IN THE UPPER TRIUBNAL [redacted]

IMMIGRATION AND ASYLUM CHAMBER

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

B E T W E E N :

THE KING
On the application of
[redacted]

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

SKELETON ARGUMENT
For the proposed statutory intervenor
THE INDEPENDENT MONITORING AUTHORITY

Introduction

1. The Independent Monitoring Authority for the Citizens' Rights Agreements ("**IMA**") believes that these proceedings raise three questions of general public importance (together "**the Three Issues**"):

   1.1. First, is the UK obliged, in implementing a constitutive scheme of residence rights in line with Article 18 of the Withdrawal Agreement ("**WA**") to act within a reasonable time? The Respondent, the Secretary of State for the Home Department ("**the SSHD**"), says there is no obligation as to processing time *whatsoever* ("**the Timing Issue**").

   1.2. Second, how is Article 18.3 WA, which seeks to provide interim protection for those applying for constitutive rights under Article 18 WA, to be interpreted? The SSHD says it merely requires the continuation of the pre-IP Completion Day scheme of declaratory EU rights of residence and associated rights to work etc ("**the Interim Protection Issue**") and that this, if done, provides complete

protection, making complaints about delay irrelevant given the absence of any detrimental impact.

1.3. Third, is there anything inconsistent with the UK's obligations under Articles 18 and 20.1 WA, as read with Chapter VI of Directive 2004/38/EC on citizens' rights ("**the CRD**"), in the UK's policy of pausing consideration of an Article 18 WA application whilst criminal proceedings are pending ("**the Prosecution Stay Policy**"), subject only to a carve out based on the satisfaction of three cumulative conditions ("**the Prosecution Stay Issue**").

2. The IMA's position on each of these issues in turn is as follows:

2.1. The WA, properly construed, does indeed impose an obligation on the UK or any EU member state choosing to use a constitutive system to consider Article 18 applications in a reasonable time. So much emerges from the overarching principle of good faith in Article 5 WA, as read with general principles of international law and general principles of Union Law. The fact that heightened/abbreviated obligations of timing are referred to elsewhere in the WA does not mean that the timing obligations in relation to Article 18 are unbounded. What constitutes a reasonable time will of course be context and fact sensitive.

2.2. The SSHD is correct in her interpretation of Article 18.3 WA. But she is wrong in the conclusion she draws from this. It does not follow that because a declaratory system of rights continues until such point as the SSHD makes a constitutive decision on the Article 18 application that delay has no material prejudicial or harmful effect. The whole point of Part 2 WA is to provide certainty and security to those in scope of their continued ability to enjoy their EU rights of residence to the full; the longer that uncertainty as to the final recognition of those rights remains, the greater the practical erosion of those rights and the feeling of consequential jeopardy in the very state (be it the UK or a host Member State) that is otherwise intended to be a secure and potentially permanent home for the applicant in question.

2.3. The Prosecution Stay Policy is inconsistent with the requirements of Article 18 and 20.1 WA and leads to unwarranted and disproportionate delays to the processing of Article 18 WA applications. In particular, it is a fetter on discretion which requires even cases involving multiple trivial offences or single offences evidently of a seriousness incapable of justifying refusal of an Article 18 WA application to be stayed and has thereby contributed to a substantial backlog of delayed Article 18 applications.

3. The IMA seeks permission to address these points in writing by these written submissions; and should time permit (and there appears to be ample time to do so in the day allotted to this case) by oral submissions taking no more than 30 minutes.

Background

4. The IMA is the body charged under the WA and s.15 and Schedule 2 of the European Union (Withdrawal Agreement) Act 2020 ("EUWAgA 2020" and "Schedule 2" respectively) with the monitoring of the UK's implementation and application of Part 2 WA and Part 2 of the EEA EFTA Separation Agreement. Functionally, in this area, it performs the same sort of surveillance and enforcement function as previously undertaken (in the UK's EU membership) by the European Commission[1] with a requirement to have regard to the importance of addressing general or systemic failings in the implementation of Part 2 WA: see paras 22-24 of Schedule 2. To this end it is given powers to conduct inquiries (see paras 25-28 of Schedule 2), to receive complaints (para 29) and to bring or intervene in legal proceedings (including judicial reviews) (see para 30).

