



Neutral Citation Number: [2024] EWHC 1234 (KB)

Case No: Case No: QA-2022-000089

**IN THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22 May 2024

Before :

**MR JUSTICE CONSTABLE**

Between :

**GWLADYS FERTRE**

**Appellant**

- and -

**VALE OF WHITE HORSE DISTRICT COUNCIL**

-and-

**Respondent**

**(1) THE3MILLION LTD**  
**(2) SECRETARY OF STATE FOR LEVELLING**  
**UP, HOUSING AND COMMUNITIES**  
**(3) INDEPENDENT MONITORING AUTHORITY**  
**FOR THE CITIZENS’ RIGHTS AGREEMENTS**

**Proposed**  
**Intervenors**

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Simon Cox (instructed by Turpin Miller LLP) for the Appellant  
Andrew Lane (District Council’s Legal) for the Respondent

Hearing date: 16 May 2024

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## JUDGMENT

**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Wednesday 22<sup>nd</sup> May 2024.**

### Mr Justice Constable:

#### Introduction

1. The Appellant, Ms Fertre, is a national of France. She was admitted to the UK on 4 November 2020 under European Union law. On 18 November 2020, Ms Fertre was granted pre-settled status ('PSS') until 4 November 2025. At this date, Ms Fertre will become eligible for indefinite leave to remain.
2. On 21 September 2021, Ms Fertre applied to the Vale of White Horse District Council ("VWDC") to be placed on the housing register for allocation of housing under Part VI 1996 Act ('the 2021 Housing Application'). On 12 October 2021, VWDC refused that application on the ground that Ms Fertre was not eligible for allocation.
3. A week later, Ms Fertre applied as homeless to VWDC ('the 2021 Homelessness Application'). On the same day, 19 October 2021, VWDC again concluded that she was not eligible for assistance. Ms Fertre sought a review of that decision pursuant to s.202 of the Housing Act 1996 ('the 1996 Act'). Ms Fertre argued that that Article 23 of the UK-EU Withdrawal Agreement ('WA') precluded VWDC from deciding that she was not eligible, since she has PSS. In its letter dated 21 January 2022, VWDC upheld the decision ('the s.202 Eligibility Decision'). The basis of the decision included that Ms Fertre had not been economically active in the UK and that her right to equal treatment under Article 23 WA did not require her to be treated as eligible.
4. Ms Fertre lodged an appeal ('the Appeal') under s. 204(1)(a) of the 1996 Act on 11 February 2022. This provides:

*(1) If an applicant who has requested a review under section 202—*

*(a) is dissatisfied with the decision on the review, or*

*(b) is not notified of the decision on the review within the time prescribed under section 203,*

*he may appeal to the county court on any point of law arising from the decision or, as the case may be, the original decision.*

*(2) An appeal must be brought within 21 days of his being notified of the decision or, as the case may be, of the date on which he should have been notified of a decision on review.*

*(3) On appeal the court may make such order confirming, quashing or varying the decision as it thinks fit.*

5. The Appeal mistakenly named South Oxfordshire District Council as Respondent. The substitution of VWDC as Respondent was finally resolved by the Order of Ellenbogen J for the reasons given at [2024] EWHC 112 (KB). The Appeal is presently set down for 1.5 days on 11 and 12 June 2024.
6. In the period during which the substitution issue was being resolved through the Courts, Ms Fertre's children were taken into local authority care, and on 1 December 2023 she was compulsorily detained under Mental Health Act 1983 ('the 1983 Act'). On 24 January 2024, Ms Fertre was discharged and placed in "step-down" accommodation by Oxford County Council under s.117 of the 1983 Act. The licence for that accommodation of 23 January 2024 stated that it was for a maximum of 8 weeks, i.e. to 19 March 2024. This was subsequently extended to 2 April 2024, and then to 22 April 2024. On 6 March 2024, Ms Fertre made a fresh application to VWDC for housing assistance ("2024 Homelessness Application") in light of the threatened eviction from her stepdown accommodation. She contended that her self-employment in 2023 and her subsequent incapacity for work were new facts relevant to her deemed right to reside in the UK and therefore for her eligibility for housing assistance. On 11 March 2024, VWDC gave a decision under s. 184 of the 1996 Act to the same effect as its previous decisions, i.e. that Ms Fertre was a person from abroad who was not eligible for housing assistance. On 21 March 2024, Ms Fertre applied to VWDC under s. 202 of the 1996 Act for a review of this decision ('the 2024 s.202 Application'), and asked VWDC to exercise its power under s. 188(3) of the 1996 Act to provide her with accommodation pending its review, in light of the threatened eviction.
7. On 28 March 2024, Ms Fertre sent VWDC a letter under the Judicial Review Pre-Action Protocol concerning what she saw as its failure to provide accommodation under s. 188(3). VWDC replied on the same day accepting that the conditions for the provision of accommodation pending s. 202 review were met but pointing out that Ms Fertre may be eligible for accommodation under s. 117 of the 1983 Act. VWDC also stated that the effect of the 2024 Homelessness Application was that Ms Fertre's earlier one was 'overtaken', given that it was based on a factual case which is no longer the case, and VWDC considered that it was withdrawn, *R (Konodyba) v RB Kensington & Chelsea* [2011] EWHC 2653 (Admin). VWDC said that, therefore, pursuing the Appeal could bring Ms Fertre no benefit, in light of her fresh application and in particular the new facts which fall to be considered on VWDC's review.

