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Our Ref: FOI2023/63218

14 September 2023

Dear Mr Williams,

Thank you for your Freedom of Information (Fol) request received on 16 August. You wrote:

“Please disclose any guidance or operational instructions issued to case managers and/or decision makers for universal credit concerning what approach should be taken to cases which may benefit from the judgment in *SSWP v AT (UC)* [2022] UKUT 330 (AAC).

Please disclose not just the guidance or instructions issued concerning whether to stay such cases under s.25 Social Security Act 1998 but also any guidance or instructions on how to assess whether *SSWP v AT* applies in cases where it is accepted a stay is inappropriate because the claimant is in hardship.”

### **DWP Response**

We confirm that we do hold the information you have requested. A copy of the information is therefore attached in the Appendices A and B.

Please note that the attached Decision Making Instructions and accompanying DMA Noticeboard post are interim guidance prepared in light of a specific appeal, namely the *SSWP v AT* litigation, which was and still is under appeal. Therefore, this is subject to change in light of further developments in the *SSWP v AT* litigation or other case law. Consequently, please can you notify others of the interim nature of the guidance if you share it more widely.

If you have any queries about this letter, please contact us quoting the reference number above.

Yours sincerely,

DWP Central Freedom of Information Team  
Department for Work and Pensions

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### **Your right to complain under the Freedom of Information Act**

If you are not happy with this response you may request an internal review by e-mailing [freedom-of-information-request@dpw.gov.uk](mailto:freedom-of-information-request@dpw.gov.uk) or by writing to: DWP Central FoI Team, Caxton House, 6-12 Tothill Street, London, SW1H 9NA.

Any request for an internal review must be received by us within 40 working days of the date of this letter. Please note we are not obliged to provide a review if it is requested after more than 40 working days.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Website: [ICO FOI and EIR complaints](#) or telephone 0303 123 1113.

AT Charter Instructions – Decision Making Steps

A. Introduction

1. These instructions should be read together with the ‘**Claimants with Pre-Settled Status making a claim to Universal Credit**’ noticeboard post (link) and deal with the particular circumstances arising out of the outcome of the lead Upper Tribunal case of *SSWP v AT (AIRE Centre and IMA Intervening)* [2022] UKUT 330 (AAC) (“AT”) and the possible invoking of the SSWP’s staying of decision-making power.
2. Section 25 of the Social Security Act 1998 permits the Secretary of State not to make a decision on a claim for benefit that is before him if there is an appeal in other lead case pending. AT is such a lead case pending and due to be heard in March 2023 in the Court of Appeal. **Nothing in these instructions** is to be read as being the same as any existing UC hardship considerations, e.g., sanctions, advance payments etc. These instructions are unique to dealing with the AT decision.

B. Steps for decision makers

3. Claimants **without Pre-Settled Status** are not affected by the AT decision in any way and so are not covered by these instructions.
4. For claimants **with Pre-Settled Status who meet the HRT**, they should be managed as follows:
  - i. In all cases, a DM must consider each claim under BAU HRT rules.
  - ii. This means that all UC claims, both from single and joint claimants, should firstly proceed for an HRT assessment in the usual way.
  - iii. This also applies to all changes of circumstances received after 12 December 2022 which potentially affect the claimant’s existing right to reside.
  - iv. If the claimant/both partners pass the HRT, the UC claim/existing award continues on this basis.
  - v. For cases at mandatory reconsideration stage, if the original HRT refusal decision is overturned, the claim for UC is awarded in the usual way. If the original HRT refusal is maintained but the claimant is now found to be able to pass the HRT, the UC claim proceeds from when the HRT was met.
5. For claimants **with Pre-Settled Status who are found not to meet the HRT**, they should be managed as follows:

**(1) The case of AT does not apply, and the claim proceeds for HRT refusal for:**

- i. Claimants whose decisions relate to entitlement for periods before 12 December 2022;
- ii. Claimants who are non-EU national claimants, including those from Norway, Iceland, Liechtenstein and Switzerland; or

- iii. EU nationals not in scope of the Withdrawal Agreement at the end of the transition period meaning that they did not exercise a Treaty right such as being a worker (or a family member), self-employed person (or a family member), a job seeker, a student, being within the initial 3 months of arrival in the UK, being self-sufficient or having a retained or derived residence right before 31 December 2020.

**(2) The case of AT does apply, and so the claim proceeds as follows:**

- i. For EU national claimants, firstly it should be assessed if they **are able to work**, pursuant to paragraphs 6-10. For EU nationals able to work, the claim should be disallowed as the claimant does not meet the threshold set out in the AT case.
- ii. For EU national claimants who are assessed as unable to work and where there is no evidence of hardship, the decision to refuse on HRT grounds should now be stayed.
- iii. For EU national claimants who are assessed as unable to work but with evidence of potential hardship being available to the DM before the decision to refuse on HRT grounds is stayed, this should be considered following the steps set out below.
- iv. For EU national claimants where any evidence of hardship is raised after the decision to stay has been made, this should be considered following the steps set out below.
- v. For EU national claimants where any evidence of being unable to work is raised at mandatory reconsideration stage, this should be considered following the steps set out below.

