



Neutral Citation Number: [2021] EWHC 2509 (Admin)

Case No: CO/299/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/09/2021

Before:

PETER MARQUAND
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Between:

THE QUEEN on the application of	<u>Claimant</u>
KELLY ANNE KING	
- and -	
THE SECRETARY OF STATE FOR EDUCATION	<u>Defendant</u>

Adrian Berry and David Lawson (instructed by the **Public Interest Law Centre**) for the **Claimant**

Galina Ward (instructed by **GLD**) for the **Defendant**

Hearing dates: 6 and 7 July 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30 on 17 September 2021.

Peter Marquand:

Introduction

1. The events that form the background to this claim took place whilst the United Kingdom was still subject to European Union law (“EU law”). The Claimant alleges that the refusal of the Defendant to provide her with maintenance support for living and other costs under the regulations for student support applicable at the time discriminated against her on grounds of nationality.
2. The Claimant is a national of Zimbabwe and is married to Mr King, a British citizen. Whilst Mr King lived and worked in the United Kingdom, the Claimant lived in Zimbabwe. However, when Mr King moved to work in the Republic of Ireland, the Claimant moved there to live with him. When Mr King’s employment in the Republic of Ireland came to an end, the Claimant and Mr King returned to the United Kingdom. The Claimant wished to qualify as an operating department practitioner and to work in the NHS. She therefore undertook various courses, but in particular applied for the necessary degree at Sheffield Hallam University. The Claimant applied for a student loan and student maintenance support in order to fund those university studies and assist with her family’s living expenses.
3. The Defendant is responsible for providing such funding, although on a day-to-day basis this is undertaken by Student Finance England operated by the Student Loan Company Ltd. Student Finance England, applying the relevant regulations, granted the Claimant a loan to cover the tuition fees, but refused maintenance support. It is the decision to refuse to provide the maintenance support for living and other costs that is the subject of the Claimant’s challenge. That challenge is made on two grounds. First, that the refusal is discrimination against her on the grounds of nationality, which is prohibited under EU law. Secondly, that the refusal is discrimination against her on grounds of nationality in breach of the European Convention on Human Rights (ECHR), as incorporated into English law by the Human Rights Act 1998 (HRA). The Defendant denies any discrimination under EU law and maintains that the different treatment of the Claimant is justified and therefore not a breach of the Claimant’s rights under the ECHR.
4. For the Claimant, Mr Berry addressed the court on the EU law issues and Mr Lawson on the issues under the ECHR. Ms Ward represented the Defendant and I am grateful to counsel for their oral and written submissions.

The legal framework

Financial arrangement for student support

5. The relevant primary legislation is the Teaching and Higher Education Act 1998 (THEA). Section 22 THEA requires regulations to be made to make provision authorising or requiring the Defendant to make grants or loans for prescribed purposes to eligible students in connection with their undertaking designated higher or further education courses. Those regulations are the Education (Student Support) Regulations 2011/1986 (“the Regulations”). Section 23(4) THEA gives the Defendant a discretion to delegate his functions exercisable under the Regulations. Such delegation has taken

place to the Student Loan Company Ltd¹. However, section 23(5) THEA provides that any arrangement made under subsection 4 shall not prevent the Defendant from exercising the function in question himself.

6. Regulation 4 of the Regulations² state that the categories of eligible students are set out in Part 2 of Schedule 1 to the Regulations. Part 1 of the Schedule contains various definitions in Paragraph 1. Part 2 has 15 paragraphs setting out the categories of eligible students. Each paragraph contains a number of requirements that must be met. However, the general scheme of Part 2 may be summarised as follows. It covers the categories concerning persons:
- i) who are settled in the United Kingdom, other than by reason of having acquired the right of permanent residence (being “ordinarily resident” for a period is also a requirement) – paragraph 2;
 - ii) who are settled in United Kingdom by virtue of having acquired the right of permanent residence (being “ordinarily resident” for a period is also a requirement) – paragraph 3;
 - iii) who are refugees – paragraph 4;
 - iv) who are granted stateless leave – paragraph 4A;
 - v) who are granted leave to remain under section 67 Immigration Act – paragraph 4B;³
 - vi) who are granted humanitarian protection – paragraph 5;
 - vii) who are eligible by virtue of rights arising from EU Law and/or residence within the European Economic Area (“EEA”) or Switzerland – paragraphs 6 to 11;
 - viii) who are children of a Swiss national – paragraph 12;
 - ix) who are children of a Turkish worker – paragraph 13;
 - x) who have been resident in the United Kingdom for a long time – paragraph 13A.
7. Paragraphs 6 and 9 are relevant to this case and the relevant parts of those paragraphs are as follows:

“6.—
(1) A person who—

(a) is—

(i) an EEA migrant worker or an EEA self-employed person;
...
”

¹ In England this is the body corporate exercising the function, but it is styled: “Student Finance England”.

² As they were at the relevant time.

³ Unaccompanied refugee children: relocation and support

(iii) a family member of a person mentioned in paragraph (i) or (ii);

...

(b) subject to sub-paragraph (2), is ordinarily resident in England on the first day of the first academic year of the course; and

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

...”

“9.—

(1) A person who—

(a) is either—

(i) an EU national on the first day of the first academic year of the course; or

(ii) a family member of a such a person;

(b) is—

(i) attending or undertaking a designated course [...] in England; or

...

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course;

...”

8. Paragraph 1 contains the following relevant definitions:

““EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

...

“EEA national” means a national of an EEA State other than the United Kingdom;

...

“worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be.”

9. The Regulations provide for two forms of student support. First, a loan concerning the fees for the course and secondly, grants and loans for living and other costs (“maintenance support”). Regulations 38(3) and 69(3)(a) preclude the award of grants and loans, respectively, for living and other costs where the student falls within paragraph 9 or 10 of Schedule 1 to the Regulations.

Relevant EU law

10. In Part 2 of the Treaty on the Functioning of the European Union (“TFEU”) the articles relating to non-discrimination and citizenship of the European Union (referred to as the “Union”) are set out. The relevant parts of the TFEU and the articles are set out below:

“Article 18

(ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

...