8. Ms Fertre replied on 9 April, stating that Konodyba was, as relevant, only authority that a successful fresh application might render a pending appeal otiose, and the fresh application had not yet been successful. Ms Fertre also argued that, in any event, success on the Appeal would mean that any local authority would be required to treat her as eligible so long as she holds PSS, ie until 18 November 2025, regardless of her economic activity or capacity to work. It is clear that Ms Fertre considered the appeal ongoing, notwithstanding the 2024 Homelessness Application.
9. On 17 April 2024, VWDC issued its application to strike out the Appeal under CPR 52.18 ('the Strike Out Application'). This provides:
- (1) *The appeal court may—*
- (a) *strike out the whole or part of an appeal notice;*
- (b) *set aside permission to appeal in whole or in part;*
- (c) *impose or vary conditions upon which an appeal may be brought.*
- (2) *The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.'*
10. The Strike Out Application was, at this point, advanced on the basis that Ms Fertre had made, and VWDC had accepted (in the sense of accepted that it was required to consider) a fresh application which, it argued, superseded the application to which the Appeal related. VWDC contended that the Court should not entertain an appeal against an application which has been superseded because even if the Court quashed it, the local authority would not be obliged to re-take the decision.
11. On 22 April 2024, Ms Fertre was granted a 6 month assured shorthold tenancy of supported accommodation for person with mental health issues. On 30 April 2024, Ms Fertre withdrew the 2024 s202 Application on the basis that she was no longer homeless. The letter to VWDC stated:

*We write to inform you that the application made on 21 March 2024 under Housing Act 1996 s.202 for review of the decision of 11 March 2024 that the applicant is not eligible for homelessness assistance is hereby withdrawn, as our client has received assistance from the social services and health authorities under s. 117 to secure supported accommodation. A copy of her tenancy agreement is attached.*

*In light of those facts, the applicant, while eligible for homelessness assistance, is not presently homeless or threatened with homeless and is not owed any other relevant duty under Part VII Housing Act 1996. In *Temur v Hackney London Borough Council* [2014] EWCA Civ 877, [2015] PTSR 1 the Court of Appeal held that on a review under s. 202 the reviewer may substitute an adverse decision on different grounds to the original decision. In light of that judgment, the*

*reviewer may substitute a decision rejecting our client's application made on 6 March 2024 on the ground that she is not presently homeless or threatened with homeless and is not owed any other relevant duty under part VII Housing Act 1996.*

12. The letter did not refer to the ongoing Appeal.
13. On 3 May 2024, VWDC provided the review of its decision in respect of the 2024 Homelessness Application, deciding that Ms Fertre was not homeless. Following these developments, VWDC submitted further submissions in support of the Strike-Out Application, on the basis that the Appeal was unarguably academic, relying upon section 31(2A) of the Senior Courts Act 1981, and/or an abuse of process.
14. The matters before me are (1) the Strike Out Application (2) applications by the three proposed Intervenors, if the appeal is not struck out, to intervene at the hearing on 11 and 12 June 2024.

### The Strike Out Application

#### The Issues

15. Mr Cox, for Ms Fertre, at paragraph 37 of his Written Submissions identified the following issues as arising from the two sets of VWDC written Submissions:
  - (1) Has Ms Fertre abandoned her appeal?
  - (2) Does the Court lose power to determine a pending s. 204 appeal if (a) the respondent entertains a fresh application by the appellant for housing assistance or (b) the appellant accepts that they are not presently homeless or (c) in response to that fresh application, the respondent determines under s. 202 that the appellant is not homeless.
  - (3) Is Ms Fertre abusing the court's process by maintaining the appeal?
  - (4) Does Ms Fertre no longer have any interest in the outcome of her appeal?
  - (5) Is there a power to strike out where Ms Fertre has an interest, based upon section 31(2A) of the Senior Courts Act 1981?
  - (6) Should the Court exercise such a further power to strike out (if it exists)?
16. Mr Lane, for VWDC, helpfully clarified that he was not pursuing the sub-points to issue (2) as jurisdictional arguments, but they remained relevant to the questions of abandonment and/or abuse and/or the lack of interest. Similarly, his emphasis in argument did not focus on the section 31(2A)

argument, and, for the reasons given in respect of issue (4) in particular, it has not been necessary for me to decide issues (5) and (6).