**C. *AT Charter threshold: Ability to work***

- 6. In light of the AT Upper Tribunal decision, where a claimant is able to work, refusal of UC will not violate their Charter rights as they are themselves able to avoid destitution by working. Such claims should be processed as normal and disallowed for not passing the HRT. Claimants will not meet the AT Charter threshold if able to work even if the claimant is not currently working.
- 7. When determining a claimant's ability to work, consideration should reasonably be given to barriers to working which 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.
- 8. If the claimant is under the No Work Related Requirements, Work Preparation or Work Focused Interview only conditionality groups, he/she is not expected to look for work at the present time and should not be considered able to work for the purposes of paragraph 6.
- 9. If the claimant is within the Intensive Work Regime, this is a strong indication of ability to work although it is possible that the claimant is in fact deemed unable to work at that very moment in time. It should be checked therefore if work coaches have switched off work availability and work search requirements by way of temporary easements. Claimants may also present evidence which has not been seen by a work coach.

10. The following questions and points can also be used when determining a claimant's ability to work with a request for evidence in support:

- Any issues regarding physical or mental ill health, e.g., in relation to the diagnosis, effects and prognosis of any such condition and its effect on capability to work?
- What is the number and age of any children the claimant is responsible for and are there any health issues, disabilities or special educational needs that are relevant, for example to making obtaining of childcare difficult?
- What alternatives are available to the claimant in terms of nursery or other pre-school provision and/or schools? Or family or friends who could support with childcare?
- In terms of other caring responsibilities, what care is provided, to whom, how much time does this take, could the care be provided from another source?
- Claimants may mention not working as having recently become homeless and taking steps to find accommodation.
- Claimants may mention being unable to work due to domestic abuse. Evidence may be from a person acting in an official capacity such as a healthcare professional, police officer, registered social worker or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic abuse.

11. For claimants able to work, the UC claim should be disallowed as the claimant does not meet the threshold set out in the *AT* case following the BAU process. **[Use SP1]**

12. For claimants who are assessed as unable to work but have raised hardship, a DM should follow the steps from paragraph 13 below. If no hardship has been raised, the decision to refuse their UC claim should now be stayed. **[Use SP2]**

**D. AT Charter threshold: Assessment**

13. Where (1) *AT* applies, (2) the claimant is deemed unable to work and (3) has raised evidence of hardship, a DM should note and follow the following points and steps:

14. Hardship in these instructions means the inability to "meet their most basic needs" and should be considered as relevant whether claimants reference the case of *AT* or not.

15. However, when assessing hardship, the following principles should be noted:

- a) the claimant's position would have to meet a particularly high level of severity;
- b) their position must amount to extreme material poverty;
- c) such that they cannot meet their most basic needs, which include food, personal hygiene, clothing and a place to live with adequate heating;
- d) further and additionally, the situation must either (a) undermine the claimant's physical or mental health, or (b) put them in a situation of degradation incompatible with human dignity;
- e) that situation is to be such that it can be equated to inhuman and degrading treatment (i.e. breach of Art.3 ECHR or Art.4 of the Charter); and
- f) to the extent that the situation arises from the person's "wishes and personal choices" it can be discounted.

16. This assessment can apply to new claims, mandatory reconsiderations and HRT reviews but it is **only required** in respect of periods of potential entitlement from 12 December 2022 onwards. For any potential entitlement from before 12 December 2022, the claimant **must** be assessed on the law as it was before the *AT* decision was made and there is therefore no *AT* Charter assessment to consider in such cases.
17. The assessment is to be done by reference to **the individualised circumstances** of a claimant's case to the usual standard of **on the balance of probabilities**.

Relevant considerations and evidence

18. The focus of the assessment is on the claimant's ability to meet "*their most basic needs*" presently and in the immediate future, pursuant to the threshold principles set out in paragraph 13 above. While many claimants will have financial needs, as evidenced by having made a claim for benefits, this is a high threshold that many will not meet.
19. DMs should consider what information and evidence would be relevant, how to obtain it and whether this can be done sensitively. In all instances, DMs should consider what information is already available on DWP systems. DMs should bear in mind that claimants' oral evidence, if credible, must be taken into consideration. It is important that evidence is noted on DWP systems.
- a) Is the claimant able to meet their "most basic needs", which include but may not be limited to **housing, basic level of heating adequate for a person's health, food, clothing, and personal hygiene**. When considering the claimant's basic circumstances, relevant questions to gather evidence about and to consider include:

Accommodation and heating:

- Is the claimant single, in a couple, supported by friends, family, the local authority or charities? Is the claimant looking after a child/ren or anyone else, and are there particular health or disability issues?
- Is the claimant homeless or at such risk in the very near future?
- Where the claimant states that they are not able to pay for accommodation, what steps have been taken in relation to more affordable accommodation?
- Is there any evidence that the accommodation is impacting the claimant's physical and mental health and that the claimant is unable to find alternative accommodation?
- Is there evidence of insufficient heating, also looking at the household composition e.g. if it includes a person with a health condition or responsibility for a child or qualifying young person. Of relevance could be a doctor's or health care professional's letter verifying that the lack of heating will cause suffering.