“Article 20

(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

...

“Article 21

(ex Article 18 TEC)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”

11. Directive 2004/38 (“the Citizenship Directive”) gives effect to how the article 21 TFEU rights are to operate. Article 3 of the Citizenship Directive makes it clear that it applies to EU citizens (referred to as “Union citizens” or “citizens of the Union”) who move to or reside in a member state other than that of which they are a national, and to their family members, as defined within point 2 of article 2. Family members includes the spouse of a Union citizen. The “host member state” means the member state to which

the Union citizen moves in order to exercise their right of free movement and residence (point 3 of article 2).

12. Article 7 of the Citizenship Directive provides a right of residence in another member state for a period of longer than three months if, amongst other matters, the Union citizen is a worker. The family members of a Union citizen who is a worker who are not nationals of a member state (known as “third country nationals”, abbreviated to “TCN”) have a right of residence when they accompany or join the Union citizen in the host member state.
13. Article 24 of the Citizenship Directive sets out the provisions on equal treatment as follows:

“1. 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 shall 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 a Member State and who have the right of residence or permanent residence.

“2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.”

14. In *R v Immigration Appeal Tribunal and another, ex parte Secretary of State for the Home Department* [1992] 3 All ER 798 (known as: “*Surinder Singh*”), the Court of Justice of the European Union (CJEU) considered the position of Mr Singh, an Indian national, married to Mrs Singh (also referred to as Ms Purewal), a British citizen. They had lived and been employed in the Federal Republic of Germany, but returned to the United Kingdom at the end of 1985 in order to open a business. Mr Singh was initially granted leave to remain in the United Kingdom, but following a decree nisi of divorce this was cut short and a deportation order made against him. The decision the CJEU had to make was whether the then in force Treaty and Council Directive (the predecessors to TFEU and Citizenship Directive concerning the right to free movement and residence of workers) entitled Mr Singh, as a TCN, to enter and remain in the United Kingdom in circumstances where his spouse had previously exercised her right to free movement in another member state (namely the Federal Republic of Germany).
15. The CJEU answered the question by concluding that the Treaty and Directive required a member state to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of one of its nationals returning to its territory, where that national

had previously exercised their right of free movement. At paragraph 19 onwards the CJEU held:

“19. A national of a member state might be deterred from leaving his country of origin in order to pursue an activity as an employed or self-employed person as envisaged by the Treaty in the territory of another member state if, on returning to the member state of which he is a national in order to pursue an activity there as an employed or self-employed person, the conditions of his entry and residence were not at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another member state.

“20. He would in particular be deterred from so doing if his spouse and children were not also permitted to enter and reside in the territory of his member state of origin under conditions at least equivalent to those granted them by Community law in the territory of another member state.

“21. It follows that a national of a member state who has gone to another member state in order to work there as an employed person pursuant to art 48 of the Treaty and returns to establish himself in order to pursue an activity as a self-employed person in the territory of the member state of which he is a national has the right, under art 52 of the Treaty, to be accompanied in the territory of the latter state by his spouse, a national of a non-member country, under the same conditions as are laid down by Regulation 1612/68, Directive 68/360 or Directive 73/148.

“22. Admittedly, as the United Kingdom submits, a national of a member state enters and resides in the territory of that state by virtue of the rights attendant upon his nationality and not by virtue of those conferred on him by Community law. In particular, as is provided, moreover, by art 3 of Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg, 16 September 1963; Misc 6 (1964); Cmnd 2309), a state may not expel one of its own nationals or deny him entry to its territory.

“23. However, this case is concerned not with a right under national law but with the rights of movement and establishment granted to a Community national by arts 48 and 52 of the Treaty. These rights cannot be fully effective if such a person may be deterred from exercising them by obstacles raised in his or her country of origin to the entry and residence of his or her spouse. Accordingly, when a Community national who has availed himself or herself of those rights returns to his or her country of origin, his or her spouse must enjoy at least the same rights of entry and residence as would be granted to him or her under Community law if his or her spouse chose to enter and reside in

another member state. Nevertheless, arts 48 and 52 of the Treaty do not prevent member states from applying to foreign spouses of their own nationals rules on entry and residence more favourable than those provided for by Community law.

16. In 2014 the CJEU in *O v Minister voor Immigratie, Integratie en Asiel* case C-456/12; [2014] QB 1163 considered similar circumstances to those in *Surinder Singh*, although by this time the TFEU and Citizenship Directive were in force. The case concerned two men, Mr O and Mr B, who were both TCNs and family members (as defined in the Citizenship Directive) of Union citizens at the relevant time. Mr O and Mr B had been residing with their respective family members (referred to as “sponsor O” and “sponsor B”) in Spain and Belgium for various periods of time. However, when Mr O and Mr B moved to the Netherlands with their family member, they were declined a right of residence there. Two of the questions to be resolved by the CJEU were, first, whether the Citizenship Directive should apply by analogy, following *Surinder Singh*, in particular as sponsor O sponsor B were not “workers” when in the host member state (Spain and Belgium respectively). Secondly, if the answer to the first question was “yes”, was there a certain minimum duration of the residence of the Union citizen in a host member state required before the TCN can acquire a right of residence in the Union citizen’s home member state.
17. In its analysis, the CJEU held that article 21(1) TFEU and the Citizenship Directive did not confer any autonomous right on TCNs (paragraph 36). Any rights conferred on TCNs were rights derived from the exercise of freedom of movement by a Union citizen (paragraph 36). Concerning the Union citizen who had a family member who was a TCN, the Citizenship Directive did not establish a derived right of residence for that TCN in the country of which the Union citizen was a national. However, the Citizenship Directive did establish a derived right of residence for that TCN in a member state of which the Union citizen was not a national, when the Union citizen had exercised their right to free movement to that member state and therefore came within the Citizenship Directive (paragraph 37 – 40). The Citizenship Directive was intended only to govern the conditions of entry and residence of the Union citizen in a member state other than the member state of which that Union citizen was a national. A member state cannot refuse its own nationals the right to enter its territory and remain there, under a principle of international law (paragraph 42).
18. Due to the arguments advanced by the parties in this case, it is necessary to set out a long extract from the judgment. The CJEU analysed whether a right of residence for a TCN may be derived from article 21(1) TFEU. The justification for a derived right of residence was stated to be on the basis that a refusal to allow such a right would discourage the Union citizen from exercising the right of free movement into the host state (paragraph 45). The CJEU referred to *Surinder Singh* and *Minister voor Vreemdelingenzaken en Integratie v RNG Eind* [2007] ECR I-10719 as confirming that a TCN family member of a Union citizen worker returning from a host member state to their own country had a derived right of residence from the TFEU (paragraph 46). The judgment continues in paragraph 46 as follows:

