NEUTRAL CITATION NUMBER: [2024] EWCC 1

Case No: J05MA951

IN THE COUNTY COURT AT MANCHESTER

The Civil Justice Centre
1, Bridge Street West
Manchester

Date: 22 May 2024

Before :

His Honour Judge Bird

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Between :

C **Appellant**

- and –

OLDHAM COUNCIL **Respondent**

-and –

(1) THE INDEPENDENT MONITORING AUTHORITY FOR THE CITIZENS' RIGHTS AGREEMENT
(2) THE 3MILLION LIMITED
(3) THE AIRE CENTRE

Interveners

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Adrian Berry and Desmond Rutledge (instructed by Shelter) for the Appellant
Toby Vanhegan (instructed by Oldham Council) for the Respondent
Aarushi Sahore (Instructed by the Independent Monitoring Authority for the Citizens' Rights Agreements) for the first intervener
Tom Royston and Charles Bishop (instructed by Public Law Project) for the second intervener Jamie Burton KC and Yaaser Vanderman (instructed by the AIRE Centre) for the third intervener (written submissions only)

Hearing dates: 8th and 9th February 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment

His Honour Judge Bird:

A. Introduction

1. The Appellant came to the United Kingdom from Equatorial Guinea in 2019 to join her two daughters. She lived with one and then the other. Things did not work out and in about May 2022 she became homeless. She applied to the Respondent (the local housing authority) for assistance as a homeless person. On 20 October 2022, the application was rejected on the ground that, because of her immigration status, she was ineligible for assistance. This judgment deals with her appeal against that decision.

2. The general rule (see sect.185 of the Housing Act 1996) is that any person who requires leave to enter or remain in the United Kingdom (a person who is subject to immigration control) is not eligible for assistance. That rule is displaced if an applicant comes within reg.5 of the *Allocation of Housing and Homelessness (Eligibility)(England) Regulations 2006* ("the Regulations").

3. In some circumstances, a person who has a right to reside in the United Kingdom (who is not subject to immigration control) will also be treated as ineligible for assistance (see reg.6 of the Regulations). The persons identified in reg.6 have only a temporary or limited right to reside.

4. The Appellant's right to remain in the United Kingdom arises under Part 2 of the Withdrawal Agreement (an international agreement made between member states of the European Union and the United Kingdom on the withdrawal of the United Kingdom from the European Union and referred to in this judgment as "the WA"). The extent and effect of those rights is in issue.

5. In short summary, the Appellant argues that the WA gives her the right not to be discriminated against on the ground of her immigration status (relying on Art.23 WA) or, in the alternative, if she has no equal treatment rights, it gives her certain guaranteed rights under the Charter of Fundamental Rights of the European Union ("the CFR"). In either case, the Appellant argues that the Respondent has unlawfully ignored those rights.

6. If I accept that the Appellant is entitled to the equal treatment rights sets out at Art.23 WA, then the appeal must be allowed. If I reject that argument but find that she is entitled to rely on the rights set out in the CFR, the appeal must also be allowed. If I reject both arguments then the Respondent's decision, which is based purely on domestic law, will stand.

7. Because the issues raised by the Appellant are of wider importance, I gave permission for three interested parties to intervene: the Independent Monitoring Authority ("the IMA"), the 3Million Limited ("T3M") and the Aire Centre. The IMA is a statutory body responsible for monitoring the implementation and application of Part 2 of the WA, T3M is the largest grassroots organisation for Union citizens living in the United Kingdom and the Aire Centre is a charity and pro bono law centre providing specialist advice and litigation services in the areas of EU and Human Rights law. In addition to the Appellant and Respondent, I heard from counsel instructed by the IMA and T3M and I had the benefit of written submissions from the Aire Centre. I am grateful to all parties for the focussed and helpful submissions each has made.

B. The Facts

8. Equatorial Guinea is a former Spanish colony. The Appellant was born there in 1950. Her daughters are Spanish citizens. The Appellant's right to enter and remain in the United Kingdom arose under EU law (which at that time applied in the United Kingdom). She was entitled to enter the United Kingdom under EU Directive 2004/38/EC (the Citizens' Rights Directive or "CRD") as a non-EU citizen and dependent "family member" (see Art.5) and remain for 3 months (see Art.6) provided she had a valid passport. Her right to remain for more than 3 months under EU law would have depended on continued compliance with the requirements of the CRD.