Food:

- Is the claimant single, in a couple, supported by friends, family, the local authority or charities? Is the claimant looking after a child/ren or anyone else?
- What means does the claimant have to access food supplies? When was the last food shop, how long was this shopping supposed to last and reasons for it running out very soon? Does the claimant have money available to purchase food and has the claimant sought and/or received assistance through charities, foodbanks and local authorities?

- A claimant is likely to be assessed as being in immediate hardship if they have insufficient resources to provide meals for the coming seven days if they have responsibility for a child or qualifying young person, provide care for an adult or live with a person with a health condition.

Clothing and personal hygiene:

- Hygiene costs and services include toilet roll, toothpaste, soap, nappies, sanitary products, washing detergent and laundry services.
- Where a claimant says they have no immediate resource to meet their own or their household's hygiene needs, seek to establish what products or services are required and whether these items or services are available free or from alternative sources, for example immediate family, doctors or health centres.
- Does the claimant have seasonally appropriate clothing for themselves and their family and, if not, are they able to purchase or source from second hand shops, charities, friends or family?
- Is there any evidence of detrimental impact on physical or mental health?

- b) Is the claimant able to access any alternative resources or sources of income – this could include the claimant's household being in receipt of for example wages, rental income, savings, welfare payments, pension or welfare benefit payments from abroad, bank interest, real property, maintenance payments or child maintenance payments from an ex-spouse or partner, financial support from family members or friends, local authority support etc.

DMs should consider whether the claimant has explored any other means of financial support to help them meet or partially meet their household's basic and essential needs. There is no list in legislation of what these resources could be, and they will vary from area to area. A claimant is reasonably expected to make efforts to reduce non-essential costs.

Resources and support:

- Does the claimant or their partner have any savings, benefits, pensions, child maintenance payments or income that covers or partially covers the household's most basic needs?
- Does the claimant have any non-essential spending such as clubs, society membership or entertainment activities? Bear in mind that some non-essential spending may require the claimant to serve notice to cancel.
- Are there any friends or family who are offering or could offer support?
- Has the claimant been in contact with local charities, support groups and other organisations such as the Local Authority, and what is the outcome?
- Has the claimant explored any other means of financial support to help them meet or partially meet their household's basic and essential needs?
- Is the claimant relying on charities? Is this a reliable steady source of support?

20. To further aid the Decision Making Steps, **AT Scenarios** can be found in **Annex B**. This section provides different scenarios on whether a claimant should be accepted for hardship and the next steps as detailed in this document.

#### **E. Escalation at any point in decision making**

21. If, after initial consideration, a DM is unsure of how to proceed in a specific case, the matter should, along with the case background and evidence gathered, **be referred to DMA (Leeds)** for further consideration using this link and marking it as “AT decision” in the subject. The referral must set out what the decision-making issue is and, as relevant, include:
- a. UCFS Claimant ID;
  - b. Claimant NINO;
  - c. the Case history including details of why the claimant cannot meet the HRT, is an AT case, and is deemed not to be able to work;
  - d. Reasons for the decision to stay; and
  - e. Details and evidence of any hardship raised and why alternative support cannot cover basic needs.

#### **F. AT Charter threshold met - Entitlement period and decision to award universal credit**

22. If the Charter threshold is met, then the claim can be considered under the usual UC claim rules as if the claimant has met the HRT. All other conditionality conditions still need to be met and business as usual conditionality rules should be followed. As above, any award for entitlement can only be from 12 December 2022 onwards or from the date of the claim if later. Continued entitlement should be reviewed periodically.
23. If the decision is taken to award UC, claimants should be notified that in the event that the UT’s decision is overturned on appeal, they may be required to repay UC as an overpayment.

#### **G. AT Charter threshold not met - Communication to claimant**

24. If the Charter threshold is not met, then the claim is to be refused and this outcome notified to the claimant.

#### **H. Change of Circumstances review and MR**

25. The same considerations as above apply.
26. To further aid the Decision Making Steps, **AT Standard Paragraphs** can be found in **Annex A**. This section provides all the standard paragraphs that should be issued to claimants for New Claims, HRT change of circumstances reviews and at Mandatory Reconsideration.

#### **Annex A – Standard Paragraphs**

Decision makers should use the below standard paragraphs, as relevant, to inform the claimant about the outcome of their HRT decisions.



## New UC Claim

### Managing affected cases

Firstly, a DM should assess whether a **claimant is able to work**. If they are, the claim should be disallowed as the claimant does not meet the threshold set out in *AT*.

#### SP1. Standard paragraph if claimant is able to work

You claimed Universal Credit on [xx/xx/xx].

We have decided that you cannot get Universal Credit.

#### **You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- you are able to work, which means you do not meet the hardship criteria set out in a recent legal case called 'AT'.

### The AT legal case

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The criteria only apply to people who are not able to work. We have decided that you are able to work at this time which means you cannot get Universal Credit.

*The decision must include the MR standard paragraph.*

If the claimant is **unable to work but does not raise hardship** at the initial decision-making stage, the decision to disallow UC **should be stayed** using the below standard paragraphs.

#### SP2. Standard paragraph for staying a decision – single claimant

You claimed Universal Credit on [xx/xx/xx].

We have decided that you cannot get Universal Credit.