“... If that third country national did not have such a right, a worker who is a Union citizen could be discouraged from leaving the member state of which he is a national in order to pursue gainful employment in another member state simply because of

the prospect for that worker of not being able to continue, on returning to his member state of origin, a way of family life which may have come into being in the host member state as a result of marriage or family reunification: see the *RNG Eind* case, paras 35, 36, and *Iida's* case, para 70.

“47 Therefore, an obstacle to leaving the member state of which the worker is a national, as mentioned in *Ex p Secretary of State* and the *RNG Eind* case, is created by the refusal to confer, when that worker returns to his member state of origin, a derived right of residence on the family members of that worker who are third country nationals, where that worker resided with his family members in the host member state pursuant to, and in conformity with, Union law.

“48 It is therefore necessary to determine whether the case law resulting from *Ex p Secretary of State* and the *RNG Eind* case is capable of being applied generally to family members of Union citizens who, having availed themselves of the rights conferred on them by article 21(1) [TFEU], resided in a member state other than that of which they are nationals, before returning to the member state of origin.

“49 That is indeed the case. The grant, when a Union citizen returns to the member state of which he is a national, of a derived right of residence to a third country national who is a family member of that Union citizen and with whom that citizen has resided, solely by virtue of his being a Union citizen, pursuant to and in conformity with Union law in the host member state, seeks to remove the same type of obstacle on leaving the member state of origin as that referred to in para 47 above, by guaranteeing that that citizen will be able, in his member state of origin, to continue the family life which he created or strengthened in the host member state.

“50 So far as concerns the conditions for granting, when a Union citizen returns to the member state of which he is a national, a derived right of residence, based on article 21(1)[TFEU], to a third country national who is a family member of that Union citizen with whom that citizen has resided, solely by virtue of his being a Union citizen, in the host member state, those conditions should not, in principle, be more strict than those provided for by [Citizenship Directive] for the grant of such a right of residence to a third country national who is a family member of a Union citizen in a case where that citizen has exercised his right of freedom of movement by becoming established in a member state other than the member state of which he is a national. Even though [Citizenship Directive] does not cover such a return, it should be applied by analogy to the conditions for the residence of a Union citizen in a member state other than that of which he

is a national, given that in both cases it is the Union citizen who is the sponsor for the grant of a derived right of residence to a third country national who is a member of his family.

...

“53 On the other hand, an obstacle such as that referred to in para 47 above may be created where the Union citizen intends to exercise his rights under article 7(1) of [Citizenship Directive]. Residence in the host member state pursuant to and in conformity with the conditions set out in article 7(1) of [Citizenship Directive] is, in principle, evidence of settling there and therefore of the Union citizen's genuine residence in the host member state and goes hand in hand with creating and strengthening family life in that member state.

“54 Where, during the genuine residence of the Union citizen in the host member state, pursuant to and in conformity with the conditions set out in article 7(1)(2) of [Citizenship Directive], family life is created or strengthened in that member state, the effectiveness of the rights conferred on the Union citizen by article 21(1) [TFEU] requires that the citizen's family life in the host member state may continue on returning to the member state of which he is a national, through the grant of a derived right of residence to the family member who is a third country national. If no such derived right of residence were granted, that Union citizen could be discouraged from leaving the member state of which he is a national in order to exercise his right of residence under article 21(1) [TFEU] in another member state because he is uncertain whether he will be able to continue in his member state of origin a family life with his immediate family members which has been created or strengthened in the host member state: see the *RNG Eind* case, paras 35 and 36, and *Iida's* case, para 70.

“55 A fortiori, the effectiveness of article 21(1) [TFEU] requires that the Union citizen may continue, on returning to the member state of which he is a national, the family life which he led in the host member state, if he and the family member concerned who is a third country national have been granted a permanent right of residence in the host member state pursuant to article 16(1)(2) of [Citizenship Directive] respectively.

...

“61 In the light of all the foregoing considerations, the answer to the first, second and third questions is that article 21(1) [TFEU] must be interpreted as meaning that where a Union citizen has created or strengthened a family life with a third country national during genuine residence, pursuant to and in conformity with the conditions set out in article 7(1)(2) and article 16(1)(2) of

[Citizenship Directive], in a member state other than that of which he is a national, the provisions of that Directive apply by analogy where that Union citizen returns, with the family member in question, to his member state of origin. Therefore, the conditions for granting a derived right of residence to a third country national who is a family member of that Union citizen, in the latter's member state of origin, should not, in principle, be more strict than those provided for by that Directive for the grant of a derived right of residence to a third country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a member state other than the member state of which he is a national.”

