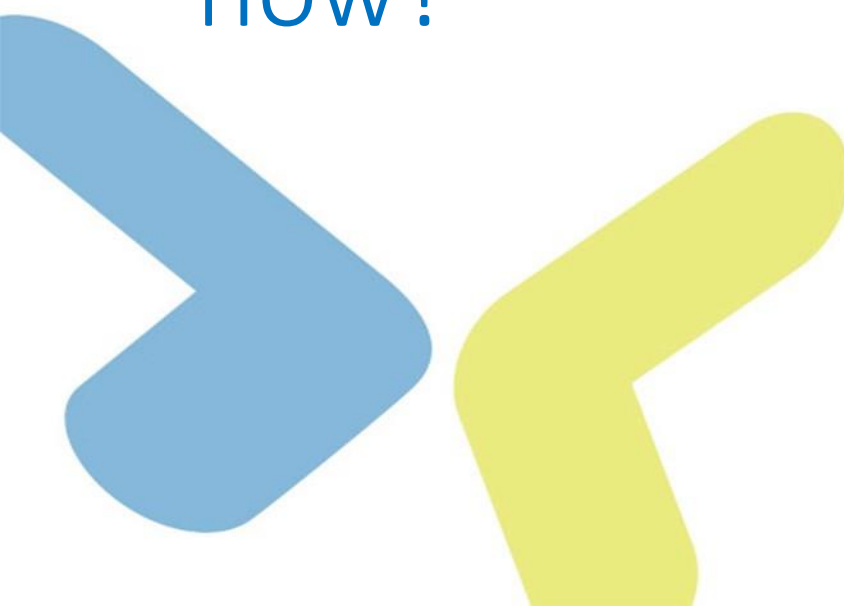


EU Rights & the AT Case – Where are we now?



Not subject to immigration control

- Those granted status under the EU Settlement Scheme, and those who have applied and have a Certificate of Application pending a decision, are NOT classed as people “subject to immigration control” for the purposes of welfare benefits and homelessness legislation.
- As such, they may be eligible for welfare benefits and homelessness assistance
- However, those with only pre-settled status or a certificate of application must pass the Habitual Residence Test by showing that they are a “qualified person” at the point of application in order to meet the eligibility requirements

No Right to Reside

- Those with pre-settled status or a certificate of application –
- If you are found not to be a “qualified person...
- You are deemed not to have a “right to reside” in the UK; and
- Therefore, you do not pass the Habitual Residence Test

AT Case – the basic principle

SSWP v AT [2022]

Before refusing Universal Credit on a right to reside ground to a claimant with pre-settled status, the Secretary of State must be satisfied that refusal would not prevent them living in dignity



AT Criteria

- Applications made from 12/12/2022
- Applicant has Pre-settled Status; &
- Does not pass the Habitual Residence Test; &
- Is **unable** to work; &
- Cannot meet or is in danger of being imminently unable to meet “most basic needs”

To whom does AT NOT apply?

- Only applies to those with EU pre-settled status NOT to those with settled status, a cert of application, or any other status
- Does NOT to EEA nationals who are not EU nationals (Norway, Iceland, Liechtenstein, Switzerland)
- Does NOT apply to those who are able to work
- Does NOT apply to those who can meet their most basic needs through other forms of support

Unable to work

DWP Memo to decision makers, June 2024:

“When determining a claimant’s inability to work, consideration should reasonably be given to factors preventing the claimant from working. Examples of these could be physical or mental health conditions, homelessness, having childcare or other caring responsibilities, being a victim of domestic violence, or having other complex needs which mean the claimant is unable to work at that moment”



“Most basic needs”

- Is the applicant unable to meet their “most basic needs” at present or in the near future
- “most basic needs” includes food, accommodation, heating, clothing, personal hygiene. Not a closed list – depends on circumstances of individual
- If an applicant can meet their most basic needs from another source, will not meet the AT criteria;
- However, Decision Maker must look at the present reality, not speculate on possible ways of meeting needs
- CPAG provides template witness statement where applicant can set out inability to meet their basic needs

Points of ongoing dispute – right of residence on 31/12/2020

- DWP guidance states that the applicant must have been exercising an EU right of residence on 31/12/2020 in order to meet requirements under AT
- This would include worker, self-employed person, jobseeker, self-sufficient person, student, person within initial 3 months right of residence, those with retained or derived rights on that date
- While in the AT case the applicant had an EU right of residence on 31/12/2020, the Court made no finding in relation to that
- CPAG draft document to contest a refusal on the basis that the applicant did not have an EU right of residence on 31/12/2020

Points of ongoing dispute – non-EU family members

- DWP guidance states that the AT judgment does not apply to “*non-EU national claimants, including those from Norway, Iceland, Liechtenstein and Switzerland*”
- This would rule out non-EU family members of EU citizens
- The guidance gives no reasoning for this statement & it is the subject of dispute
- CPAG draft document for those refused because they are a non-EU family member where the letter gives no explanation for this
- CPAG ask to be contacted if decision letter gives any further explanation of refusal on this ground.