However, we have paused making the decision on your Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

You do not have the right to appeal against the Secretary of State's decision to pause making the decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

Standard paragraph for staying a decision – joint claim –  
SP3. partner not entitled (not on HRT grounds)

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You and your partner claimed Universal Credit on [xx/xx/xx].

We have decided that you and your partner cannot get Universal Credit at this time.

However, we have paused making the decision on your Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note: The reason your partner cannot get Universal Credit will be explained to them in a separate notification**

You do not have the right to appeal against the Secretary of State’s decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

Standard paragraph for staying a decision – joint claim –  
SP4. partner not entitled (both on HRT grounds)

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You and your partner claimed Universal Credit on [xx/xx/xx].

We have decided that you and your partner cannot get Universal Credit at this time.

However, we have paused making the decision on your joint Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note:** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against the Secretary of State’s decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

Standard paragraph for staying a decision – joint claim –

SP5. \_\_\_\_\_ partner entitled only

You and your partner claimed Universal Credit on [xx/xx/xx].

We have decided to treat you as an ineligible partner. This means that whilst your partner can get Universal Credit, you cannot at this time.

However, we have paused making the decision on your Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’. This means that you are treated as an ineligible partner, as this case may be relevant to you.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note:** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against this Secretary of State’s decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

Standard paragraph for staying a decision – joint claim –

### **Hardship raised – AT Charter threshold not met**

Having considered the AT Charter threshold, if this is not met, a DM must disallow the claim on HRT grounds.

#### SP6. Standard paragraph when AT Charter threshold is not met - When claimants mention hardship at the making of their UC claim

You claimed Universal Credit on [xx/xx/xx].

We have decided that you cannot get Universal Credit.

#### **Your claim of hardship**

You told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

When reviewing your claim, we have considered whether you will suffer hardship if Universal Credit is not paid.

#### **You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’.

#### **The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and IMA intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria.

We have decided that **you do not meet the criteria** and so cannot get Universal Credit.

#### ***Reason for our decision***

*[Explain our reasoning to prevent unnecessary confusion and contact as the claimant will most likely want to know why.]*

The decision must include the MR standard paragraph.

SP7. Standard paragraph when AT Charter threshold is not met – When claimants represent hardship following the staying of their HRT decision

You claimed Universal Credit on [xx/xx/xx].

We have decided that you cannot get Universal Credit

On [x date] we told you that we were pausing the decision on your claim because of the ‘AT’ legal case.

**Your claim of hardship**

On [y date] you told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

We have looked again at your claim.

**You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in the case of ‘AT’ – as explained in our previous letter to you.

**Reason for our decision**

*[Explain our reasoning to prevent unnecessary confusion and contact as the claimant will most likely want to know why.]”*

The decision must include the MR standard paragraph.



### **Hardship raised – AT Charter threshold met**

Having considered the AT Charter threshold, if this is met, a DM must grant the claim on HRT grounds under normal BAU rules.

SP8. Standard paragraph for meeting the AT Charter threshold – When claimants mention hardship at the making of their UC claim:

You claimed Universal Credit on [xx/xx/xx].

We have decided that you can get Universal Credit.

#### **Your claim of hardship**

When you made your claim, you told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

#### **Why you can get Universal Credit**

You can get Universal Credit because, at the current time, you satisfy the hardship criteria set out in the 'AT' legal case.

This applies even though you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit.

#### **The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (*AIRE Centre and IMA intervening*) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria.

Your Universal Credit claim will be granted on this ground subject to you meeting all the Universal Credit eligibility criteria. This will be kept under review.

However, you need to be aware that this decision is being appealed by the Secretary of State.

If the appeal is successful, any Universal Credit you have been paid may be recovered from you. If that happens, we will let you know.

[This decision will include standard dispute paras.]

*SP9.* Standard paragraph for meeting the AT Charter threshold – When claimants represent hardship following the staying of their HRT decision

You claimed Universal Credit on [xx/xx/xx].

We have decided that you can get Universal Credit.

On [x date] we told you that we were pausing the decision on your claim because of the ‘AT’ legal case.

**Your claim of hardship**

On [y date] you told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

We have looked again at your claim.

**Why you can get Universal Credit**

You can get Universal Credit because, at the current time, you satisfy the hardship criteria set out in the ‘AT’ legal case – as explained in our previous letter to you. This will be kept under review.

This applies even though you do not have a qualifying right to reside in Great Britain which gives you access to Universal Credit.

However, you need to be aware that this decision is being appealed by the Secretary of State.

If the appeal is successful, any Universal Credit you have been paid may be recovered from you. If that happens, we will let you know.

[This decision will include standard dispute paras.]

## HRT change of circumstances reviews

### Managing affected cases

Claimants are required to report any changes to their circumstances (i.e. if they stopped working) and there is chance that the claimant will no longer meet the HRT requirements for the purposes of accessing UC. However, it is possible that some claimants may fall under AT. In these cases, DMs should assess whether a claimant is able to work. If they can, the existing award should be terminated as the claimant does not meet the threshold set out in AT. This will be a supersession for a change of circumstances. **Please note, if there is a change to a claimant's circumstances and they continue to meet the UC requirements, the above does not apply.**

#### SP10. Standard paragraph if claimant is able to work

You reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

We have decided that you can no longer get Universal Credit.