5. Having carefully considered the present proceedings the IMA considers that each of the Three Issues does raise general or systemic issues about Part 2 and, to the extent that the IMA disagrees with the SSHD or any potential Court ruling endorsing the SSHD's approach, systemic failings.

[1] Article 159(1) WA provides for the IMA to have powers equivalent to those of the European Commission.

6. The facts of this case, which are set out in detail in the parties' respective pleadings, can be distilled to the following fundamentals:

6.1. The applicant, K, [redacted], is a former builder who appears to have been street homeless and substance dependent. In recent years he has been a repeat criminal offender convicted (at the time of his Art 18 WA application) of a number of more minor offences not resulting in a custodial sentence (see §13 of K's skeleton). These minor prior convictions meant, under the terms of the Prosecution Stay Policy, that a stay was unavoidable.

6.2. K duly made an Article 18 application to the EU Settlement Scheme ("EUSS") within the time allotted by the WA.

6.3. There is a dispute between K and the SSHD as to whether he completed five years residence in the UK in accordance with the CRD such as to entitle him to permanent residence. This in turn affects the threshold the SSHD must pass in order to show that the refusal of his Article 18 application and/or deportation is justified.

6.4. Consideration of K's application was stayed within days of it being made by reason of the Prosecution Stay Policy.

The Timing Issue

7. The position of the SSHD is clear: by contrast to specific provisions of the WA, the CRD and the EEA Regulations formerly implementing the same, "*[t]there are, however, no requirements under the Withdrawal Agreement as to the timescale for making a decision in respect of application for residence documents under Article 18(1) [WA]*". And unless there is an express time limit, there is no implied one: DGR §§11-13. Instead, it is said the Applicant's rights are protected by Article 18.3 WA: see DGR §14. By these short paragraphs the SSHD invites the Court to reach some very far-reaching conclusions with effects far beyond the present litigation.

8. The Timing Issue thus falls to be considered alongside the Interim Protection Issue. And it follows that insofar as the SSHD's stance on the Interim Protection Issue is factually or legally suspect so too must her stance on the Timing Issue be so. The balance of these submissions on the Timing Issue are on the predicate that Article 18.3 does not provide the complete protection the SSHD alleges, and that there is detriment not least from the uncertainty and distress caused by protracted delay.

9. It is common ground that Article 18 WA contains no express timing obligation. The starting point for any analysis of any implied timing obligations are the interpretative provisions of Part 1 WA, as helpfully explained by this Tribunal in the case of *Secretary of State for Work and Pensions v AT (Aire Centre and IMA intervening)* UC: [2022] UKUT 330 (AAC). These principles then need to be carefully applied to the content of Part 2 WA, Articles 18 and 20.1 WA in particular.

The operative principles of Part 1

10. Starting with Part 1 WA:

    10.1. Article 2(a) WA defines "*Union Law*" to include references to (i) the Charter of Fundamental Rights and Freedoms of the EU ("**CRFEU**"); and (ii) EU law general principles.

    10.2. Article 4.1 WA imposes an obligation of same result, across the EU and the UK.

    10.3. Article 4.3 WA requires a Court to interpret and apply "*refer[ences] to Union law or to concepts or provisions thereof … in accordance with the methods and general principles of Union Law*"

    10.4. Article 4.4 WA requires Courts to follow CJEU decisions handed down before the end of the transition period when implementing and applying Union law or concepts or provisions thereof.

    10.5. Article 5, which deserves citation in full, provides:

The Union and the United Kingdom shall, in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement.

They shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this Agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this
Agreement.

This Article is without prejudice to the application of Union law pursuant to this Agreement, in particular the principle of sincere cooperation.

11. In considering timing obligations two things are of particular importance:

11.1. The specific embodiment of the general interpretative principle of good faith, and its linkage to notions of effectiveness (paragraph 2) and sincere cooperation (paragraph 3) a term with clear resonances to Article 4(3) TEU and the EU duty of sincere cooperation; and

11.2. The effect given to the EU Charter and EU general principles, and thus to the general principle of good administration since, as set out below, EU law has frequently drawn upon that general principle to derive implied timing obligations.