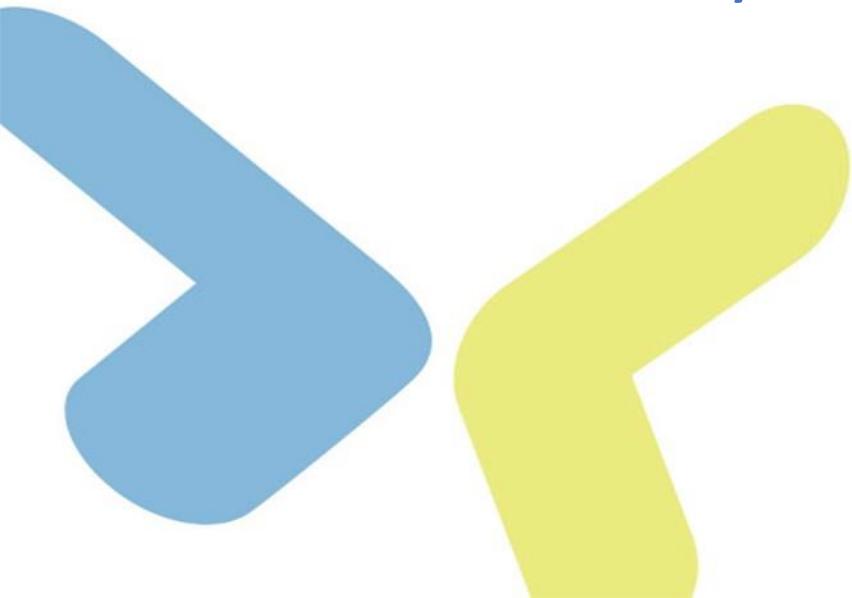
Yet to be clarified

- Whether AT principles can be translated into eligibility for housing & homelessness assistance under the Housing Act 1996 has yet to be litigated
- Legal case of C v Oldham Council heard in Feb 2024 did not decide the issue as the applicant was found ineligible for other reasons
- Room for future litigation



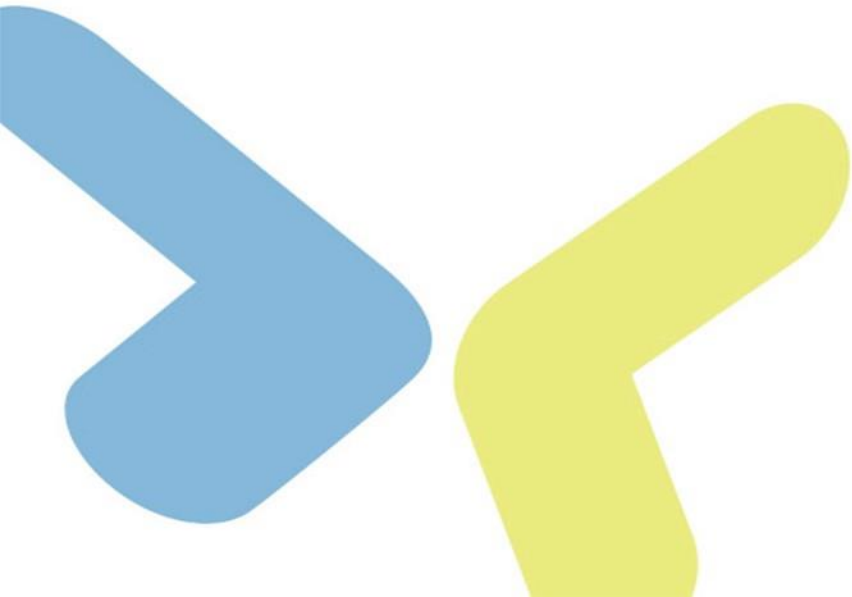
Other ways forward – settled status

- Any person with pre-settled status who can show evidence that they have been in the UK for 5yrs can re-apply to the EUSS for settled status
- Once a person acquires settled status, they do not have to show that they are a “qualified person” to pass the HRT



Other ways forward – become a qualified person?

- Find work
- Referral to employment support



Summary

- AT gives a possible route to benefits for those with pre-settled status who cannot pass the HRT but may be unable to work
- There are still some points of contention in the way that the DWP is enacting the AT judgment & these may be possible to challenge
- Do not neglect to look at other possible routes – e.g. has the HRT been applied correctly, might the applicant be able to apply for settled status