

Tribunal Ref: UA-2025-001646-USTA
and UA-2025-001910-CHB

IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

BETWEEN:-

KT

Appellant

- v -

(1) SECRETARY OF STATE FOR WORK AND PENSIONS

(2) HMRC

Respondents

- and -

INDEPENDENT MONITORING AUTHORITY

Intervener

SUBMISSIONS ON BEHALF OF
THE INDEPENDENT MONITORING AUTHORITY

REFERENCES: RESPONDENTS' SUBMISSIONS, DATED 14 JULY 2026, REFERRED TO AS "R SUBS"

I. INTRODUCTION

1. The Independent Monitoring Authority (the "**IMA**") intervenes in this case to make submissions on a single issue relevant to Ground 2 of the appeal: whether the Court of Appeal's judgment in SSWP v AT [2024] KB 633 ("**AT**") applies where a person who has been granted Pre-Settled Status ("**PSS**") in the United Kingdom, but who does not meet the conditions for a right of residence under Article 13 of the Withdrawal Agreement ("**WA**"), applies for Child Benefit.
2. The IMA's position is that, as is clear from the terms of the judgment, AT applies to any application for state support – including Child Benefit – to the extent that a refusal of support may risk a violation of the Charter of Fundamental Rights of the European Union (the "**Charter**").

3. The IMA does not seek to make any submissions pertaining to the facts of KT's case or the judgment of the FTT below. It is solely concerned with the application of the judgment in AT as a matter of principle.

II. LEGAL FRAMEWORK

4. The Respondents set out the relevant legal framework in respect of Child Benefit at R Subs, §§23-34.
5. The IMA does not take issue with this account. In particular, it is common ground that Child Benefit:
 - a. Is a non-contributory benefit.
 - b. Is not means-tested.
 - c. Is considered a social security benefit for the purposes of EU law: Case C-308/14 Commission v UK ECLI:EU:C:2016:436, §61 ("Commission v UK").
6. The IMA notes that Child Benefit is a social benefit intended, in particular, to meet some of the costs that must be borne by a person responsible for one or more children: Commission v UK, §58.

III. SUBMISSIONS

7. The Respondents' position is set out at R Subs, §111, as follows:

"111. The Respondents have not had sight of how KT puts her case on this issue. For the avoidance of doubt, HMRC's position is that the AT judgment does not apply to CHB entitlement decisions because AT relates and applies to social assistance benefits. CHB is not a social assistance benefit but a social security benefit: see Commission v UK (C-308/14) at [54]-[61]; HMRC v RO [2022] UA-2021-SCO-000036-CHB at [7]. This Ground accordingly relates only to the UC appeal."
8. The IMA disagrees with this analysis, which involves a misreading of the judgments in AT. This is for the following five reasons.
9. **First**, the Court of Appeal in AT nowhere expressly confines its reasoning to decisions not to award social assistance benefits. It is true that the support sought in

AT was Universal Credit – a social assistance benefit – but that was simply the factual context in which that claim arose. That factual feature formed no part of the Court of Appeal’s reasoning.

10. **Secondly**, the ratio of AT, as derived from the judgment in Case C-709/20 CG v Department for Communities in NI EU:C:2021:602 (“CG”), includes the findings that the anchoring right of residence of someone in AT’s position (and, therefore, KT’s position) contained in Article 13 of the EU-UK Withdrawal Agreement (the “WA”):
 - a. Brings Article 21 TFEU into effect through cross-reference: §94;
 - b. Thereby, must be construed by reference to the Charter: §92;
 - c. Pursuant to Articles 1, 7 and 24 of the Charter, the UK must ensure that the anchoring right of residence is sustainable in a dignified manner. Without this, the right of residence would be inoperative or ineffective: §§98-99; and,
 - d. This is a technical question of construction of Article 13 WA: §100.
11. In other words, the focus of the analysis is not on the decision to refuse Universal Credit. Rather, the “*gravamen of the complaint is about an omission not a commission*”: having recused Universal Credit, the failure to consider entitlement to other forms of support that would make the Article 13 WA right effective: §91.
12. **Thirdly**, the question as to whether the anchoring right of residence is effective or sustainable in a dignified manner, pursuant to Articles 1, 7 and 24 of the Charter, is a question of substance not form. It cannot possibly depend, for its fulfilment, on the precise *form* in which a state decides to support individuals.
13. This is clear from the terms of these provisions of the Charter as well as the “*Explanations*” supporting them and authorities that have considered them: AT, §§31-42.

