



Department
for Work &
Pensions

Minister for Welfare Delivery
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15th July 2022

Rt Hon Sir Stephen Timms MP
Chair of the Work and Pensions Select Committee
Dear Stephen,

RE: the letter from the WPSC on DWP guidance following CJEU rulings dated 22 June 2022.

Thank you for your letter dated 22 June. I welcome the opportunity to respond to the questions raised by the committee and provide clarification on some key points.

The *CG v Department for Communities (NI)* case concerned a refusal of benefits that occurred before the end of the transition period. The Court of Justice of the EU (CJEU) found that an EU citizen could claim equal treatment with nationals of the EU host state only if his or her residence in that state complied with the conditions of EU Directive 2004/38. It held that an EU member state had a right to refuse access to social assistance to economically inactive people who did not have sufficient resources. This applied irrespective of whether or not the individual had been granted a domestic right of residence, in this case pre-settled status under the EU Settlement Scheme.

The CJEU went on to address the Charter of Fundamental Rights (the Charter) on the specific facts of the case (CG having fled domestic violence with two young children with little or no resources). It held that the Charter was engaged and that the national authorities could only refuse an application for social assistance after ascertaining that the refusal did not expose the claimant and her children to an actual and current risk of violation of their fundamental rights in articles 1, 7 and 24 of the Charter.

The CJEU made clear that the authorities could take into account **all means of assistance provided for by national law**. The CJEU concluded it was for the referring court to determine whether the claimant and her children could benefit from various assistance highlighted in the case, other than Universal Credit.

Importantly, the CJEU's decision did not declare the system that the UK had implemented since 2004 as unlawful or contrary to EU law. It simply reminded the UK of its obligations under the Charter. How the provision of support is allocated between central and local government is a matter for domestic law, not EU law.

The position for EU citizens who do not have a permanent right of residence in the UK and who are seeking to claim income related benefits has not changed in substance following EU exit. Individuals who are not exercising a qualifying right under the Withdrawal Agreement are not entitled to those benefits, just as those who were not exercising an EU right to reside were not entitled before.

Universal Credit is not the only form of support available for those with pre-settled status. Alternative support is available for those at risk of destitution, for example through emergency assistance provided by the Local Authority. Local Authorities can provide a basic safety net of support to an individual, regardless of their immigration status, if there is a genuine care need that does not arise solely from destitution.

Contributory benefits such as contributions based Job Seekers Allowance can be claimed by those who have previously worked and paid National Insurance contributions, with disability and carer benefits also being available as relevant.

1. Will the Department share how many Universal Credit claims have been rejected on the ground that an applicant with pre-settled status lacked a relevant right to reside?

The Department does not hold data on the number of Universal Claimants with pre-settled status and who have had their claim refused on the specific basis that they are not exercising a relevant right to reside at the point of claim.

2. Is it the Department's view that Decision Makers have a duty to perform a fundamental rights test before rejecting the claims of claimants with pre-settled status? If so:

- a) When does the Department intend to change the guidance?***
- b) What details will the guidance offer on how such duty should be performed?***
- c) What steps is the Department taking to identify those who might have been denied benefits due to this issue and ensure that they get the support to which they are entitled?***

3. If the Department does not plan to change the guidance, could it set out its justification in detail?

The Department has no current plans to update the guidance referenced in your letter. The Department does not accept that CG has any application to situations which are governed by the rules in place after the end of the transition period, because EU law no longer applies. For periods before the end of the transition period, the Department considers that, to the extent that the Charter applies on the specific facts of any case, the state's obligations are satisfied by the availability of alternative sources of support.

The Department continues to keep all guidance under review, including following the outcome of relevant judgments. The application and interpretation of CG is currently raised as part of various appeals in the Upper Tribunal, and guidance will be updated where necessary following any judgment.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Rutley". The signature is written in a cursive style with a horizontal line underneath.

David Rutley MP

Minister for Welfare Delivery



Work and Pensions Committee

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David Rutley
Minister for Welfare Delivery
Department for Work and Pensions

From the Chair

22 June 2022

Dear David,

The Committee has asked me to write to you concerning ADM memo 01-22, which updates the guidance that the Department issues to its Decision Makers on access to benefits by EEA nationals with pre-settled status.

We have been informed that updated guidance to Decision Makers is not consistent with a CJEU ruling. The CJEU held that some EEA nationals with pre-settled status—typically non-workers—have no right to equal treatment on grounds of nationality when claiming Universal Credit. However, it added a safety net: Decision Makers cannot reject a benefit claim until after they have satisfied themselves that doing so would not breach the claimant's rights under the EU Charter of Fundamental Rights. The relevant Charter provisions concern human dignity, the right to respect for private and family life, and the best interests of the child. The CJEU held that Decision Makers must ensure that an EU citizen with pre-settled status in a vulnerable situation 'may nevertheless live in dignified conditions'. The memo makes no mention of this fundamental rights test.

The EU Rights and Brexit Hub wrote to us that this omission makes the guidance 'unlawful and will lead to decision makers failing to undertake this assessment aimed at protecting the most vulnerable EEA nationals (including children and those fleeing domestic abuse) from destitution.' The CJEU judgment remains binding in its entirety on and in the UK. The Committee understands that the test it requires is not currently in guidance to Decision Makers, and therefore is not taking place, potentially depriving EEA nationals of access to Universal Credit that would otherwise be accessible to them.

I would be very grateful if you would answer the following questions:

- 1. Will the Department share how many Universal Credit claims have been rejected on the ground that an applicant with pre-settled status lacked a relevant right to reside?**

2. Is it the Department's view that Decision Makers have a duty to perform a fundamental rights test before rejecting the claims of claimants with pre-settled status? If so:
 - a. When does the Department intend to change the guidance?
 - b. What details will the guidance offer on how such duty should be performed?
 - c. What steps is the Department taking to identify those who might have been denied benefits due to this issue and ensure that they get the support to which they are entitled?

3. If the Department does not plan to change the guidance, could it set out its justification in detail?

We would be grateful for a reply by **Friday 15 July**.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Stephen Timms". The signature is written in a cursive style with a horizontal line above the name.

Rt Hon Sir Stephen Timms MP
Chair