9. The Appellant was granted "pre-settled status" ("PSS") on 18 November 2019 pursuant to the EU Settlement scheme (a scheme designed to give effect to the United Kingdom's obligations under the WA) and paragraph EU14 of appendix EU to the Immigration Rules. In effect, she was granted 5 years limited leave to remain ("LLTR").

10. In normal course, a person who has LLTR is required on its expiry, to make a further application either for leave to remain ("LTR") or for an extension of the LLTR. A failure to do so has serious consequences and renders the person an overstayer who might be removed (see the discussion at para.140 of the *Citizens' Rights Case* referred to below).

11. When the Respondent made the decision under appeal, the Appellant was no longer living in the same household as her daughter and had her own income through pension credit payments. It is common ground that at that point she was no longer a dependent family member.

C. The Respondent's decision

12. The Respondent proceeded on the basis that the Appellant was not subject to immigration control, so that the issue of eligibility for assistance would be determined by reg.6.

13. It is common ground that by operation of reg.6, the Appellant is to be treated as ineligible for assistance. When her PSS is disregarded (as reg.6(1A) requires), her only right to reside in the United Kingdom is a derivative right of the kind identified at reg.6(1)(b)(iii). By operation of reg.6(1) she "is to be treated as a person from abroad who is ineligible" for housing assistance.

D. Grounds of appeal

14. The Appellant proceeds with a single ground. The Respondent misapplied the law in reaching its decision. It failed to take account of paramount rights enjoyed by the Appellant under the WA or under the CFR.

E. Scope of the Appeal

15. Before dealing with the WA, I will deal with a preliminary issue raised by Mr Vanhegan, who appeared for the Respondent. He submitted that the scope of the appeal was impermissibly wide. His complaint was that I am being asked to consider matters which were not considered by the Respondent.

16. He relied on a number of authorities. In *Cramp v Hastings* (heard with *Phillips v Camden*) [2005] HLR 48, the Court of Appeal overturned 2 county court decisions allowing appeals. In the first case the Appellant had submitted some limited psychiatric evidence to the reviewing

officer that he was in priority need. The reviewing officer found there was no priority need. The Appellant contended before the county court on appeal that the reviewing officer ought to have obtained their own medical advice. In the second case, the Appellant argued that the reviewing officer ought to have made enquiries of the Appellant's GP. The Court of Appeal in each case concluded that it was a matter for the Reviewing Officer to decide if further enquiries were needed. The officer had a wide discretion which would only be interfered with on rationality grounds (if the county court considered that no reasonable housing authority would have failed to make the further enquiries). The Court of Appeal cautioned against allowing a ground of appeal relating to a matter "*which the reviewing officer was never invited to consider, and which was not an obvious matter he should have considered*."

17. In *Alibkhiet v Brent* [2018] EWCA Civ 2742, the Court of Appeal noted that the *Cramp* approach had been modified for cases where the Equality Act 2010 might be engaged (for example, vulnerability and disability). In that case the reviewing officer might come under a duty to carry out further enquiries. The Court of Appeal found that a review decision was not to be read in an overly critical manner. There was no obligation on a reviewer to respond to a question not put.

18. I do not accept Mr Vanhegan's point for two reasons: first the reviewing officer did consider the WA. It is specified by the officer as something that was considered and listed under the headings "the legal test I have applied" and "relevant legislation and regulations". Further it was obviously considered because the reviewing officer went on to consider the application of the CFR. That point can only have been reached once the WA had been considered. Secondly, the WA and rights under it are matters that a Housing Authority would in my judgment, on the facts of this case, consider obvious.

F. The Withdrawal Agreement in outline

Effect and interpretation

19. The WA is given domestic legal effect by section 7A of the European Union (Withdrawal) Act 2018 ('the 2018 Act"). Both parties and the intervenors agreed that section 7A is a "*muscular provision*". It provides that all rights, powers, liabilities, obligations, and restrictions created or arising by or under the WA are to be given legal effect and to be recognised and available in domestic law. Further, every enactment is to be read and has effect subject to such rights. It is plain therefore that the WA can override the Regulations.