19. The Immigration (European Economic Area) Regulations 2016 implemented the Citizenship Directive and transposed the principles discussed above of a right of residence for the TCN family member of a returning British citizen into UK legislation. They provided a number of rights for EEA nationals, but excluded a British citizen from the definition of an EEA national. However, under regulation 9 of those regulations, if a number of conditions were met, then the regulations applied to a person who was a family member of a British citizen as though the British citizen were an EEA national.
20. The cases of *Surinder Singh*, *Eind* and *O* were considered in the context of the Immigration (European Economic Area) Regulations 2016 in the case of *HK v Secretary of State for Work and Pensions* [2020] UK UT 73 (AAC) by Upper Tribunal Judge Ward. The facts in that case were that Mrs K, a British citizen, in exercise of her rights of free movement had moved to Germany where she had acquired a permanent right of residence. She married and lived with Mr K who was an Austrian national (and therefore also a Union citizen). Mr and Mrs K subsequently moved to Scotland living on their savings and pension. However, because of their circumstances they applied for benefits and in particular Mr K applied for state pension credit. In order to receive such a benefit, he had to have a qualifying right to reside. The Secretary of State in that case decided he did not and this was upheld by the First-Tier Tribunal.
21. The issue to be decided in *HK* was whether regulation 9 of the Immigration (European Economic Area) Regulations 2016 required the British citizen returning to the United Kingdom, who was to be treated as an EEA national, to meet the conditions set out in regulation 6 and therefore meet the definition of a “qualified person”. Those conditions were that the EEA national was a jobseeker, a worker, a self-employed person, a self-sufficient person or a student. Those conditions mirror the conditions in article 7 of the Citizenship Directive, which regulation 14 implemented into domestic law, by stating that a qualified person was entitled to reside in United Kingdom for as long as they remained a qualified person. A family member’s right of residence depended upon the qualified person’s right of residence.
22. Mrs K did not satisfy those conditions and therefore did not meet the definition of a qualified person. Having analysed *Surinder Singh*, *Eind* and *O* the judge rejected the submission that the returning citizen had to be economically active or that the CJEU left it open that the state of a returning citizen could impose conditions on its citizen on return (paragraphs 22 – 24 based on *Eind*). The judge emphasised that the CJEU’s rationale was not based upon the economic circumstance of the returning citizen, but rather on the need to avoid deterring a person from exercising their right to free

movement when leaving their state of nationality. The judge analysed the development of EU law from *Surinder Singh* through to *O*, in particular, referring to the CJEU seeking to rationalise the principles with the emerging concept of Union citizenship. At paragraph 28:

“Its preoccupation accordingly was with trying to define what sort of integration and family life in the host member state would suffice, faced with cases where article 21 [TFEU] rights had been asserted for various reasons other than in order to be economically active as a worker.”

23. The judge at paragraph 31 referred to the requirement to apply the Citizenship Directive “by analogy” as a: “somewhat ill-defined process”. However, the judge concluded: “it does not extend to the ability to impose a requirement to be economically active upon return...”. The judge went on to state:

“... what earned the Union citizen’s ability to confer a derived right upon his family member was his initial exercise of freedom of movement rights to go to another member state to an extent which passes the *O* tests of strengthening family life there.”

24. The judge concluded that applying the Citizenship Directive by analogy does not mean applying all of the provisions of the directive and that the conditions that must be fulfilled are applicable to the family member and not to the returning Union citizen (paragraph 33). At paragraph 35 the judge stated:

“In my view therefore the conditions falling to be applied by analogy are, for the above reasons, not those which concern what the Union citizen does following their return, but those attaching to the family member’s right to benefit from it.”

25. The outcome of the case was that regulation 9 had to be read without the requirement for a returning British citizen to meet the definition of a “qualified person”. This was necessary in order to be consistent with *Surinder Singh*, *Eind* and *O* when considering the derived right of residence of a family member of that citizen.

26. The Claimant also relied on *Regina (Fratila and another) v Secretary of State for Work and Pensions (AIRE Centre intervening)* [2020] EWCA Civ 1741 and *Jobcenter Krefeld – Widerspruchsstelle v JD* (Case C-181/19) EU:C:2020:377; EU:C:2020:794, ECJ, which is referred to *Fratila*. The issue in *Fratila* was whether Union citizens who had been granted “pre-settled” status under domestic regulations concerning the arrangements for the United Kingdom leaving European Union were entitled to universal credit. The effect of the domestic regulations was to have blocked that entitlement. The lead judgment was given by McCombe LJ and at paragraph 54 he stated: “...the clear decision in *Krefeld* [is] that there can be other rights of residence, apart from those under the [Citizenship Directive], which can import equal treatment obligations.” At paragraph 56 he stated:

“...as the law stands, it seems to me that the CJEU cases firmly recognise that the right to social assistance may be drawn in some cases from a domestic right to reside, conferred otherwise

than pursuant to EU legislation. It is perhaps not surprising that EU law should, in principle, allow EU nationals to take benefit from particular national laws of individual states if they lawfully reside in the state in question, without discrimination on the basis of nationality. Such entitlement would be entirely consonant with the aims and objects of the Union.”

The Human Rights Act 1998

27. The prohibition on public authorities, such as the Defendant, from acting in a way which is incompatible with the ECHR is contained in section 6(1) HRA. Article 14 of the ECHR, dealing with the prohibition on discrimination, is often referred to as a “parasitic” provision because it is not freestanding. It is necessary for the subject matter of any claim to fall within the ambit of another one of the articles in the ECHR. The Defendant accepts that the subject matter of this claim falls within Article 2 of the First Protocol of the ECHR. This protocol provides that everyone has the right to education.

28. The text of article 14 is as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

29. The Claimant says that she has been discriminated against on the grounds of nationality. The Defendant accepts that she has been discriminated against on some “other status”, which is, the Defendant says, her immigration status. In any event, the issue between the parties is whether or not such different treatment can be justified. The burden is on the Defendant to justify the different treatment. The difference in treatment based on immigration status does not require as weighty justification as a difference based on nationality and a wide margin is usually allowed for general measures on social or economic grounds (*Bah v United Kingdom* (2012) 54 EHRR 21, paragraphs 37 and 47).

30. In welfare cases, the test for the justification of different treatment is: “whether it is manifestly without reasonable foundation” (*R (DA and others) v Secretary of State for Work and Pensions (Shelter Children’s Legal Services and others intervening)* [2019] UKSC 21, paragraph 65). However, the parties agree that as this case concerns education, the test in *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills* [2015] UKSC 57 at paragraph 33 is applicable namely:

“The test for justification is fourfold: (i) does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right; (ii) is the measure rationally connected to that aim; (iii) could a less intrusive measure have been used; and (iv) bearing in mind the severity of the consequences, the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community?”