Good faith

12. Article 5 WA explicitly links good faith with the notion of effectiveness and sincere co-operation. Article 5 WA builds upon Articles 26 and 31 of the Vienna Convention on the Law of Treaties ("**VCLT**") which together require: (i) every treaty to be performed by the parties to it in good faith; and (ii) every treaty to be interpreted in good faith in accordance with its ordinary meaning given the context, object and purpose of the treaty. As to the use of these VCLT principles: see e.g. *R(IMA)* [2022] EWHC 3274 (Admin), at [64]-[70] for their application to the WA; and, more generally, Richard Gardiner, *Treaty Interpretation*, 2nd ed at pp.165-181, particularly the aspect of good faith that promotes the most effective interpretation of a Treaty to promote its overall object and purpose (see §2.4.5). Since unreasonable or unjustified delay operates to erode the value of the rights intended to be conferred (here by Part 2 WA), and thereby

frustrates the parties' common goal to secure modified continuity of existing rights to reside and legal certainty, good faith as a general canon of Treaty interpretation, given particular force by Article 5 WA strongly supports the implication of a reasonable time duty.

General principle of good administration and timing

13. Such analysis is supported by CJEU case-law on the general principle of good administration. According to consistent pre-IP Completion Day CJEU case law (see most recently C-225/19 and C-226/19, *Minister van Buitenlandse Zaken*, EU:C:2020:951, "**Zaken**", and the case-law it cites):

    13.1. The principle of good administration as codified in Article 41 CFREU applies only to EU institutions (i.e. the Commission, Council etc) and does not apply to Member State bodies even when the latter are implementing EU law: see Zaken at [33];

    13.2. The principle of good administration is also a pre-existing general principle of EU law which does bind Member States when implementing EU law: see Zaken at [34].

14. As to the content of this general principle, Article 41 CFREU is a good guide. It provides at Article 41.1, in a formulation plainly borrowed in part from (and as a precursor to) the right in Article 6 ECHR (applicable at the stage of judicial determination), that (underline emphasis added):

    "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union."

15. Moreover, it is clear that even before the Article 41 CFREU codification that the CJEU took a similar attitude to delay/reasonable time: see e.g. the line of case-law starting with Case 121/73 *Lorenz* EU:1973:152 (a much applied state aid case where the Court inferred a duty to opine on a state aid application in reasonable time, the key holding being "*the Commission would not act with proper diligence if it omitted to define its*

attitude within a reasonable period, guided by Articles 173 and 175, which provide for a period of two months"); Case 282/95P *Guerin* EU:C:1997:159 at [37] (duty in a competition case on the Commission in accordance with the principle of good administration to adopt a definitive decision in a reasonable time on receipt of a complaint's observations); and, in the field of Staff Cases, Case 61/76 *Geist* [1977] ECR 1419 (express duty to prepare a report in a Staff Case every two years found to be an aspect of good administration), explained by AG Reischl to be a duty to draw up such biennial report in a reasonable time in the later case of Case 207/81 *Ditterich* EU:C:1983:80.

16. Thus, as a matter of Union law, the principle of good administration is the default source of any duty to act within a reasonable time, unless more concrete or specific expression of such a duty or a particular time period can be found either in the text of Part 2 WA (specifically Article 18 WA) or in the provisions of EU law which it incorporates by reference. EU law often does explicitly dictate or provide an indication of what a deadline is for any individual administrative step to be completed may be, or whether a deadline is just a long-stop for a concurrent reasonable time obligation (as with the twin duties in a domestic JR to act promptly and in any event within three months).

17. Moreover, as the Explanation to Article 41 CFREU makes explicit, such principle of good administration must be understood alongside the linked general principle of effectiveness and effective remedial protection, as now enshrined in Article 47 CFREU (which does bind Member States when implementing EU law, not just Union bodies) and which itself is a reaffirmation of the general principle of effective judicial protection: see C-194/19 *État belge (Circumstances subsequent to a transfer decision)*, EU:C:2021:270, at [43] and the case-law cited. In this connection, persistent and unjustified denial of the recognition of a right may erode the substance of the right. Indeed in an extreme case it might amount to a constructive refusal or revocation of the right in question. See, for example, Case C-390/99 *Canal Satélite Digital SL* [2002] ECR I-607 at [35]-[41], esp [41] (erosion of the right of free movement by reason of the duration of an otherwise justified prior authorisation scheme), as cited with approval at

[68]-[69] of *R(Lumsdon) v LSC* [2015] UKSC 41 at [68]-[69] per Lords Reed and Toulson for the Court.