20. The WA is to be interpreted in accordance with the Vienna Convention on the Law of Treaties 1969. For present purposes, the guiding principle is that the exercise of interpretation must be carried out in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty, in their context and in the light of the treaty's object and purpose (see *R (IMA) v The Secretary of State for the Home Department* [2023] 1 WLR 817 "the Citizens' Rights case" at paragraphs 64 to 70), bearing in mind that the search of "object and purpose" is not "*an invitation to delve into the minefield of negotiating objectives as a substitute for focusing upon the text as a source for determining the parties' intentions*" (see *SoSWP v AT* [2023] EWCA Civ 1307 at paragraph 80). Particular attention is to be paid to Part 1 of the WA which contains bespoke provisions recording the common intention of the parties about interpretation (see *SoSWP v AT* [2022] UKUT 330 at para.36) and, by the same principle, Art.9 which sets out definitions of terms used in Part 2.

Parts and titles

21. Part 2 of the WA deals with rights and obligations. Its application is central to the outcome of this appeal. It comprises Articles 9 to 39 and is divided into four "titles":

    a. Title 1 deals with general provisions (Arts.9 to 12).
    b. Title 2 (Arts.13 to 29) deals with rights and obligations and is divided into three chapters:

        i. chapter 1 (Arts.13 to 23) deals with "rights related to residence, residence documents",
        ii. chapter 2 deals with "rights of workers and self-employed persons" and
        iii. chapter 3 deals with "professional qualifications".

    c. Title 3 (Arts.30 to 36) deals with the co-ordination of social security systems, and
    d. Title 4 (Arts.37 to 39) deals with other provisions.

22. Art.10 lists those persons to whom all of Part 2 applies. Following a very late concession by the Respondent, it is now agreed by both parties and each intervenor that the Appellant falls within Art.10 and so is a person to whom Part 2 applies.

General provisions of the WA outside Part 2

23. Art.4(3) is an important provision. If the Appellant cannot rely on WA Art.23, this provision allows her to rely on the CFR. It provides that provisions of the WA "*referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law*."

Specific provisions in Part 2

24. The term "family member," which is a key definition for the Appellant, is defined within Part 2 as a person who falls within the personal scope of Art.10 and comes within the definition set out at Art.2(2) of the CRD. The Appellant qualifies as a family member under the CRD if she is "dependent" (see CRD Art.2(2)(d)). It is accepted that the Appellant was a "family member" when she was granted PSS and at the end of the transition period but was not a family member at the time the Respondent made its decision.

25. Art.17(2) provides that:

> *"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."*

Art.13

26. Art.13 is a key provision. Art.13(3) deals with the residence rights of "family members" from third party countries:

> "*Family members who are neither union citizens nor United Kingdom nationals shall have the right to reside in the host state under Article 21 TFEU and as set out in Article 6(2), Article 7(2), Article 12(2) or (3), Article 13(2), Article 14, Article 16(2),*

> *Article 17(3) or (4) or article 18 of [CRD] subject to the limitations and conditions set out in those provisions*"

27. Art.13(4) provides that:

> "*The host State may not impose any limitations or conditions for obtaining, retaining, or losing residence rights on the persons referred to in paragraphs 1, 2 and 3, other than those provided for in this Title. There shall be no discretion in applying the limitations and conditions provided for in this Title, other than in favour of the person concerned.*"

28. The Art.21 TFEU (the Treaty on the Functioning of the EU) right is described by the IMA (paragraph 27 of their skeleton) as "*the foundational right of free movement and residence in the EU*". This foundational right is not absolute, but plainly subject to the terms of the CRD.

Arts. 15, 18, 23 and 39 WA

29. Art.15 deals with the right of permanent residence. It provides that family members "who have resided legally in the host State in accordance with Union Law" for a continuous period of 5 years "shall have the right to reside permanently" in the host state "under the conditions" set out in Arts. 16, 17 and 18 of the CRD.

30. Art.18 (of the WA) provides for the issuance by the host state of residence documents. The scheme is a constitutive scheme. Art.18(1) allows the United Kingdom to require any person who resides there "*in accordance with the conditions set out in this title*" to apply for "*a new residence status which confers the rights under this Title*". The purpose of the application procedure (see Art.18(1)(a)) is "*to verify whether the applicant is entitled to the residence rights set out in this Title*". Art.18(4) describes the Art.18(1) status as "*the new residence status….as a condition for legal residence*".

31. Art.23 provides that, "*in accordance with*" Art.24 of the CRD, subject to "*the specific provisions provided for*" in title 2, all United Kingdom citizens or Union citizens will enjoy equal treatment rights in the host state if they reside in the host state "*on the basis of this Agreement*". The benefit of this right is extended to those family members who have "*the right of residence*" or "*permanent residence*." It is accepted that to enjoy Art.23 rights, a family member must also reside "*on the basis of*" the WA.

