks may be difficult or even impossible, I do not accept that it would be unrealistic to expect a person in that situation to continue to trade as a cleaner when subject to the physical constraints of the later stages of pregnancy and the aftermath of childbirth, as continuing to trade does not necessarily presuppose the personal carrying out of the service.

25**.** Nor do I agree that adopting a fact-finding approach to whether GP could retain her status as a self-employed person during a period of "maternity leave" would subject her and other women in her position to an undesirable pressure to resume self-employed work prematurely. The issue at this point is not whether there should be a *Saint-Prix* style protection for self-employed people but about whether GP's case, on what has now become known about it, is a suitable vehicle for examining that.

26. Nor do I accept the submissions based on, as he puts it, the fact that a self-employed person (and an employed worker) is only allowed to work up to 10 days during the period she is in receipt of maternity allowance. That is something of an over-simplification, as the disqualification is

> "for such part of the maternity allowance period as may, in the opinion of the Secretary of State, be reasonable in the circumstances, provided that the disqualification shall, in any event, be for at least the number of days on which she so worked in excess of 10 days": see reg 2(2) of the Social Security (Maternity Allowance) Regulations 1987.

Not only therefore is it possible to put in subcontractors or make other temporary arrangements to perform the services while a person is on maternity leave and to take steps to preserve client contacts before a maternity allowance period starts, there is the scope for up to 10 days' work on any view to e.g. keep customer relations ticking over and if the person even decides (and as a self-employed person, they have the flexibility of decision-taking) that a few more days are needed, it does not follow that the loss of maternity allowance is necessarily total or anything like it.

27. I therefore set the FtT's decision aside in GP's case also and make the following further findings of fact:

a. before she commenced maternity leave, ceasing activity as a cleaner, in December 2014, she had 4 regular customers and some infrequent customers. The regular customers were a named pub, where she cleaned 7 days a week; a named company's offices, where she cleaned 5 days a week; and two private houses, one where she cleaned every day and one where she cleaned on an "as and when requested" basis, but frequently. The infrequent customers were people in other private houses. She indicated on her claim form for child benefit that she worked 24 hours a week. Although the figure may be of some significance to tax credit claims, she had not been claiming tax credit prior to maternity, but I am still not entirely convinced of the accuracy of that figure for the reasons at (i) below. I accept it as indicating the order of magnitude of her work rather than as an exact figure;
b. in some cases, payment was made to her bank account, while in others she was paid cash-in-hand;
c. her accounts, prepared by an accountant, indicate net profit in 2013/4 was £6700 and between 6 April 2014 and 30 November 2014 £4801. Her net earnings were thus somewhere around £129-141 weekly. At that time she did not claim tax credits or housing benefit;
d. she promoted her business through advertisements and by word of mouth;
e. she was paid maternity allowance with effect from 8 December 2014;
f. she kept her customers informed during her pregnancy and thereafter about her plans for maternity leave and subsequent return;
g. she initially arranged for a couple of friends to provide cleaning services to her customers when she was on maternity leave. This arrangement continued for a couple of months, before stopping for reasons which are not in evidence, whereupon GP contacted her customers and they agreed to use agency staff for the remainder of her maternity leave. By 1 April 2015 (about six weeks after the birth of her son), when she completed the claim form for child benefit, GP was aware that some of her customers had made alternative arrangements and was envisaging that she would retain 2-3 customers when she returned and put that figure down on the form;
h. following her return to work, she resumed cleaning the company's offices mentioned above, still for 5 days a week, and also cleaned for two private homes weekly. She indicates that she lost two customers while on maternity leave and I accept the figure as at least broadly accurate, though there may be some room for debate about the "occasional" customers previously referred to;
i. following the birth of her son, she had meanwhile claimed child tax credit which is also subject to a right to reside test, succeeding on appeal (and without further challenge from HMRC who administer that

benefit also,) and working tax credit also. This enables her to manage on a smaller client base and with a smaller income than previously;
j. while there is some difficulty in reconciling the fact that GP was working for 24 hours a week including at least two contracts she no longer has, one of which was cleaning a pub 7 days a week, with the fact that she is now working for at least 16 hours weekly, explanations are possible e.g. that the 24 hours was an understatement, or that she has increased the amount of the company office cleaning; in any event HMRC has clearly accepted by the award of Working Tax Credit that that she is working for 16 hours a week (see Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002/2005, reg 4, second condition, first variation) and I so find.

28. In GP's case, I conclude, in agreement with the FtT judge but with the benefit of fuller evidence, that her self-employment carried on throughout. As at the date of decision under appeal (28 April 2015) she had actively carried on cleaning right up to the start of her maternity allowance period. She had made initial arrangements to try to preserve her customer base by arranging for friends to step in. By some 3-4 months into her maternity period she was in a position to form a view of her likely continuing customer base when she returned. All of this shows a continuing attention to the operation of a business, albeit it was in a lull so far as active cleaning was concerned.