31. This reflects that a higher threshold for justification is required for cases concerning education rather than welfare benefits.
32. The court's task is not a procedural review of the Defendant's decision, but rather the matter for the court is the adequacy of the justification (*R (TD, AD and Patricia Reynolds) v Secretary of State for Work and Pensions* [2020] EWCA Civ 618, paragraph 53). However, whether the issue has been considered by the decision-maker is relevant to the court's determination, as it may affect the weight the court should give to the views of the decision-maker when coming to its own assessment on the issue of justification (*TD* paragraph 54 and *Tigere* at paragraph 32). The court is required to give careful scrutiny of the justification advanced (*TD* paragraph 64). What must be justified is the difference in treatment and not merely the underlying policy. It is the difference in treatment compared with others that needs to be justified (*TD* paragraph 85). Cost alone does not justify a difference in treatment and if resources are finite a non-discriminatory solution is required (*TD* paragraph 86).

Material facts

33. The Claimant's husband, Mr King, is a citizen of both Zimbabwe and the United Kingdom. The Claimant and Mr King met whilst he was on holiday in Zimbabwe and subsequently married in December 2013 in Zimbabwe. Their first child was born in 2014 in Zimbabwe and is a Zimbabwean national. Initially, Mr King lived in the United Kingdom and the Claimant lived in Zimbabwe.
34. Mr King worked for Ladbrokes plc in the United Kingdom, but moved to work for Ladbrokes in the Republic of Ireland on 17 March 2015. The Claimant and their child moved to live with Mr King in the Republic of Ireland arriving on 5 April 2015. On 15 September 2015, Mr King, the Claimant and their child moved to the United Kingdom to live. Their second child was born on the 3 February 2019 and is a British citizen.
35. Mr King was made redundant from Ladbrokes in October 2017 and has had periods of unemployment when he claimed benefits as well as periods of employment with Capita and the Home Office in "Borders, Immigration and Security". From October 2020, Mr King became a student again studying for a law degree on a two-year course. The Claimant has also claimed benefits including universal credit. This was initially refused by the Department of Work and Pensions (DWP), but following a mandatory reconsideration, it was accepted that she had a "right to reside" and was paid that benefit.
36. In 2016, the Claimant decided she wished to go to university and therefore undertook the necessary exams, which she successfully completed. The Claimant was accepted onto a three-year operating department practice course at Sheffield Hallam University starting in the autumn of 2019. The Claimant applied to Student Finance England for a loan for the tuition fees and maintenance support. On 1 May 2019 Student Finance England refused the Claimant's application. However, following an appeal in a decision of 6 June 2019 Student Finance England agreed that the tuition fee loan would be made but not maintenance support. The Claimant made a further appeal and sought the assistance of her member of parliament. The Claimant started her operating department practice course on 23 September 2019. The decision of the independent assessor, which is subject to challenge in this case, was contained in a letter dated 28 October 2019

confirming that the Claimant was entitled to a loan for the fees of the course but not for maintenance support.

37. The independent assessor, Michaela Jones, explained in the decision letter that because Mr King was a British citizen, he was excluded from the definition of an EEA national and therefore the Claimant did not come within paragraph 6 of Schedule 1 to the Regulations. However, the Claimant did fall within paragraph 9 of Schedule 1 to the Regulations. As I have identified above, a person who falls within paragraph 9 of Schedule 1 to the Regulations was entitled to a loan for the fees, but not maintenance support. A person within paragraph 6 of Schedule 1 to the Regulations was entitled to both a loan for the fees and maintenance support.
38. As a result of becoming a student, in October 2019 the DWP determined that the Claimant was not entitled to support through the childcare cost element of universal credit. The Claimant has served two witness statements which identify the difficulties that she and Mr King have had in financing their living expenses and the impact on them of missing some meals and restricting heating in order to meet their outgoings. In her statement, the Claimant says that she has been taking an antidepressant for around a year as a consequence of her situation. It has also meant the Claimant missed various parts of her course, which she has subsequently had to catch up on. The Claimant states that she has suffered a financial loss as result of the decision of the independent assessor and Student Finance England.
39. On 9 November 2020 the Claimant was granted “settled status” through the EU Settlement Scheme. This changed her eligibility for student maintenance support and with effect from the second term of the academic year 2020/21 she was entitled to student support of all kinds.
40. The Defendant served a witness statement from Mr Paul Williams, the deputy director for student funding policy at the Department for Education. Mr Williams generally outlines the scheme of the Regulations. There is a requirement to pay back loans after graduation, subject to a minimum salary threshold being met. There is no obligation to pay back grants (paragraph 6). Exhibited to the statement is the explanatory memorandum to the Education (Student Support) (Amendments) Regulations 2016/270. This states that for EU nationals in the academic year 2014/2015, the grants and loans to them amounted to £240 million with £143 million of that being maintenance loans. At paragraph 11, Mr Williams sets out the reasons for the eligibility requirements as follows:

“The eligibility requirements for access to [Higher Education] student support were put in place in order to:

“a. target the subsidy built into the student loan scheme for English students (noting that there are separate and different rules for the other parts of the UK). About 53% of £16.4 billion of full-time undergraduate loan outlay in England in the 2019-20 financial year is expected not to be repaid; borrowers start to repay their loans only when earning above the relevant repayment threshold and any outstanding balance is written off at the end of the loan term. Eligibility requirements therefore

operate to manage the amount of public money granted to students, at a loss to the government;

“b. target the subsidy on those who are likely to remain in England (or at least the UK) indefinitely, so that the general public benefits of their Higher Education will be to the country’s advantage;

“c. increase the likelihood that, because the recipients of the loans will probably remain here, the taxpayer will receive repayment; and

“d. minimise administration costs. The Student Loans Company processes around 2 million applications for student loans each year from applicants in a huge variety of different personal situations, whether linked to immigration status, marriage or partnership, or other factors.”