32. Art.39 provides:

> *"The persons covered by this Part shall enjoy the rights provided for in the relevant Titles of this Part for their lifetime, unless they cease to meet the conditions set out in those Titles"*

33. Rights of residence set out in Part 2 of the WA are linked to (but different from) rights of residence under EU law, particularly those set out in the CRD. As the Court of Appeal explain in *AT* the CRD is the principal measure implementing the principles set out in Art.21 (see paragraph 23).

G. The CRD

34. Art.24 of the CRD is referred to within Art.23 WA. As far as material, it provides:

> "*Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State and enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of the member state and who have the right of residence or permanent residence*"

H. Authorities

35. Submissions concentrated on the *Citizens' Rights* case, *SoSWP v AT* in the Upper Tribunal and in the Court of Appeal and *CG v The Department of Communities in Northern Ireland* [2022] 1 CMLR 26 in the Court of Justice of the European Union.

36. *AT* and *CG* each concern the right of those covered by Part 2 of the WA to receive Universal Credit. In each case the issue was whether the deciding authority was obliged to take account of the applicant's rights under the CFR. These decisions establish that a person within the personal scope of the WA, but who does not have equal treatment rights, is entitled (by operation of WA Art.4(3)) to rely on the CFR.

37. Both *AT* and *CG* were EU nationals who had come to live in the United Kingdom when the United Kingdom was an EU state (AT in Great Britain and CG in Northern Ireland). Each was granted PSS. As a matter of domestic law, that status was a bar to the grant of Universal Credit. CG had no rights under the CRD because she had insufficient resources to avoid becoming a burden on the state, was not an enrolled student and was not a worker. The host state had granted her Art.18(1) status on a more favourable basis than the WA permitted. The Court held that in doing so it had "*recognised*" (and implemented) her rights under TFEU Art.21. As the state was therefore "applying" Union law it was obliged to do so in accordance with the CFR (see WA Art.4(3) and *AT* in the Upper Tribunal at paragraph 54). The Upper Tribunal in *AT* concluded that the principles set out in *CG* applied whenever PSS had been granted.

38. These cases also shed light on the proper application of general equal treatment rights. It is important to note that the TFEU (Art.18), the CRD (Art.24) and the WA (Art.23) each have their own equal treatment provisions. The cases emphasise the importance of identifying and applying the correct provision. The general will always give way to the specific. In *CG* (see paragraphs 50 and 51), the court treated the identification of the correct provision as a preliminary point and reformulated the question put to it by the national court. The court identified, although CG was exercising rights under TFEU, the specific equal treatment right to be considered was that set out in the CRD (Art.24). Art.24 rights could only be claimed if CG met the conditions set in the CRD (see also *Dano* [2015] 1 WLR 2519 at paragraphs 68 and 69 of the Court's Judgment and see paragraph 78 and 79 of *CG*). As CG did not meet those conditions, she could not take advantage of Art.24. The fact that CG had been granted PSS without any condition as to resources, was irrelevant. It was pointed out that if CG were entitled to rely on Art.24, she would be in a better position under the WA than she would have been in under the CRD (see paragraph 81).

39. In the *Citizens' Rights* case, Lane J found that the grant of LLTR and the consequent requirement for a further application for LTR was unlawful under the terms of the WA. He found that the grant of LLTR and the requirement to apply for LTR after LLTR had been

granted were "limitations" and "conditions" on Art.13 rights, of the type prohibited by Art.13(4).

40. Lane J went on to consider the nature of rights acquired under Art.13. The following references are useful and indicate that a person granted rights under Art.18 enjoys no special rights above and beyond those which might be enjoyed under Art.13 for so long as the requirements of Art.13 are met:

    a. At para.148 reference is made to Art.39. Rights enjoyed under Part 2 are enjoyed only for as long as the beneficiary complies with the specified conditions.
    b. At para.151 the right of residence under Art.13 is described as a "*conditional right*".
    c. At para.156 Lane J points out that the grant of LLTR (PSS) represents no more than a "*snapshot of the applicant's position*" at the time the Art.18(1) application is considered. He goes on to note two important matters:

        i. First, "*the pursuit of certainty under a constitutive residence scheme cannot affect the nature of the rights of residence conferred by the WA*" and

        ii. secondly, "*a person with article 13 residence rights falling short of permanent residence is entitled to reside in the United Kingdom for as long as the relevant limitations and conditions in the Directive are satisfied. That is an inherent feature of the rights conferred by article 13(1) to (3)*."

    d. At para.158: "*a person who acquires a residence right under Art.13(1) and who continues to meet the relevant limitations and conditions – for example as a worker – cannot lose that right otherwise than as provided for in Part 2 of the WA*".