#### **You can no longer get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- you are able to work, which means you do not meet the hardship criteria set out in a recent legal case called 'AT'.

#### The AT legal case

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The criteria only apply to people who are not able to work. We have decided that you are able to work at this time which means you cannot get Universal Credit.

The decision must include the MR standard paragraph.

If the claimant is **unable to work but does not raise hardship** at the initial decision-making stage, the decision to disallow UC **should be stayed** using the below standard paragraphs.

SP11. Standard paragraph for staying a decision – single claimant

You reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

We have decided that you can no longer get Universal Credit

However, we have paused making the decision on your Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

You do not have the right to appeal against the Secretary of State's decision to pause making the decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

SP12. Standard paragraph for staying a decision - joint claim - partner not entitled (not on HRT grounds)

You reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

We have decided that you and your partner can no longer get Universal Credit at this time.

However, we have paused making the decision on your Universal Credit claim.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note: The reason your partner cannot get Universal Credit will be explained to them in a separate notification**

You do not have the right to appeal against this Secretary of State's decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

SP13. Standard paragraph for staying a decision – joint claim – partner not entitled (both on HRT grounds)

You and your partner reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

We have decided that you and your partner can no longer get Universal Credit. However, we have paused making the decision on your joint Universal Credit claim

**We have paused making the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note.** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against this Secretary of State's decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

SP14. Standard paragraph for staying a decision – joint claim – partner entitled only

You and your partner reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

We have decided to treat you as an ineligible partner. This means that whilst your partner can get Universal Credit, you can no longer get it at this time.

However, we have paused making the decision on your Universal Credit claim.

**We have paused making the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'. This means that you are treated as an ineligible partner as this case may be relevant to you.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note.** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against this Secretary of State's decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

### **Hardship raised – AT Charter threshold not met**

Having considered the AT Charter threshold, if this is not met, a DM must disallow the claim on HRT grounds.

#### SP15. Standard paragraph when AT Charter threshold is not met – When claimants mention hardship when reporting a change in circumstances

You reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].

On x date we told you that you could no longer get Universal Credit but that we would be pausing making that decision because of the case of AT.

We also told you that if our decision caused you hardship you should tell us.

#### **Your claim of hardship**

You told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

When reviewing your claim, we have considered whether you will suffer hardship if Universal Credit is not paid.

#### **You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’ – as explained in our previous letter to you.

#### ***Reason for our decision***

*[Explain our reasoning to prevent unnecessary confusion and contact as the claimant will most likely want to know why.]*

*The decision must include the MR standard paragraph.*

### **Hardship raised – AT Charter threshold met**

Having considered the AT Charter threshold, if this is met, a DM must grant the claim on HRT grounds under normal BAU rules.

#### SP16. Standard paragraph for meeting the AT Charter threshold – When claimants mention hardship when reporting a change in circumstances

You reported a change in your circumstances on your Universal Credit claim on [xx/xx/xx].



On x date we told that you could no longer get Universal Credit but that we would be pausing making that decision because of the case of AT.

We also told you that if our decision caused you hardship you should tell us.

### **Your claim of hardship**

When you reported a change in your circumstances, you told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

### **Why you can get Universal Credit**

You can get Universal Credit because, at the current time, you satisfy the hardship criteria set out in the ‘AT’ legal case – as explained in our previous letter to you.

This applies even though you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit.

### **The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (*AIRE Centre and IMA intervening*) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria.

Your Universal Credit claim will be granted on this ground subject to you meeting all the Universal Credit eligibility criteria. This will be kept under review.

However, you need to be aware that this decision is being appealed by the Secretary of State.

If the appeal is successful, any Universal Credit you have been paid may be recovered from you. If that happens, we will let you know.

[This decision will include standard dispute paras.]

## **Mandatory Reconsiderations**

Standard paragraph to use for Mandatory Reconsiderations affecting periods of entitlement on or after 12/12/22.

Firstly, a DM should assess whether a **claimant is able to work**. If they are, the claim should be disallowed as the claimant does not meet the threshold set out in AT.

SP17. Standard paragraph if claimant is able to work

You claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

We have decided that you cannot get Universal Credit.

**You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- you are able to work, which means you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The criteria only apply to people who are not able to work. We have decided that you are able to work at this time which means you cannot get Universal Credit.

*The decision must include the MR standard paragraph.*

If the claimant is **unable to work but does not raise hardship** at the initial decision-making stage, the decision to disallow UC **should be stayed** using the below standard paragraphs.

**SP18. Standard paragraph for staying a decision – single claimant**

You claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

However, we have paused making the decision on your MR application.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called 'AT'.

**The AT legal case**

The legal case is 'Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens' Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)'.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

You do not have the right to appeal against the Secretary of State's decision to pause making the decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

– joint claim

SP19. Standard paragraph for staying a decision – partner not entitled (not HRT grounds)

You and your partner claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

We have decided to pause making the decision on your Mandatory Reconsideration application.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note: The reason your partner cannot get Universal Credit will be explained to them in a separate notification**

You do not have the right to appeal against the Secretary of State’s decision to pause making the decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

SP20. Standard paragraph for staying a decision – partner not entitled (both on HRT grounds)

– joint claim

You and your partner claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You and your partner applied for a Mandatory Reconsideration on [xx date].