41. The position of the application of the Regulations to *Surinder Singh* spouses is dealt with in paragraphs 14 and 15 as follows:

“14. The Department has periodically sought legal advice (to which legal privilege is not waived) to ensure that the 2011 Regulations continue to be lawful. Advice was sought about the legality of these Regulations in relation to their application to *Surinder Singh* spouses. For the reasons described above at paragraph 11, the Department has not provided access to student support to persons claiming support under EU legal principles except where it is required by law. In 2016, the 2011 Regulations were amended to extend the eligibility criteria under paragraph 10A for access to living cost support from three years ordinary residence in the UK to five years. I exhibit the Explanatory Memorandum to the relevant amending regulations [PW, pages 1 to 4], and the Government’s response to the consultation that preceded that amendment, as these contain relevant background information about the numbers of students, sums of money involved, and other matters that the Government took into consideration at that time.

“15. As the Department does not believe that it is required under EU law to provide living costs support to persons in Ms King’s position, no such provision is made in the 2011 Regulations. This is in order to protect the public purse and effectively manage the student support budget.”

The grounds

42. The Claimant was given permission to bring judicial review by Mr Justice Holman by order dated 15 December 2020 on two grounds of the three grounds initially advanced. The first of those grounds is that the Claimant was entitled to maintenance support

under EU law. The second ground is that the decision was incompatible with the Claimant's rights under the ECHR.

Discussion

Was the Claimant entitled to maintenance support under EU law?

43. There is no dispute that under EU law the Claimant was entitled to join Mr King in the Republic of Ireland after he had exercised his right to free movement under the Citizenship Directive. Having joined him there, the Claimant had derived rights from the TFEU following *Surinder Singh*, *Eind* and *O* to enter and reside in the United Kingdom as the TCN spouse of a Union citizen returning to their member state of origin.
44. It is also not disputed that if a citizen of a member state, other than the United Kingdom, had come to the United Kingdom relying on the Citizenship Directive, accompanied by their TCN spouse then that spouse would have had rights of entry and residence in the United Kingdom under the Citizenship Directive directly. However, under paragraph 6 of Part 2 of Schedule 1 of the Regulations they would be entitled to maintenance support and a loan for the tuition fees⁴. The Claimant was in a different position because paragraph 6 applied to family members (which would include the Claimant) of "migrant workers", but the definition of such a person in paragraph 1 of Part 1 of Schedule 1 excludes as an EEA national a person who is a national of the United Kingdom, such as Mr King. Whilst this may seem surprising, it has to be remembered that the Citizenship Directive, which the Regulations implement, only applies to Union citizens exercising their right to freedom of movement to enter and reside in a member state other than their own. It does not apply to them returning to their own state. Therefore, the circumstances of a Union citizen (other than a United Kingdom citizen) coming to the United Kingdom and the United Kingdom citizen returning, or having returned, to the country are not comparable.
45. However, this is at the heart of the Claimant's complaint. Mr Berry submits that the reason she is not entitled to maintenance support is because of her husband's nationality. His submissions are that article 24 of the Citizenship Directive applies by analogy, following *Surinder Singh* and the subsequent cases, and she is therefore entitled to benefit from the requirement under article 24 of the Citizenship Directive to equal treatment. In particular, Mr Berry, relying upon *Surinder Singh*, states that the Claimant may rely upon article 24(2) of the Citizenship Directive by analogy in respect of her "conditions of residence" in the United Kingdom, as her husband had exercised free movement rights and was a worker in the United Kingdom at the material time.
46. The Citizenship Directive applies to Union citizens who leave their country of origin to work⁵ in another member state, in other words exercising their right of free movement within member states in order to work. The Citizenship Directive aims to facilitate the exercise of an individual's article 21 TFEU rights. It does not apply to a person when they are returning to their native member state having exercised their right of free movement. A person returning to their own country does so based on principles of

⁴ Subject to meeting other requirements including being ordinarily resident for a specified period in the EEA or Switzerland, but they are not relevant to determining this case.

⁵ There are other circumstances where it applies, but for this case it is sufficient to refer to "work" only.

international law and not based upon the Citizenship Directive. It was made clear in *O* and *HK* that the TFEU and the Citizenship Directive did not confer any autonomous right on TCNs who were family members of such a person. The rights of that TCN are derived from the exercise of freedom of movement by a Union citizen. This right of residence, when the TCN accompanies their spouse back to their spouse's member state of origin, was derived from TFEU.

47. In *Surinder Singh* at paragraph 19 the CJEU explained the basis for that derived right was that a national of a member state might be deterred from leaving their country of origin, in order to exercise their right of free movement as a worker, if: "... On returning to the member state of which he is a national... the conditions of his entry and residence were not at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another member state." At paragraph 20 the court states such a person may be particularly deterred if: "...his spouse and children were not also permitted to enter and reside in the territory of his member state of origin under conditions at least equivalent to those granted them by community law in the territory of another member state." At paragraph 22 the CJEU explained that the rights to free movement would not be fully effective if a person was "... deterred from exercising them by obstacles raised in his or her country of origin to the entry and residence of his or her spouse."
48. The CJEU in *O* answered the question of whether those derived rights of residence, which apply to the TCN spouse of workers, also apply to TCN spouses of Union citizens who are not workers when they return to the member of state of which they are a national, having resided together in another member state. In analysing *Surinder Singh* and *Eind* at paragraph 46 the CJEU referred to the worker Union citizen potentially being discouraged from exercising his right to free movement if, on return to his member state of origin, there was a prospect of not being able to continue "a way of family life which may have come into being in the host member state as a result of marriage or family reunification...". A refusal to grant a derived right of residence to a TCN family member in such a circumstance is described in paragraph 47 as "an obstacle" to the exercise of the right to freedom of movement for a person to leave their own member state to work in another member state.
49. The CJEU determined that *Surinder Singh* and *Eind* applied generally to family members of Union citizens who had exercised the right to freedom of movement under article 21 TFEU (which as can be seen from paragraph 10 above does not just apply to Union citizens who are "workers"). The court referred to EU law seeking to remove the same type of obstacle for workers exercising their right of free movement: "... by guaranteeing that that citizen will be able, in his member state of origin, to continue the family life which he created or strengthened in the host member state." The "citizen" referred to in that extract is the citizen who has exercised their right to freedom of movement by previously leaving their own member state.
50. In considering the derived right of residence for the TCN spouse the CJEU stated at paragraph 50: "so far as concerns the conditions for granting... a derived right of residence... Those conditions should not, in principle, be more strict than those provided for by [the Citizenship Directive] ... Even though [the Citizenship Directive] does not cover such a return, it should be applied by analogy to the conditions for the residence of the Union citizen in a member state other than that of which he is a

national...” This is repeated again in the paragraph 61 which gives the court’s answer to the questions posed to it.