I. Issues and submissions

41. The following issues fall to be considered:

    a. Is the Appellant eligible for homelessness assistance as a family member within the regulations?
    b. If not, is the Appellant within the personal scope of the WA (Article 10)?
    c. If so, does she have a right of residence under the WA (Article 13)?
    d. If the Appellant does fall within Article 13 WA, has she been impermissibly discriminated against, contrary to WA protection?
    e. If she does not fall within Article 13 WA (but does come within Article 10), nonetheless what assistance does the CFR provide?
    f. What is the effect of Article 17(2) WA?

42. The final issue, which is of some real importance, arose late. It was first raised by T3M the day before the hearing through the provision of a short note. Mr Royston addressed me briefly on the point and I received further written submissions from the Appellant and the IMA on it after the hearing.

43. The first question is intended to address a straightforward issue. Does the Appellant qualify for homelessness assistance purely based on domestic law and so without regard to the WA? The answer is no, she does not. I do not understand there to be any issue on that. The second

issue is agreed. The real issue is whether the Appellant, who was (but is no longer) a dependent family member, has a right of residence under Art.13.

44. The Appellant submits that she falls within Art.13(3) even if she does not now fulfil the conditions set out in the CRD. That argument is grounded on the fact that she is exercising rights under TFEU Art.21. As a fall-back position, the Appellant argues that she enjoys such rights through Art.17(2).

45. The IMA submits that the Art.18(1) constitutive scheme is a "*gateway process for rights under Part 2 WA*". In other words, Art.18 does not confer a once and for always guarantee that a person with PSS is in full compliance with the WA. IMA relies on para.156 of the *Citizens' Rights* case. It points out that the United Kingdom chose to grant Art.18(1) status to persons based on "simple residence" at the end of the transition period. It follows that someone may have Art.18(1) rights as a matter of domestic law, but not meet the conditions reflected in the CRD as required by Art.13. It would follow that that person would not be residing in the United Kingdom "*on the basis of*" the WA but based on a domestic law right.

46. The Appellant submits that it would follow, if she falls within the scope of Art.13, that she is entitled to rely on the equal treatment provisions of Art.23. The effect would be that the Regulations (which plainly and directly discriminate against the Appellant on the ground of her immigration status) must be seen as incompatible with her Art.13 rights and so ignored. The Respondent does not agree but submits that she does not come within the scope of Art.13. T3M submits that a person with PSS is "residing on the basis of" the WA and so is entitled to the rights afforded by Art.23. In effect, it submits that an Art.18(1) grant confers unconditional rights and emphasises that the United Kingdom has chosen not to "declare" a person has rights "at one point in time" but to "confer" those rights for a specified time. The AIRE centre support T3M.

47. The IMA submits that Art.23 rights only apply to those residing "on the basis of" the WA and that the Appellant (who did not fulfil the conditions of residence required by Art.13) therefore cannot rely on it.

J. Art.17(2)

48. The IMA submits that Art.17(2) applies where a person who is a dependent family member at the end of the transition period ceases thereafter to be dependent. In these circumstances the individual is treated as if they had retained their status. The relevance of this provision was explained in ***R (Ali) v SSHD*** [2023] EWHC 1615 at paragraphs 90 and 91. In summary, under EU law, an EU citizen living in the United Kingdom who lost the right to reside could regain it, because EU law continued to apply. After the WA came into effect, once a right is lost (absent any contrary provision in the WA) the right would be permanently lost. It follows that Art.17(2) addresses this issue and protects that position of a once dependent family member.

K. Resolution

49. In my view, the Appellant has a right of residence under Art.13 only if she complies with Art.13. She may comply with Art.13 on one of two bases: as a matter of fact (factual compliance) or as a matter of construction (constructive compliance as a result of the terms of the WA).