Part 2 of the Withdrawal Agreement

18. Clearly the principle of good faith in Article 5 applies generally. But is there a sufficient *refer[ence] to Union law or to concepts or provisions thereof*" in Article 18 WA or elsewhere in Part 2 WA for Article 4.3 WA to bite upon. The answer to this is clearly "yes" for two main reasons:

18.1. First, Article 18 WA contains process obligations which are an amalgam of the novel constitutive process (see Article 18.1(a) to (d) WA) and of conventional EU procedural obligations, largely lifted from or inspired by the CRD (Article 18.1(e) onwards). Article 18.1(p), the operative provision, plainly does reference Union law or the concepts or provisions thereof and so envisages delay of an Article 18 application only so far as is warranted by an Article 20 WA process, which in turn directly incorporates the specific provisions of Chapter VI of the CRD for such public policy/security cases. In particular Chapter VI CRD contains Articles 28 (especially Article 28.1) and 31 (especially Article 31.3), which expressly require proportionate and fact-sensitive/fact-based decision-making. This is sufficient for the application of general principles via Article 4.3 WA, particularly when the requirements of single/congruent result (under Article 4.1 WA) and good faith/effectiveness (under Article 5 WA) are considered.

18.2. Second, it is in any event impossible to consider the procedural provisions in Article 18 in isolation from the substantive rights guaranteed by Part 2 WA, largely encompassed by Article 13 WA. In particular, as Lane J has held in *R(IMA*) (cited above), Article 13.4 WA precludes procedural features of Article 18 WA from eroding the value of substantive rights conferred by Article 13: see [145]-[147]. Those relevant substantive rights of residence, work etc, are all based on Union law provisions or concepts. And it has long been an EU law truism that limitations upon such substantive rights must comply with EU general principles and, latterly, the CFREU. Save for the authorisation of a constitutive scheme, and the timelines

for such option (which raise no question of delay), Article 18 WA governs not the content of rights but rather the process for the identification and constitutive conferral of such substantive rights and cannot be taken to authorise their effective erosion through unwarranted delay.

19. For these reasons, whether grounded in obligations of good faith and effectiveness (Article 5 WA, read in light of the VCLT and objects and purposes of the WA) or in the light of the specific requirements of the EU law general principles of good administration and effectiveness, there is an obligation to conclude consideration of an Article 18 application in a reasonable time. What will be such a time will vary depending upon the facts and the context of such application.

The Interim Protection Issue

20. The SSHD's related point is that no problems of timing arise given that K has, unless and until his Article 18 application is rejected, full protection under Article 18.3 WA.

21. The IMA agrees with the SSHD that Article 18.3 requires continued application of a declaratory system of rights, pending any final and effective constitutive decision. And the IMA accepts that Article 18.3 may provide, in many cases, a substantial and important level of interim protection. For instance, an applicant may rely upon Article 18.3 WA, the certificate of application issued "immediately" under Article 18.1(b) WA and the domestic Grace Period Regulations cited by the SSHD, to apply for and obtain, say, social security benefits or other advantages available to those with EU rights of residence (and so 'grandfathered' rights under the WA) from, say, the SSWP or local authorities.

22. But that analysis ignores three things (and here the IMA broadly agrees with §92 of K's skeleton, and the effect of the evidence therein cited):

    22.1. First, the broader point of the constitutive system is to provide a single, authoritative domestic determination of a right to reside, thereafter enforceable against all arms of the state, obviating (at least for those granted settled status) the need repeatedly to go through the process of proof of entitlement through

the complex web of legacy EU entitlements. The product of the Article 18 process, and any appeals it may entail, is a single and binding decision on entitlement to reside and through it entitlement to a number of defined rights, benefits and duties. It avoids repeat and complex disputes on these topics.