51. The “discouragement” or “obstacle” which is referred to in paragraphs 54, 55 and 61 is uncertainty about whether a family life could continue, which had been established in the host member state.
52. Mr Berry submits that given the cases discussed above refer to the Citizenship Directive applying “by analogy” that article 24(2) of that directive concerning equal treatment also applied by analogy, once a *Surinder Singh* right of residence was recognised. He stated that the Claimant may rely on it by analogy in respect of her “conditions of residence”, as that phrase is used in *Surinder Singh* and *O*. In *HK* “by analogy” is referred to as a “somewhat ill-defined process” and it does not follow that everything within the Citizenship Directive applies to the TCN spouse returning to their spouse’s member state of origin. *Surinder Singh*, *Eind* and *O* all concern the right of residence of the TCN. In *HK*, the circumstances are different as both people involved were Union citizens. It was about whether certain qualifying requirements could be placed on the returning United Kingdom citizen and the effect those requirements had on the EU law derived rights of their spouse. Nevertheless, it too was concerned with rights of residence. The references in *Surinder Singh*, *Eind* and *O* are to the conditions, as in stipulations or requirements, for granting residence. They are not the conditions, as in the circumstances, in which the TCN spouse resides in the country with their returning spouse. In *Surinder Singh* the references to:
 - a) “conditions of his entry and residence” (paragraph 19);
 - b) the spouse and children being permitted “to enter and reside...under conditions at least equivalent...” to those granted to them in the host member state (paragraph 20); and
 - c) to the spouse enjoying “the same rights of entry and residence” (paragraph 23).

in their proper context mean: the same rights/conditions of entry and the same rights/conditions of residence. Similarly, in *O* in paragraph 50 of the judgment, the reference to the application of the Citizenship Directive by analogy is to “conditions for [my emphasis] the residence” of a Union citizen, not to “conditions of [my emphasis] residence”, as submitted by Mr Berry.

53. The substance of these four cases is about whether there is an obstacle or deterrent to the Union citizen returning to his own country created by the conditions for granting the right of entry/residence to their accompanying spouse. As explained, that is based upon the requirement to allow any family life that has been established outside of the Union citizen’s own member state to continue on their return.
54. Having returned to the United Kingdom, the equal treatment provisions in the Citizenship Directive and TFEU did not apply directly to the Claimant. This is the conclusion that must follow from *O* (see paragraph 17 above). The Regulations, particularly paragraph 6 of Schedule 1, did not create any additional conditions or requirements to the grant of entry and/or residence. Therefore, there is no potential obstacle to the decision to exercise that right to freedom of movement created by the

Regulations. It is not, as submitted by Mr Berry, that the equal treatment in article 24(2) applies by analogy once the *Surinder Singh* right is established. The process of applying the Citizenship Directive by analogy applies to determining the conditions for a grant of a derived right of residence for the TCN spouse of a returning Union citizen.

55. If I am wrong and it was a condition of residence, would the effect of the Regulations in this case amount to a discouragement or obstacle created by uncertainty about whether a family life could continue, which had been established in the host member state? First, there is no evidence in this case that the decision to undertake higher education was made whilst the Claimant was in the Republic of Ireland. In other words, there is no uncertainty about the family life established in Republic of Ireland continuing. Secondly, I am not satisfied that an absence of maintenance support under the Regulations should be considered as an obstacle or discouragement to the continuation of family life established in the host member state. Particularly in the circumstances when the TCN spouse may come, after a period of time, within another category in the Regulations, which would enable maintenance support to be awarded. This is what has happened as a matter of fact in the Claimant's circumstances. Ms Ward submitted during the hearing that that education in these circumstances did not amount to "family life", but I make no finding on that as it was not fully argued. Nevertheless, when considered objectively, my conclusion is that it is not such an obstacle or discouragement.
56. Mr Berry submitted that the discrimination was on the basis of the enjoyment of EU rights and not UK rights. Having referred to *Fratila* and *Krefeld*, he submitted that the principle of equal treatment came from the TFEU and by analogy article 24 of the Citizenship Directive applied. The Claimant was fully in scope and there was no ability for the Defendant to restrict her recourse to public funds. He submitted the thrust of the cases was that she must be entitled to residence under the same conditions by analogy with the right to free movement. There was nothing to show that the principles of equal treatment did not apply. I do not accept these submissions. *Fratila* is concerned with the equal treatment of Union citizens under domestic legislation, who benefit from the equal treatment rights conferred by the TFEU. It does not assist in answering the central question which is what were the nature and extent of the derived rights of a TCN spouse in the factual position of the Claimant. I have answered this above and *Fratila* does not assist the Claimant.

Is the difference in treatment justified under ECHR Article 14?

57. The parties have agreed that article 14 is engaged, for the reasons that I have outlined in paragraph 27 above. However, there is a disagreement on whether or not the difference in treatment is on the basis of nationality or immigration status. The reason this is significant is that weightier reasons are required to justify any difference in treatment on grounds of nationality rather than immigration status. As the parties agreed the test I should apply, it is not necessary to reach a conclusion on this point. However, briefly, I would have concluded that the reason for the difference in treatment is based on the Claimant's immigration status. Whilst it is correct that the Claimant's treatment under the Regulations in this case is dependent upon Mr King's British nationality, from the Claimant's perspective there is an element of choice and it is not an immutable personal characteristic, such as race (*Bah* paragraph 47).