50. I accept that there is no factual compliance with Art.13 because the Appellant is no longer a dependent family member. But, I accept that there is constructive compliance, because at the

relevant time the Appellant was a dependant and by operation of Art.17(2) she must continue to be treated as a dependant. It follows, because it is accepted that in all other aspects (leaving dependency aside) the Appellant meets the Art.13 conditions, that she must be treated as having an Art.13 right of residence. It follows that the Appellant is entitled to rely on Art.23, and more specifically on Art.24 CRD.

51. If the Appellant were not treated as having continuing rights under Art.13 (factually or constructively), she would not be entitled to rely on Art.23 of the WA. I reach that view on the following grounds:

    a. Art.23 WA expressly defers to Art.24 CRD. That is plain from the words "in accordance with." Any doubt about that is resolved by reference to the specific provisions of Title 2 which incorporate (in a modified form) the requirements of CRD into the WA.
    b. The fact that (as *AT* and *CG* make clear) she was exercising her Art.21 TFEU rights when she came to the United Kingdom is irrelevant, save for the purpose of applying (if Art.23 does not apply) the CFR.
    c. The fact that she has been granted PSS is irrelevant as it was in *CG*.
    d. The United Kingdom's adoption of a constitutive system rather than a declaratory system does not alter the nature of rights enjoyed. As is clear from the *Citizens' Rights Case* the appellant can (subject to the express provisions of the WA and in particular Art.17(2)) lose her rights.

52. In my view this conclusion is in line with the context and purpose of the WA. On a pure textual analysis bearing in mind the principles to be applied when interpreting international treaties, the grant of the Art.18(1) new residence status must be taken as conclusively establishing that at the moment of grant the grantee is "*entitled to the residence rights set out in* [Title 2]". The fact that the grant relates to a moment in time is in my judgment clear from Art.18(1)(a). The purpose of the application procedure is to verify if the applicant "*is entitled*" to the relevant residence rights. Art.13 does not set out an absolute and continuing right. It follows that it is not possible to verify if an applicant will be able to reside in accordance with its terms in the future. The rights granted under Art.18 are no greater than those granted in Title 2. See Lane J in *Citizens' Rights* case. If (at this stage of the analysis) any of the conditions attaching to the right of residence under Art.13 are not met, then the Art.13 right must lapse. That was the conclusion of Lane J.

53. It follows that I accept the IMA's submission and reject those of the Appellant and T3M and the Aire Centre. In short, the Art.18(1) grant does not mean that the Appellant should be treated as residing in accordance with Art.13 forever.

54. It follows that the regulations should be disregarded, and the Appellant treated as a person who is eligible for housing assistance under Part 7 of the Housing Act 1996 (as defined). The appeal must therefore be allowed.

Alternative resolution

55. If I am wrong that the Appellant is entitled to rely on Art.23 WA then in any event, by operation of Art 4(3) WA the CFR applies. The Respondent reached a different conclusion. Its decision is therefore wrong and if the primary reason for allowing the appeal is wrong, it must be allowed on this secondary basis. It would be for the Respondent then to consider the application of the Appellant's CFR rights.

Post judgment matters

56. In response to an invitation to provide proposed corrections to the draft judgment (see CPR PD 40B para.3.1) the Respondent invited me to amend paragraph 24 of this judgment "*to make it clear that the Respondent did not accept that the appellant was a family member at the end of the transition period*". I am not prepared to do so because the request is an impermissible attempt to re-open the argument. Further, and in particular, for the following brief reasons I reject the invitation in any event:

    a. The Respondent's review decision of 20 October 2022 recorded that the decision maker was "*satisfied that* [the Appellant was] *a family member of an EEA national who was lawfully resident in the UK prior* [the end of the transition period]". This finding was cited by the IMA at paragraph 44 of their skeleton. They went on to say "*accordingly it appears straightforward that the Appellant is on the personal scope of Art.10(1)(e) at the end of the transition period*". The finding is at odds with the change to the judgment sought by the Respondent.
    b. Further, and more importantly (see paragraphs 22 and 24 above), the Respondent conceded at the hearing that the Appellant fell within the personal scope of Art.10. Given that the Appellant is neither a Union Citizen nor a United Kingdom national, the concession can only have been made on the basis that the Appellant was a "family member" under Art. 10(1)(e). No other basis for the concession has been advanced. The effect of the concession is in my judgment absolute. There was no suggestion that the concession left the "family member" issue open for argument.

57. In reaching this view I have taken account of submissions from the IMA and from Shelter.