

IN THE COUNTY COURT  
AT [REDACTED]

BETWEEN:

[REDACTED]

Appellant

-and-

[REDACTED]

Respondent

-and-

**THE INDEPENDENT MONITORING AUTHORITY FOR  
THE CITIZENS' RIGHTS AGREEMENTS**

Intervener

-and-

**THE AIRE CENTRE**

Intervener

-and-

**THE 3MILLION LIMITED**

Intervener

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**SUPPLEMENTARY NOTE FILED BY THE  
INDEPENDENT MONITORING AUTHORITY  
IN RESPECT OF ARTICLE 17(2) WA**

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*This note uses the same abbreviations as the IMA's skeleton argument dated 30 January 2024.*

**Article 17(2) WA**

1. This supplementary note addresses Article 17(2) WA [Auths/1484-1485] which provides as follows:

“Article 17

Status and changes

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.”
2. Article 17(2) WA is a bespoke provision which does not have a direct parallel in EU legislation. As explained below, it appears to apply in a situation where a dependent family member – who is in personal scope under Article 10 WA at the end of the transition period – ceases to qualify a dependant after the end of the transition period. Article 17(2) provides that such a family member maintains their residence rights (and thus any rights which are in turn consequent on this) under Title II of Part 2 WA even if they are no longer a dependant.

***R (Ali) v SSHD* [2023] EWHC 1615 (Admin)**

3. As far as the IMA is aware, the only authority to date which has considered Article 17(2) WA is *R (Ali) v SSHD* [2023] EWHC 1615 (Admin) [Auths/620-642]. This was a claim concerning the rights of a third country daughter (a Bangladeshi national) of an EEA citizen. The daughter had applied for PSS in the UK prior to the end of the transition period as a dependent family member. However, her application was rejected on 21 September 2020 (i.e. before the end of the transition period) on the basis that she had stopped being a dependant by that time: §§4-6 [Auths/621].
4. The claimant challenged the refusal on two grounds by reference to Article 17(2) WA:
  - (1) First, the claimant argued that Article 17(2) WA codified the CJEU’s decision in *Reyes*, to the effect that a family member does not lose their right to reside if they cease to be dependent: §§34-35, 38, 40 [Auths/630-631]. This argument was rejected. Lane J confirmed that under EU law the family member needs to meet the conditions of residence on an ongoing basis: §§59-60, 62, 66-69, 72-77, 79 [Auths/635-638].
  - (2) Second, she argued that Article 17(2) WA establishes a new right under the WA such that a person who is a dependant at any time “before” the end of the transition

period will retain residence rights thereafter: §§47-49 [Auths/633]. This argument was also rejected. Lane J found that a dependent family member needed to be in personal scope of the WA at the end of the transition period under Article 10(e)(i) and then they could retain that status even if they ceased to be dependent after the end of the transition period: §§80-96, esp. §§87, 89 and 92 [Auths/638-639].

5. Accordingly, the claim was dismissed because the claimant had ceased being a dependent before the end of the transition period and Article 17(2) WA did not operate to preserve any residence rights in her favour. The decision is nonetheless relevant because in the course of his reasoning, Lane J explained the purpose and the operation of Article 17(2) WA as follows (emphasis added):

“89. There is, however, a good reason for article 17(2), notwithstanding that article 10(1)(e)(i) has the effect I have just described. Article 17(2) makes different provision than is made under EU law for the consequences of loss of dependency. Article 17(2) ensures that a person can continue to benefit from family member rights under the Withdrawal Agreement (provided other relevant conditions are met), regardless of the circumstances in which that person ceases to be dependent on the EU citizen.

90. The point can be explained as follows. 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.”

6. As to the application of *Ali* in this case, the above is a clear indication that a person such as ■ could take the benefit of Article 17(2) if she is a family member at the end of the transition period (and the other conditions, such as her ■ working, are met). She would then be protected by Article 23 WA as she would be residing on the basis of the WA. This would be because the relevant conditions and limitations for her residence rights under Article 13(3) (as ameliorated by Article 17(2)) would be satisfied. She would thus be entitled to equal treatment protection. This would be a straightforward answer

which would not require considering the meaning of Article 18 WA and the consequences of the domestic grant of PSS alone. Taking each step in turn:

- (1) A person such as ■ would need to be a family member at the end of the transition period in accordance with Article 10(1)(e)(i) WA.
  - (2) Subject to (1), they would be entitled to a right of residence under Article 13(3) WA subject to the conditions and limitations set out in that provision (and subject to having made an application for a residence document under Article 18(1), i.e. an application to the EUSS in the UK).<sup>1</sup>
  - (3) The condition in Article 14(2) of the CRD, incorporated by reference in Article 13(3) WA, which requires ongoing compliance with the condition in Article 7(2) CRD (which requires consideration of Article 7(1)(a)-(c) for the Union citizen and the definition of a family member in Article 2(2)(d) CRD), is modified by Article 17(2) WA so that the requirement to be dependent after the end of the transition period to enjoy a right of residence would not apply.
  - (4) Subject to meeting those conditions, someone such as ■ would thus be “*residing on the basis of this Agreement*” for the purposes of Article 23(1) WA and therefore entitled to equal treatment. Such a person would be entitled to homelessness assistance as a matter of WA law.
7. If ■ meets the conditions set out above by reference to her circumstances, this means that there would be no need to proceed to ask whether the Charter would apply.

### **Additional developments**

8. The IMA makes two further points by way of update about *Ali*.
9. First, the Court of Appeal has granted the claimant permission to appeal in *Ali* and the appeal is currently listed for 2-3 July 2024.<sup>2</sup> The IMA is not aware of the grounds raised by the claimant but it is likely that the Court of Appeal will be required to consider the

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<sup>1</sup> The IMA notes for completeness that under the domestic rules for PSS, there is also no need to establish dependency after the date of the grant of PSS (EU4 of the EUSS provides that “Where a person has been granted limited leave to enter or remain under this Appendix ... They must continue to meet the eligibility requirements for that leave which they met at the date of application (except for any which related to their dependency as a child, dependent parent or dependent relative) ...”)

<sup>2</sup> See the Civil Appeals Tracker for CA-2023-001834:  
[https://casetracker.justice.gov.uk/getDetail.do?case\\_id=CA-2023-001834](https://casetracker.justice.gov.uk/getDetail.do?case_id=CA-2023-001834).

meaning and effect of Article 17(2) WA when deciding the appeal. The IMA does not consider that this Court needs to await that decision but is simply noting the development for the Court's information.

10. Second, Lane J had had regard to an Opinion of the Advocate General in Case C-488/21 *GV v Chief Appeals Officer (Ireland)* (“*GV*”) in the course of his reasoning. That case involved a preliminary issue about whether a family member needed to continuously meet the conditions of dependency under EU law: see *Ali* §§72ff [Auths/637]. When *Ali* was handed down on 30 June 2023, there was some uncertainty as to whether the analysis would change when the CJEU delivered its decision in *GV*: §§76-77 [Auths/637]. On 21 December 2023, the CJEU handed down its decision (see ECLI:EU:C:2023:1013). That decision confirms the orthodox view under EU law, which is that the dependent family member needs to meet the conditions and limitations of residence including dependency to retain their derived residence rights: see *GV* at §§30(i), 60-62. In the IMA's view, this does not change Lane J's analysis in *Ali*, because he had concluded that even if that is the position under EU law, Article 17(2) is expressly providing for a different approach.

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