14. It is also clear from the judgments in AT where Green LJ:
- a. Referred to the CG judgment as applying Article 1 of the Charter so as “to impose a duty of result on the host state to ‘ensure’ that a person in the situation of CG had a right of residence to ‘live in dignified conditions’”: §72 (emphasis added).
 - b. Focused on the following facts as being relevant to whether there would be a Charter violation in these circumstances: the availability of means and resources to meet needs (which would include accommodation); the degree of isolation; and, the degree of dependency of children.”: §112.
 - c. Focused on the question of “the day to day position of the individual, not the system”: §124.
 - d. Adopted the statement of the Upper Tribunal¹ in AT that the state had to “focus on the concrete factual position, not the theoretical legal one”: §137.
15. **Fourthly**, the Court of Appeal in AT expressly, and repeatedly, considered any and all “support”, “relief” or “other forms of protection” as potentially relevant to whether the UK was ensuring that AT was enjoying her right of residence in dignified conditions. It did not focus on the nature of that support – e.g. whether it was contributory/non-contributory or amounted to social assistance benefits or social security benefits.
16. In particular:²
- a. In its articulation of the grounds of appeal, it referred to whether AT could rely on the Charter in construing WA rights so as “to obtain support”: §16 (emphasis added). The generic term “support” is used repeatedly: see, also, §§99, 124 and 157.
 - b. It summarised the findings in CG that a state, in seeking to comply with Charter rights, could not just stop at the question of whether to refuse

¹ [2023] 1 WLR 2669.

² Except where stated otherwise, these are references to Green LJ’s judgment.

Universal Credit. Rather, *“It had to go on and verify whether, even if UC was not available, some other state provided support was due”*: §74 (emphasis added). See also Dingemans LJ’s reference to *“other public financial support available”*: §185.

- c. It summarised CG as holding that *“there was a positive duty on a host state who refuses one form of relief (in that case also UC) to determine (‘ensure’, ‘ascertain’, ‘check’ – CG paragraphs [89], [92] and [93]) whether the person was in need of other forms of protection to secure their dignity and make their residence right in effect viable.”*: §91 (emphases added). See, also, §124, where the Court referred to the need to ascertain whether an individual could benefit from *“other forms of assistance”*.
- d. Child Benefit was specifically considered by the Court as one form of *“support”* that was capable of satisfying the state’s obligations under the WA and Charter: §§128(ii) and 174. Nowhere did the Court state that Child Benefit did not need to be, or could not form, part of the relevant analysis due to its technical status as a social security benefit.
- e. It adopted the Upper Tribunal’s analysis that whilst some form of assessment must be undertaken, there may be *“some other source of state support”* that is sufficient to meet an individual’s basic needs: §144 and see, also, §§149 and 156.

17. **Fifthly**, the Respondents also rely on HMRC v RO [2022] UA-2021-SCO-000036-CHB (**“RO”**), §7, which states:

*“7. ... The Supreme Court put its consideration of Fratila and Tanase on hold pending a ruling of the Court of Justice of the European Union examining similar issues. In C-709/20 CG the CJEU held that it was legitimate to exclude Pre-Settled Status from constituting a valid right to reside for social assistance. The case provides no reason to conclude that the answer would not be the same for child benefit. **The CJEU went on to suggest that there was an obligation on states to apply articles 1, 7 and 24 of the EU Charter, but whatever the scope of that obligation, that was in the context of steps to take before refusing social assistance, which is not what the present case concerns.**”* (emphasis added)

18. This reasoning should not be followed given that:
- a. RO was decided before AT was determined in either the Upper Tribunal or the Court of Appeal. It did not have the benefit of the judgments in that appeal, which were supported by detailed legal submissions from a number of teams of specialist Counsel.
 - b. It is unclear whether the Upper Tribunal in RO had the benefit of submissions from the parties on this point.
 - c. Its encapsulation of the issue and reasoning is contained in a single sentence.
 - d. It is wrong for the reasons set out above.
19. The effect of the above analysis is that, before refusing an application for Child Benefit from someone in the position of KT, HMRC must assess whether their rights under the Charter and, therefore, Article 13 WA, would be breached.

IV. CONCLUSION

20. For the reasons outlined above, it is submitted that the Respondents are wrong to argue that the principle derived from AT does not apply to the facts of this case. Properly construed, AT applies to any individual and their dependents whose rights of residence under Article 13 WA are put in jeopardy by reason of destitution. How to ensure such residence rights remain effective – i.e. how to provide state support so as to avoid destitution – is a question of substance over form. It does not depend on how such support is classified in domestic law.

YAASER VANDERMAN

Brick Court Chambers

28 September 2026