29. HMRC rightly accept that the activity was "genuine and effective" prior to the maternity period. On the circumstances as known at the date of HMRC's decision, GP intended to return and anticipated she would have 2-3 clients. Little was known at that point about the detail but I take what has since emerged as subsequent evidence capable of relating back to the circumstances obtaining at that point– that the work is of at least 16 hours of work, producing an implied return of somewhere around £90-£95 per week (by comparing her known earnings earlier) and that a substantial part of it is carried out to meet the needs of a commercial undertaking pursuant to a durable business relationship.

30. I therefore conclude that as at the date of decision GP had until her period of maternity been actively in genuine and effective activity, then took steps to maintain it, and anticipated returning to the personal provision of cleaning services and on the balance of probability would do so.

31. What is "genuine and effective" is conditioned by the relationship as a whole, notwithstanding that little or no actual work was done at any given time. Were it otherwise, women with subsisting contracts of employment would need the benefit of the *Saint-Prix* ruling as well as those who for one reason or another do not have an ongoing contract of employment, but such a view is unsupported by authority: see e.g. CIS/1042/2008 (in relation to the self employed – albeit a decision by consent) and CIS/185/2008 (in relation to the employed).

32. It follows that as at the date of decision in her case, GP was in genuine and effective self-employment.

33. That that should be so, while HD was not, even though in the period of maternity HD appears to have done more actual delivery of services than GP did, might on one level appear odd, but the reason for it, when both were performing economic activities which, as I have held, were continuing businesses on the circumstances obtaining at the respective dates of decision, is that in HD's case events had occurred (such as her moving house and the effect of that on customers' willingness to travel in order to be treated by her, and the extent of the loss of custom in consequence of her pregnancy) which demonstrated that the scope of HD's business was much reduced. It reflects the fact that, as noted by Judge Jacobs (see [9] above), self-employment is not confined to periods of actual work.

34. GP's claim thus succeeds, whether or not *Saint-Prix* also applies to the self-employed. HD's does not and so I move to the question of whether she is assisted by the *Saint-Prix* ruling.

35. On 17 October 2016, there was published in the Official Journal details of the reference for a preliminary ruling from the Court of Appeal (Ireland) in C-442/16 *Florea Gusa v Minister for Social Protection, Attorney General*. Ms Ward's written submission referred to it in general terms but it was not the subject of detailed submissions at the oral hearing. The material part of the questions referred for present purposes is as follows:

> "Does an EU citizen who (1) is a national of another Member State; (2) has lawfully resided in and worked as a self employed person in a host Member State for approximately four years; (3) has ceased his work or economic activity by reason of absence of work and (4) has registered as a jobseeker with the relevant employment office retain the status of self employed person pursuant to Article 7(1)(a) whether pursuant to Article 7(3)(b) of Directive 2004/38/EC or otherwise.
>
> If not, does he retain the right to reside in the host Member State not having satisfied the criteria in Article 7(1) (b) or (c) of Directive 2004/38/EC or is he only protected from expulsion pursuant to Article 14(4) (b) of Directive 2004/38/EC."

34. I have also now had the opportunity of obtaining and considering the judgment of the Irish Court of Appeal, which can be found on BAILII as [2016] IECA 237: the discussion at [30] –[46] is particularly instructive as to the Court's reasons for making the reference. Subject to further submissions, it appears to me on considering the matter further in the light of the conclusions I have reached on HD's case that the questions posed by the referring court may have considerable relevance for this case, in that (in particular):

> (a) whether someone could retain self-employed status "pursuant to Article 7(3)(b) of Directive 2004/38/EC" would be liable to raise questions of whether there were circumstances in which self-employed

status fell to be assimilated to that of being employed, even where (as in the case of Article 7(3)(b)) the relevant provision refers only to having been employed and express provision is made elsewhere within the Article which in terms addresses self-employment;

(b) whether an EU citizen could retain the right to reside having been formerly self employed, while not retaining self-employed status under Article 7(1)(a) nor eligible under Article 7(1)(b) or (c) of the Directive appears liable to raise questions of whether those who have been self-employed have rights which are not apparent on the face of the Directive and may thus (as occurred in *Saint-Prix*) shed light on the approach to be taken to construing the substantive Treaty Article (in this case Article 49 TFEU); and

(c) the case may lead to a re-examination of the CJEU's approach in C-147/11 *Czop* and C-148/11 *Punakova* and (as the Irish Court of Appeal's judgment at [46] implicitly acknowledges) of the correctness of the Court of Appeal's decision in *R(Tilianu) v SSWP* [2010] EWCA Civ 1397.

35. Such potential relevance raises the question of whether it is appropriate to stay a ruling on this aspect of HD's case pending the CJEU's ruling in *Florea Gusa* and accordingly submissions are directed as set out in the Interim Decision at the head of these Reasons.

C.G Ward
Judge of the Upper Tribunal
12 January 2017