We have decided to pause making the decision on your joint Mandatory Reconsideration application.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

The decision in this case is being appealed by the Secretary of State.

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note.** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against the Secretary of State’s decision to pause making the decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you have another type of right to reside, please let us know.

– joint claim

You and your partner claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

We have decided to treat you as an ineligible partner. This means that whilst your partner can get Universal Credit, you cannot at this time.

However, we have paused making the decision on your application.

**We have paused the decision because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’. This means that you are treated as an ineligible partner as this case may be relevant to you.

**The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and Independent Monitoring Authority for Citizens’ Rights Agreements (IMA) intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria. **You do not meet the criteria.**

Because of this appeal, we are pausing making decisions on claims affected, under section 25 of the Social Security Act 1998.

Our decision in relation to your claim will be reviewed when the legal case has been finally decided in the Court of Appeal or the Supreme Court.

**To note.** Your partner will receive a separate notification with their decision.

You do not have the right to appeal against this Secretary of State’s decision on your claim.

**If this situation causes hardship**

If this situation will cause you hardship, or if your circumstances change or you believe you another type of right to reside, please let us know.

### **Hardship raised – AT Charter threshold not met**

Having considered the AT Charter threshold, if this is not met, a DM must disallow the claim on HRT grounds.

#### **SP22. Standard paragraph when AT Charter threshold is not met – When claimants mention hardship at the making of their MR claim**

You claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

We told you that we were pausing making a decision on your MR because of the AT case, but that you could apply to get Universal Credit on hardship grounds.

We have decided that you cannot get Universal Credit.

#### **Your claim of hardship**

You told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

When reviewing your claim, we have considered whether you will suffer hardship if Universal Credit is not paid.

#### **You cannot get Universal Credit because:**

- you do not have a qualifying right to reside in Great Britain that allows you to access Universal Credit; and
- based on the information provided with your claim you do not meet the hardship criteria set out in a recent legal case called ‘AT’ – as explained in our previous letter to you.

#### **The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions v AT (AIRE Centre and IMA intervening) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria.

We have decided that you do not meet the criteria and so cannot get Universal Credit.

#### ***Reason for our decision***

*[Explain our reasoning to prevent unnecessary confusion and contact as the claimant will most likely want to know why.]*

*The decision must include the MR standard paragraph.*

### **Hardship raised – AT Charter threshold met**

Having considered the AT Charter threshold, if this is met, a DM must grant the claim on HRT grounds under normal BAU rules.

#### **SP23. Standard paragraph for meeting the AT Charter threshold – When claimants mention hardship at the making of their MR claim**

You claimed Universal Credit on [xx/xx/xx].

Your claim was not allowed because you did not have a right to reside in Great Britain that allows you to claim benefits.

You applied for a Mandatory Reconsideration on [xx date].

We have decided that you can get Universal Credit.

#### **Your claim of hardship**

When you made your claim, you told us that you – and any dependants, if you have them – will suffer hardship if you do not receive Universal Credit.

#### **Why you can get Universal Credit**

You can get Universal Credit because, at the current time, you satisfy the hardship criteria set out in the ‘AT’ legal case – as explained in our previous letter to you.

This applies even though you do not have a qualifying right to reside in Great Britain that allows you to access to Universal Credit.

#### **The AT legal case**

The legal case is ‘Secretary of State for Work and Pensions *v* AT (*AIRE Centre and IMA intervening*) [2022] UKUT 330 (Administrative Appeals Chamber AAC)’.

The case states that some people may get Universal Credit even if they do not have a qualifying right to reside in Great Britain but meet the hardship criteria.

Your Universal Credit claim will be granted on this ground subject to you meeting all the Universal Credit eligibility criteria. This will be kept under review.

However, you need to be aware that this decision is being appealed by the Secretary of State.

If the appeal is successful, any Universal Credit you have been paid may be recovered from you. If that happens, we will let you know.

[This decision will include standard dispute paras.]

### **Annex B – AT Scenarios**



### **Scenario 1 – AT Charter Hardship accepted**

Louisa is a Romanian national and has been residing in the UK since 08.11.2018. She was granted presettled status on 02.02.2021. On 22.12.2022 Louisa applied for UC with the support of her local women's domestic violence refuge. With the assistance of her support worker she entered the following information to her UC journal: Louisa was in genuine and effective work up until the birth of her son in September 2021 and was on maternity leave until September 2022. After this she was jobseeking. Whilst looking for work she was financially supported by her partner and struggled to find work whilst balancing childcare. As the time passed and the bills started to increase her partner started to become violent towards her. On the 20.11.2022 the police were called and Louisa and her son had to move to a safer accommodation. The accommodation, provided by a shelter, is not suitable to be lived in for a prolonged period of time, and LA made it clear that presently they are unable to provide a more suitable accommodation for a mother with a young child. Louisa has health conditions and her son (after having been assessed by the local authority) is showing signs of delayed development. Louisa is isolated and the sole carer of her young son. She has only received the occasional food voucher and had no further support from family or friends, and despite receiving some support from the LA, it is not sufficient to cover the food cost for Louisa and her baby in the immediate term. Louisa is happy to provide evidence if supported. Louisa is placed in the 'Work Focussed Interview' group due to the age of her son.