58. Mr Berry submitted that there was no evidence in Mr Williams' witness statement that the Defendant had considered the position of people such as the Claimant. However, I do not accept that submission. Mr Williams statement at paragraph 14, quoted in paragraph 41 above, clearly states that the legality of the Regulations and their application to *Surinder Singh* spouses was considered. Mr Williams does not expressly mention ECHR discrimination, but even if it is not encompassed within the reference to advice being sought about their legality, there was a specific consideration given in the context of the reasons for the eligibility requirements, which he details at paragraph 11.
59. What is the position of a TCN spouse in different factual circumstances? A TCN spouse with limited leave to remain as a partner of a United Kingdom national would become eligible for both tuition fee and maintenance support when granted indefinite leave to remain. Such an application would be possible after five years of limited leave to remain. A TCN spouse of an EU migrant worker will be entitled to both tuition fee and maintenance support if they have been "ordinarily resident" in the EEA or Switzerland for three years. The Claimant's position, as already identified, is that there is a requirement for "ordinary residence" in the EEA or Switzerland in the preceding three years, but she is only entitled to the loan for tuition fees. In so far as the Regulations relate to Union citizens, these outcomes are consistent with the article 24(2) of the Citizenship Directive, in particular where it can be seen that there is no obligation to provide maintenance support to a Union citizen who is not a worker. The Claimant is in a more advantageous position than a TCN spouse of a United Kingdom citizen who had not exercised their right to free movement.
60. *Tigere* concerned a previous version of the Regulations and whether a decision not to provide any student maintenance to individuals who had lived in the United Kingdom for several years, but did not meet the legal requirement of being "settled", was discrimination under article 14. By a majority, the court concluded that it was discrimination⁶, however, a further ground of discrimination based on the requirement for a period of "ordinary residence" of three years was rejected. Lady Hale DP (as she then was), Lord Kerr (who agreed with Lady Hale) and Lord Hughes concluded that the requirement of the Regulations for a three-year period of "ordinary residence" was compatible with the appellants Convention rights and that there was "ample justification for the rule" (paragraph 46).
61. At paragraph 53, Lord Hughes sets out the objectives of the government in promulgating eligibility rules and finds that they are "plainly legitimate objectives". The four objectives to which he refers are similar to the four objectives in paragraph 11 of Mr Williams's witness statement, which I have quoted at paragraph 40 above. Namely, managing the amount of public money granted to students at a loss to the government, targeting the subsidy to those who are likely to remain in England (or at least the UK) indefinitely, increasing the likelihood of repayment of the loans and minimising administration costs.
62. As remains the position under the version of the Regulations under consideration in this case, at paragraph 54 Lord Hughes referred to the course that has been taken to meet

⁶ Which resulted in the addition of paragraph 13 to Part 2 of Schedule 1 of the Regulations – see paragraph 6(x) above.

those objectives as being to define eligibility for student loans in part in terms of the immigration position of the applicant. At paragraph 55 Lord Hughes stated:

“It is readily understandable why the Secretary of State for Business, Innovation and Skills⁷ should have looked to the immigration rules for a convenient definition of those who are sufficiently connected with this country to justify receipt of the subsidy. But if he is to take that course, he needs to consider whether those rules do in fact adequately identify those who are sufficiently connected when it comes to University funding, and exclude those who are not. The purposes served by the immigration rules are not identical to the purposes of the regulations governing eligibility for student loans. In most respects, these two importations of immigration concepts do sensibly identify those who are to be made eligible for student loan funding. But in one respect they do not, and the framers of the Regulations appear not to have considered the case of such as the appellant, where they do not.”

63. Giving careful scrutiny to the justification put forward by the Defendant I am satisfied that it has a legitimate aim. The money available to fund student education in England is finite and to target it at those who are likely to remain in England is a legitimate course of action. As in *Tigere*, the determination of whether or not a person as a TCN spouse applicant receives maintenance support is determined by a period of “ordinary residence” and immigration status. The measure, as Mr Williams has stated, was designed in order to comply with the obligations of EU law, but to go no further. EU law provided certain minimum requirements which the Defendant was obliged to meet. However, the Defendant sought to meet the policy objectives (as set out in Mr Williams’ statement) otherwise. In so far as a person was not covered by EU law they fell to be considered under the other categories in the Regulations. The evidence was maintenance loans formed a considerable proportion of the funds allocated to those students eligible as EU nationals. This measure is rationally connected to the legitimate aims, in particular when set against the background, as I have already identified, that a TCN spouse in the same position as the Claimant would, in due course, by satisfying other categories in the Regulations be entitled to maintenance support. Mr Lawson submitted on behalf the Claimant that a less intrusive measure could have been used. He pointed out that someone who had a *Surinder Singh* right of residence was entitled to welfare benefits and the Defendant could have provided maintenance support. There are different requirements to obtain different benefits and such an argument does not undermine the Defendant’s decision. As I have stated, the Claimant would be entitled to maintenance support in the future, as indeed she was and I conclude the Defendant has justified this aspect of the test. Similarly, I am satisfied that the fourth test for justification has been met by the Defendant, namely a fair balance struck between the rights of the individual and the interests of the community. There is a need to target the resources where they are most likely to have their intended effect and limiting access to such resources to those who are likely to pass those benefits back to society strikes a fair balance. Particularly when again considered against the position that the Regulations did not provide a total bar on receiving such maintenance support, once the

⁷ The relevant Secretary of State at the time.

requirements of one of the other categories within Part 2 of Schedule 1 had been met. I am satisfied the same outcome is achieved using the four-stage test and the “manifestly without reasonable foundation” test. For these reasons, the Claimant has failed to establish discrimination under article 14 of the ECHR.

Summary

64. The Claimant, a citizen of Zimbabwe, accompanied her husband, a United Kingdom citizen, back to the United Kingdom having joined him in the Republic of Ireland where he was working. The Claimant was therefore entitled to reside in the United Kingdom pursuant to EU law, in particular, the effect of the case of *Surinder Singh*. The Claimant pursued higher education qualifications and applied for a student loan and maintenance support. The Defendant denied her maintenance support on the basis of the relevant Regulations, until she became eligible under further conditions in the Regulations.
65. I have found that the Claimant’s challenge to that decision of the Defendant fails, both as a matter of EU law and under her claim for discrimination under article 14 ECHR. The Defendant has not discriminated against the Claimant in respect of her derived EU rights and the differential treatment she received on the grounds of her immigration status under the Regulations for student support was justified.