22.2. Secondly, the object of this process is to assist those so benefiting to feel secure, certain and safe as to their future entitlements against the UK (or the host EU Member State) and enable them to plan their future working and home life accordingly. Thus the EUSS, and conferred status under it (whether PSS or SS) is intrinsically linked to integration in the host state and/or a guaranteed pathway to such integration. Providing such certainty or reassurance was a key objective of Part 2 WA: see its recital 7, as relied upon by the SSHD in the *R(IMA*) litigation, and in particular [22] of Lane J's ruling; and see the various materials set out in the **Appendix** hereto. It is not open to the SSHD now, having publicised the importance of such certainty and convinced the Court of the relevance of the same (see *R(IMA)* at [154]-[156], [174]) to say that value of the EUSS lies only in the particular benefits or social advantages accessible thereby.

22.3. Thirdly, there are some cases (identified in p.4 of the Equality Impact Assessment ("EIA") attached to the Ministerial Submission of 9 February 2021) where serious further detriment may be encountered if applications are unreasonable delayed, most obviously by joining family members who apply to the EUSS from outside the UK. Such persons cannot be admitted to the UK until the application is granted.

23. Inevitably, therefore, K and the many thousands or tens of thousands affected by the Prosecutions Stay Policy are left in a position of jeopardy and uncertainty, particularly if (were the stay to be lifted) it is clear that their suspected criminal wrongdoing would be insufficient to refuse to grant an Article 18 WA application. Only such a grant provides certainty to such applicants and their close family members (spouses/civil partners, children, Article 3(2) extended family members). And only such a grant

obviates the need for potentially multiple exercises with multiple public authorities navigating through the maze of post-Brexit entitlements.

The Prosecution Stay Issue

24. The Prosecution Stay Policy, in its operative version applied to K, is set out in Section D of K's Skeleton and §§17- 20 of the DGR. It works as follows.

24.1. If there is a pending prosecution which could lead to a conviction and a refusal on suitability grounds (even if it does not meet the criteria for referral to Immigration Enforcement in respect of any other offence), the application must be stayed until the result of the prosecution is known.

24.2. But such potential to lead to a refusal on suitability grounds is presumed in cases where there is a pending criminal prosecution. By contrast to earlier policies (and by way of departure from them) there appears to be no consideration of the facts of the individual case to assess whether it is reasonable and proportionate *in that case* to impose such a stay (because of the likely materiality/immateriality of the potential conviction to a decision on the application). Here the IMA agree with K that the blanket (and fact-free) nature of the stay policy is evident from:

24.2.1. The apparent total absence of the fact-finding, guidance or instructions that would be necessary (under Article 20 WA and Articles 28 and 31 CRD incorporated thereunder) if there were any individualised decision-making as to the likely materiality of any criminal conviction to the satisfaction or not of the threshold applicable to any particular applicant (depending on whether the applicant had less than five years, more than five years or more than ten years residence);

24.2.2. the absence of individualised decision or reasons; and

24.2.3. the contents of the 9 February 2021 submission to Ministers, especially its paragraph 77.

24.3. Instead, there is a narrow and mechanical exception ("**the Exception**") to the stay policy if three cumulative conditions are met ("**the Three Conditions**")

24.3.1. there must be only a single pending prosecution;

24.3.2. the maximum potential sentence upon conviction for that prosecution must be less than 12 months, according to the maximum category 1 sentence in line with the Sentencing Council guidelines for the alleged offence; and

24.3.3. the applicant has no previous convictions.

24.4. As the Ministerial Submission noted (before the introduction of the Exception) at its para 1: *In practice almost all EUSS applications with a pending prosecution are paused until the outcome is known*. The Exception will make, and is designed to make, very little change to this position, benefiting at most c.35% of the previously stayed cases (see para 2 recording a pool of c.10,209 stayed cases at 27 January 2021; and see para 8 recording that at most c. 3,621 cases would result in maximum sentence of less than 12 months, but of those an unknown number would be ineligible because of prior offending).