On initial consideration of the HRT it is apparent that Louisa has no qualifying right to reside for UC purposes. However, given the details provided regarding her current circumstances and inability to meet her and her child's most basic needs, staying the decision would be incorrect. The Decision Maker decides to follow the guidance in the AT Charter instructions and put the claim into payment on AT Charter grounds.

### **Scenario 2 – Living with family, able to work**

Antonio is an Italian national who came to the UK in the 1990s, as a child aged 9. Antonio believes he should be considered as having Settled Status under EUSS – previously he was granted Pre-Settled Status in 2019 and has appealed the Home Office decision. He applied to UC on the 13.12.2022. Antonio has disabilities and lives with his parents in a local authority property and is named on the tenancy agreement. Both of his parents are retired now and receive State Pension Credit. His mother also receives Carer's Allowance for Antonio. Antonio is actively jobseeking but is struggling to secure a job due to his disabilities. During the HRT interview the DM determines Antonio to have been covered by the Withdrawal Agreement at the relevant time but decides that he has no qualifying right to reside for the purposes of his claim to UC. The DM decides to stay making the decision. Once this is communicated to Antonio, he contacts the Service Centre and explains that he is unable to survive without UC.

The DM follows the guidance in AT Charter instructions to assess if Antonio can meet his basic needs. Following the conversation with him, alongside information from departmental systems, the DM decides that although Antonio might be struggling to find work, he is able to work and signposting to support him would be sensible. Furthermore, the DM believes there is no concerns of Antonio's basic needs not being met due to other benefits received by the household. The DM makes a decision to disallow Antonio's claim because he does not have a qualifying right to reside and does not meet the AT threshold.

### **Scenario 3 – Savings, able to work**

Viktor is a Dutch national. He is separated from his Canadian national spouse and has one child born in 2013. Viktor came to the UK on 25.07.2019 and was granted pre-settled status on 29.10.2019. During his stay in the UK he did not work because his ex-partner was the breadwinner and he looked after their daughter. The relationship broke down in October 2022 and his partner left the UK. His partner ceased paying rent on the property and he approached the Local Authority who placed him and his daughter in a temporary accommodation and covered the accommodation fees. Viktor applied for UC on the 01.01.2023. He was considered by the DM to have no qualifying right to reside for UC and the decision was stayed.

Viktor contacts the Service Centre to explain that he is receiving no other help or assistance and his savings are running out. The DM considers whether Viktor's and his daughter's basic needs can be met. The DM notices that on the claim disclosure Viktor declared £4,000 in savings. During their call it is determined that Victor still has £3,600 of these savings and he is looking for work, to fit around his daughter's school time. The DM determines that Viktor is able to meet his and his daughter's basic needs and that there are no blockers to him obtaining employment. The DM makes a decision to disallow Viktor's claim because he does not have a qualifying right to reside and does not meet the AT threshold.

### **Scenario 4 – Unable to work, supported by partner**

Anna is a Polish national and applied for UC on the 14.01.2023. Whilst the Decision Maker conducted the HRT the following information was gathered: she arrived in the UK in September 2018. Studied at University from 2018 until she graduated on 03.07.2021. She was granted pre-settled Status in 2020, valid until 2025. To this date she has never worked in the UK, she has declared health conditions and considers herself unfit for work. Anna has no dependents or family to derive a right from in the UK. Prior to her application to UC she had been sectioned under the Mental Health Act. She is still recovering from Psychosis and continues receiving treatment from Mental Health team. Her application to PIP is ongoing. In the claim disclosure Anna declared to have no housing costs. The decision is made to stay her HRT decision.

Anna stated in her journal that she will be in hardship if the decision is stayed. The Decision Maker contacts Anna and follows the guidance in these instructions to help assess whether her basic needs can be met. During the call Anna explains that she lives with her new partner who is covering the housing costs and other expenses. He currently earns £19,000 per year. The Decision Maker determines that Anna is not at risk of being unable to meet her basic needs and the decision to stay the case is correct. The DM makes a decision to disallow Anna's claim because she does not have a qualifying right to reside and does not meet the AT threshold.

### **Scenario 5 - Couple claim, ineligible partner**

Jacques is a French national and is living with his British partner Rachael. On the 16.12.2022 the couple applied for UC. During the HRT interview the following information is gathered: Jacques has previously worked and been self-employed outside of the UK but has no work history in the UK. Since coming to the UK in Jan 2019 he has been considered a jobseeker. He had two offers of employment rescinded during the pandemic and provided no further evidence of jobseeking. Jacques has developed anxiety and depression and was found to be unfit for work by his GP. He provided evidence of that. As he no longer was able to work or look for work he started caring for his partner full-time. As his partner is a

British national, she is entitled to UC immediately. Rachel has extensive health problems and is in receipt of PIP too. Jacques is receiving CA as her primary carer. The DM decides that Jacques has no qualifying right to reside for UC purposes and as he is part of a couple claim the negative decision was made and communicated. The couple contacted the Service Centre and stated that they are struggling to pay their bills and believe themselves to be in hardship in accordance with AT.

