

Benefits Bulletin

EEA Nationals...

8th March 2024Issue **5** [2024]

1. Background...

1.1: In [Benefits Bulletin 1 \[2023\]: EEA Nationals and Benefits](#) (dated 20th January 2023), we brought news on a decision of the Upper Tribunal which held that EEA Nationals who were living in the United Kingdom (UK) and had PRE-SETTLED STATUS could seek to apply for Universal Credit (and thereby also Pension Credit if they were of 'state pension age') if, without this financial support, they would be at risk of living in an undignified manner.

1.2: We then more recently, in [Benefits Bulletin 2 \[2024\]: Benefits Update](#) (dated 5th February 2024), brought news of how the decision of the Upper Tribunal was upheld in the Court of Appeal.



1.3: At the time we reported that all would rest on the outcome of any Department for Work and Pensions (DWP) appeal against the Court of Appeal judgement to the Supreme Court.

2. Latest news...

2.1: It was announced on 8th February 2024 that the Supreme Court refused to grant permission for the DWP to appeal against the decision. This is because in the view of the Supreme Court the DWP could show no arguable error in law within the Court of Appeal's ruling.

2.2: In consequence, the Court of Appeal's judgement is final and should be followed by the DWP Decision-Makers.



2.3: The ruling is important for EEA Nationals who have PRE-SETTLED STATUS who are living in Wolverhampton and have no money or very little money.

2.4: It opens the door for such people to apply for Universal Credit even if they do not have a 'qualifying right of residence' (because e.g. they were not a 'worker' or 'self-employed person' or family member of such a person), if there would be a risk of violation to their human dignity because they are not in a position to meet their basic needs without any financial support / extra financial support.

2.5: As stated, the same argument exists in the case of Pension Credit and EEA Nationals who have reached 'state pension age'.

3. The Advice...

3.1: Please see the advice provided by Child Poverty Action Group (CPAG) on this issue.



[Advice for Advisers](#)

3.2: This advice is aimed at those who seek to support people who have PRE-SETTLED STATUS who wish to apply for Universal Credit or have already applied but perhaps had their case 'stockpiled' (it is understood that nationally as many as 2,800 cases have been stockpiled), as a result of the DWP's ongoing legal challenges on the issue.

3.3: The information provided here confirms a number of important points including that:

- This provision may apply to others - not just EEA Nationals who have PRE-SETTLED STATUS
- The provision is concerned about a person being without the 'most basic needs' and that whilst this could vary from person to person it would essentially mean being deprived of housing, heating, food, clothing and personal hygiene
- Anyone seeking to rely on this provision should look to explain the risk to their ability to remain living in dignified circumstances without financial support when making an application for Universal Credit (or Pension Credit)
- That the DWP cannot simply seek to rely on the suggestion that help is available from a local authority through Social Services or charitable support unless this help is available and adequate

3.4: CPAG also point out that the 'risk' to dignity is not merely being without sufficient resources to meet basic needs at the point of application.

It is about whether there is an actual and / or ongoing risk.

3.4: In final analysis it is not sufficient for a person to show simply that there would be a risk to their dignity without due financial support. They will also need to show that there is no other means available to them which could provide them with the reliable source of financial support they need.

3.5: In respects of this issue the DWP may seek to argue that the person could avoid destitution through work. Therefore, the person involved should be prepared to highlight any barriers to employment such as homelessness, poor physical or mental health, domestic abuse or childcare or other care related responsibilities.



You may find a copy of the DWP's own guidance to Decision Makers on this issue on this link.

[Charter Instructions - Decision Making Steps](#)

However, please note, as CPAG point out in its Advice for Advisers this was written before the Supreme Court refused its appeal against the Court of Appeal's Judgement.

Note: The provision covered herein is of no practical help to people who due to their immigration status are held to have 'No Recourse to Public Funds' (NRPF). Please see this [LINK](#) for more information on 'public fund' benefits and entitlements.

Welfare Rights Service
Specialist Support Team
City of Wolverhampton Council
WRS@wolverhampton.gov.uk