25. Needless to say, the delays imposed by the Prosecution Stay Policy are potentially substantial enough even in the context of a well-functioning criminal justice system, particularly when account is taken of matters like appeals against conviction or sentence. But this Policy, knowingly adopted as it was in current form in July 2021, must be seen against the backdrop of the very substantial delays in the criminal justice system (see paragraph 4 of the Ministerial Submission) – of which judicial notice can and must be taken. The facts of K's case to some degree bear this out: his ABH and affray charges dated from an incident on 28 June 2020 which were not finally resolved until he was sentenced on 28 January 2022.

26. As to the legality of such strong default policy of pausing processing:

26.1. The SSHD points in §§32-37 DGR to the previous decision in ***R(X) v SSHD*** [2021] EWCA Civ 1480 as to the rationality of a link between pausing a determination and obtaining information (from a criminal trial)/***Tameside*** inquiry, and as to the existence of an implied power to pause an application. But this is a diversion. The true issue is whether the information from/result of a pending prosecution *in that case* could ever have a material impact on the legality of a decision (to refuse an application for leave on suitability grounds). And that is a question that must be assessed on its facts, given the much stricter limits imposed on such decisions by Article 20.1 WA and Chapter VI of the CRD as incorporated thereby than purely domestic cases like ***R(X)***.

26.2. The consequence is that the issue that must be grappled with, but which is evaded by the DGR, is whether the Prosecution Stay Policy causes cases to be delayed where the pending prosecution can have no material bearing on the (otherwise complete) application and its potential refusal on suitability grounds, such that the stay is itself:

26.2.1. a disproportionate measure (application of the principle of proportionality being seemingly conceded at §37 DGR, but in any event flowing necessarily from Articles 28.1 and 31.3 CRD as incorporated by Article 20.1 WA); or

26.2.2. in substance a disguised restriction on residence rights, contrary to Article 13.4 WA, once a reasonable time for processing an Article 18 application has elapsed.

26.3. By its design, and in particular by the narrowness of the 3 Conditions, the Prosecution Stay Policy will pause or stay cases where the pending prosecution will be or is very likely to be immaterial, such that a delay to the recognition of the applicant's right to reside is unjustified. A few worked examples suffice:

26.3.1. A stay will ensue whenever a person has any prior, unspent criminal conviction, no matter how minor. A single prior criminal conviction for a motoring offence, for littering, for obstructing the highway, for being drunk and disorderly, or for breach of a local bye-law will lead to the current prosecution for an offence – no matter how minor it may be itself – generating a stay of an application.

26.3.2. A stay will ensue even if a custodial maximum sentence of a year is most unlikely on the facts; and even if such a sentence is insufficient, in and of itself, to take the case past the relevant threshold, no matter how high it is (e.g. if, as K contends, the applicant has had over 10 years of lawful residence in the UK such that the test is "imperative grounds of public security", a deliberately exacting threshold).

26.3.3. A stay will ensue if the applicant is being charged with two or more offences or is asking for further offences to be taken into consideration, even if the cumulative sentence for such combined offending is likely to be trivial.

26.4. The notion that there is no instruction to stay, nor impediment to an application for exceptional treatment (see DGR §40(c) and (d)) seems unreal in circumstances where: (i) the relevant decision-makers engage in no fact finding and do not have the facts required for individual decision-making to hand; (ii) take no communicated or reasoned decision; and (iii) proactively invite no representations from the parties affected. Absent any statistics showing a meaningful level of exceptions being made, the practical fetter presented by this Policy, and its inevitable unlawful results in a large number of cases if unchallenged, lead to an incompatibility with:

26.4.1. the WA's requirements of individual, fact-based and proportionate decision-making in a reasonable time (which must apply to decisions made

under Article 18(1)(p) WA for the reasons set out above and in K's skeleton); and

26.4.2. the requirements of Article 13.4 WA, such unwarranted delay being in substance a potential limitation on the residence rights conferred by Article 13 ; and

26.4.3. so far as is necessary in the light of the above, the principles set out in *R(MAS Group Holdings Ltd)* (cited in §80 of K's skeleton).