The Decision Maker contacts Jacques again and discusses his current situation. Housing costs are covered entirely by his partner's UC, they are in receipt of other benefits in addition to the UC payments. They are still able to maintain their car, pay for groceries and utilities. There are no concerns made in regard to health and hygiene concerns. The DM decides that the couple are not at risk of not meeting their basic needs and Jacques's request is dismissed.

**DMA(Leeds)**  
**March 2023**

### Claimants with Pre-Settled Status making a claim to Universal Credit

#### Background

1. This notice clarifies the position for Decision Makers following the decision of the Upper Tribunal handed down on 12/12/22 in the case of *SSWP v AT (AIRE Centre and IMA Intervening) [2022] UKUT 330 (AAC)* (“AT”) and should be read in conjunction with **AT Charter Instructions - Decision Making Steps** which can be accessed using this link.
2. This affects Universal Credit entitlement for claimants with pre-settled status (“PSS”) under the EU Settlement Scheme (“EUSS”) who have no other legal right to reside for the purpose of the habitual residence test (“HRT”). **This means that decisions for certain cases are now to be stayed.**
3. This affects new claims to UC, existing UC cases at the mandatory reconsideration stage, and HRT review cases (both single and joint claimants) **which relate to entitlement of PSS holders from 12 December 2022 onwards**. It does not affect decisions considering entitlement before 12 December 2022, claims from those with Settled Status, a Certificate of Application or any other form of leave, or claims to other benefits. This also does not affect claims from non-EEA national claimants, including those from Norway, Iceland, Liechtenstein and Switzerland, as well as claimants who were not in scope of the Withdrawal Agreement at the end of the transition period (31 December 2020). Such cases should be decided in accordance with existing processes.

#### AT decision

4. The case of AT concerns an EU national with PSS who claimed UC in 2021. As she had no qualifying right to reside for the purposes of UC, her claim was disallowed – she was not considered to be in GB. AT appealed to the First-Tier Tribunal (“FTT”) who allowed her appeal on the grounds that without UC, AT and her daughter would not be able to live “in dignified conditions” in accordance with the judgment of *CG v The Department for Communities in Northern Ireland C-709/20* (“CG”).
5. In law, the FTT found that the EU Charter of Fundamental Rights applied through the Withdrawal Agreement and that the case of CG meant her individual circumstances should be assessed. The FTT found on her particular facts that it was a breach of her Charter rights not to grant her UC and accordingly, reg 9(1), (2) and 3(c)(i) of the UC Regs 2013 (the provisions that require the claimant to be in GB) were disapplied on Charter grounds, meaning that the SSWP was wrong to disallow the UC claim.
6. The SSWP appealed this decision on various grounds including that as AT had made her UC claim after 1 January 2021 (and so post the end of transition period), the Charter did not apply through the Withdrawal Agreement in the way argued by AT. It was also argued that the judgment of CG had been wrongly applied by the FTT in her case, that it was not authority for the SSWP needing to do an individualised assessment of a claimant’s position on Charter grounds in this way and that the SSWP could rely on an individual being able to seek relevant support, for example from local authorities as needed.

7. The case was dealt with as a lead case in the Upper Tribunal (“UT”) as there are several appeals both in the FTT and UT raising similar issues and it is recognised that the legal issues are complex and novel. The UT ultimately dismissed the Secretary of State’s appeal but has already granted leave to appeal to the Court of Appeal.
8. Pending the onward appeal, the UT findings in AT are declaratory in law, meaning that they can be applied to new cases from the date of the decision. The SSWP can, however, stay decision making pending an appeal in a lead case which is what will happen now, subject to the below.
9. The AT case is listed to be heard in the Court of Appeal on 9 and 10 March 2023.

### **Next steps for Decision Makers**

10. The next steps are set out more fully in the **AT Charter Case Assessment – Decision Making steps** ([link](#)) and so those instructions should be followed as relevant. However, by way of overview, please note the following key points:
  11. Each claim should first and foremost be considered under BAU HRT rules. This means that all new claims for UC, both from single and joint claimants, in which an HRT is needed should firstly proceed for an HRT assessment in the usual way. If the claimant passes the HRT, the UC claim proceeds in the usual way.
  12. This also applies to all changes of circumstances received after 12 December 2022 which potentially affect the claimant’s existing right to reside. In either case, if the claimant/both partners pass the HRT, the UC claim/existing award continues on this basis.
  13. At mandatory reconsideration stage, if the original HRT refusal decision is overturned, the claim for UC is awarded in the usual way. If the original HRT refusal is maintained but the claimant is now found to be able to pass the HRT, the UC claim proceeds from when the HRT was met.
  14. For claimants who do not meet HRT, this does not necessarily mean that they are in scope of the AT decision. For those not in scope of the AT decision, their UC claim should be refused for not passing the HRT in the usual way.
  15. The AT cohort are EU nationals with pre-settled status who are in scope of the Withdrawal Agreement. If they are assessed as able to work, their UC claim should be refused for not passing the HRT. For claimants assessed as not able to work, the decision to refuse on HRT grounds should be stayed under Section 25(2) of the Social Security Act 1998, however in the event of a claimant raising hardship, this should be considered in line with the AT Charter threshold as per the link above.
  16. For any cases and at any stage where the DM is unsure of how to proceed, the case (with all evidence) should be escalated to DMA Leeds for further consideration using this link.