THOMAS DE LA MARE KC

Blackstone Chambers

4 May 2023

Appendix

The following are extracts from documents which support the proposition that providing certainty and reassurance to citizens was a key objective of the Withdrawal Agreement, and the UK Government as a party to that Agreement (in each the underlined emphasis has been added by the IMA).

1. Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU Presented to Parliament by the Secretary of State for the Home Department (June 2017)

   "We will put those citizens first and do all we can to provide reassurance to the EU citizens who have made the UK their home, and likewise for UK nationals who have done the same in countries across the EU."

2. Joint Report from The Negotiators of The European Union And The United Kingdom Government On Progress During Phase 1 Of Negotiations Under Article 50 TEU On The United Kingdom's Orderly Withdrawal From The European Union (8 December 2017)

   "It is of paramount importance to both Parties to give as much certainty as possible to UK citizens living in the EU and EU citizens living in the UK about their future rights." (Paragraph 33)

   "The approach agreed in the context of the citizens' rights Part of the Withdrawal Agreement reflects both Parties' desire to give those citizens certainty […]." (Paragraph 41)

3. Policy paper: EU Settlement Scheme: statement of intent (Published 21 June 2018)

   "This will enable EU citizens and their family members living in the UK to continue their lives here much as before, as reflected in the Withdrawal Agreement, with the same entitlements to work (subject to any relevant occupational requirements), study and access public services and benefits, according to the same rules as now. It is a fair and comprehensive deal which respects the rights that individuals are exercising based on life choices they made before the UK's withdrawal from the EU. It will provide them with certainty about their future rights and, most importantly, allow them to stay in the country where they are now living." (Paragraph 1.7)

4. The progress of the UK's negotiations on EU Withdrawal: The rights of UK and EU citizens: Government Response to the Committee's Eighth Report - Exiting the EU Committee - House of Commons(21 December 2018)

   "We have now agreed the terms of the UK's smooth and orderly exit from the EU, as set out in the Withdrawal Agreement. We have also agreed the broad terms of our future relationship as set out in the Political Declaration. This Agreement will secure the rights of more than three million EU citizens living in the UK and around one million UK nationals living in the EU. The Government is clear that the reciprocal deal with the EU as set out in the Withdrawal Agreement is the only way to fully protect the rights of both UK nationals in the EU and EU citizens in the UK. The Withdrawal Agreement gives these citizens certainty that they can go on living their lives broadly as now." (Appendix – Gov Response Recommendation 15)

5. Explainer for part two (citizens' rights) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (16 October 2020)

   "*The Government has been clear that its priority is to provide certainty for EU citizens living in the UK, and UK nationals living in the EU. Part Two of the Withdrawal Agreement gives people certainty that their citizens' rights will be protected. People within scope of Part Two of the Withdrawal Agreement will have broadly the same entitlements to work, study and access public services and benefits as now, in as far as these entitlements have derived from UK membership of the EU."* (Paragraph 2)

6. Policy paper: Policy equality statement: EU Settlement Scheme (Updated 2 December 2020)

   "We want to provide certainty and clarity so that they can carry on with their life here with minimal disruption to them or to businesses, universities and other organisations." (Paragraph 4)

7. The Independent Monitoring Authority for the Citizens' Rights Agreements v Secretary of State for the Home Department [2022] EWHC 3274 (published 21 December 2022)

   "*Mr Blundell highlights the aim set out in the seventh recital of providing "legal certainty to citizens and economic operators as well as to judicial and administrative authorities in the… United Kingdom …".* (Paragraph 22 – Mr Blundell was Counsel for the Secretary of State for the Home Department)

   "In reaching my conclusion on this issue, I have had regard to the defendant's emphasis upon the desirability of having a residence scheme which brings certainty for individuals, economic operators and public authorities. (Paragraph 154)

8. Citizens' Rights Specialised Committee meeting, 17 November 2022: The UK government and European Commission gave a joint statement following the 11th meeting of the Specialised Committee on Citizens' Rights (published 13 January 2023)

   "The EU reiterated its other longstanding concerns related to delays in issuance of residence documents and entry visas and asked the UK . . .

   The EU and the UK reaffirmed their commitment to protecting citizens' rights in accordance with the obligations under the Withdrawal Agreement."