(1) Abandonment

17. VWDC contends that the act of submitting the second application and/or its effective withdrawal (or determination) on the basis that Ms Fertre is not, presently, homeless has the effect that Ms Fertre must be taken to have abandoned her appeal in respect of the s.202 Eligibility Decision.
18. There is no suggestion that Ms Fertre has in fact communicated any such abandonment explicitly. For what it is worth, any such contention would be incorrect. For example, the correspondence of 9 April 2024, following the 2024 Homelessness Application, made explicit reference to the effect of succeeding in the ongoing Appeal. In withdrawing the 2024 Homelessness Application, no suggestion was made that the Appeal was being abandoned.
19. It follows that VWDC relies upon a contention that abandonment is the automatic effect of, and/or to be implied from, the submission of the second application and/or the concession that Ms Fertre is no longer homeless.
20. VWDC advances its argument on the basis that, it says, a person can only have one application to a local authority at any one time, that the decision on review has been replaced by Ms Fertre's fresh application, and that the court cannot entertain the appeal against a decision which no longer regulates the relationship between the Ms Fertre and the VWDC. Mr Lane refers by way of support to the decision of HHJ Robinson in Konodyba v RBKC [2011] EWHC 2653 (Admin). That case involved a local authority arguing the opposite of that which VWDC argue in this case, namely that the fact of an extant appeal in relation to an earlier application prevented an applicant from making a fresh application (not that the making of the fresh application had the effect of impliedly abandoning the previous one under appeal). Whilst the Court concluded that an authority cannot owe two different housing duties at the same time (a point which, for what it is worth, I find difficult to follow but which I do not need to decide for the purposes of this case), the authority was clearly inconclusive in respect of the question of whether a person could have two applications at the same item (*i.e.* one pending appeal and a further one based upon new circumstances). For my part, there was considerable force in the point made by HHJ Robinson when identifying the potential difficulty with the conclusion that an extant appeal and a later application based upon new circumstances were somehow mutually exclusive. The Judge said:

*'If there is arguably a significant change in the circumstances there would be merit in the authority taking a fresh decision on that basis, particularly if the previous application is out of their hands because it is under appeal. If the fresh application is successful, it might render the appeal otiose and thus avoid the time and expense of the appeal being determined. If it is unsuccessful, why should the applicant be prejudiced by having had to withdraw his appeal which might otherwise have succeeded.'*

21. There was some debate between counsel as to whether the word ‘successful’ in this passage meant ‘successful’ as in accepted by the local authority as one which they would consider or ‘successful’ as in substantively successful. I have no doubt that the word was intended to mean substantively successful, not just that the applicant had successfully invoked the process by which their application would be considered. Merely having an application successfully accepted for consideration plainly does not, of itself, render the appeal otiose: that would only (potentially) be the case if the application was substantively successful.
22. I do not, therefore, consider that Konodyba provides VWDC with any assistance in the matter I have to decide.
23. In my judgment, the mere fact of making a fresh application does not, automatically or impliedly, constitute the abandonment of a prior application subject to an extant appeal. It might be that the effect of a successful fresh application renders the appeal pointless, and liable to be struck out as academic – which I consider in the context of this case further below. But it cannot, without some clear expression of intention or unequivocal conduct, amount to an abandonment of the appeal on the part of an appellant.
24. In the context of implied abandonment through the concession that Ms Fertre is now not homeless and/or the withdrawal of the 2024 Homelessness Application, Mr Cox relies upon London Borough of Tower Hamlets v Deugi [2006] EWCA Civ 159, [2006] H.L.R. 28. In that case, the applicant’s (D’s) request for assistance under Pt 7 of the 1996 Act was refused on the basis of ineligibility, because she was a person subject to immigration control, in January 2004. D requested a review of the decision and the authority upheld their decision. D appealed, as here, under s.204 on the basis that the ineligibility finding was wrong in law. The appeal was allowed and the authority’s review decision was quashed. The authority then failed to carry out a fresh review of the decision and eventually D appealed against the authority’s decision made in January 2004, asking the court to vary that decision to provide that she was eligible for assistance. The authority accepted that D had been eligible for assistance in January 2004 and that their decision had been wrong. They invited the appellant to withdraw her appeal on the basis that they would carry out a fresh review decision. The applicant refused to withdraw her appeal. The authority wrote again conceding that she had been eligible for assistance in January 2004 but purporting to withdraw their decision of that date. The authority then made a further decision in March 2005 concluding that D was no longer eligible for assistance because her son was no longer in full-time education. She requested a review of that decision but maintained her appeal against the January 2004 decision. At the appeal hearing, the authority argued that the appeal should be dismissed because the decision of January 2004 had been withdrawn and, in any event, the appeal had been overtaken by the decision in March 2005 and the pending review of it. Before the circuit judge, D accepted that she had ceased to be eligible for assistance by the time of the March 2005 decision, but nevertheless argued that the January 2004 decision should be varied to record that the authority owed her a duty because at that time she was eligible for assistance. The circuit

judge allowed the appeal, varying the decision of January 2004 to record that the authority had owed the appellant a duty. The authority appealed to the Court of Appeal, where it was determined (albeit allowing the appeal in part in a respect not material for present purposes) that (per May LJ):

*‘although Tower Hamlets could concede the issue and express this as withdrawing their decision, they could not thereby unilaterally prevent Mrs Deugi from continuing her appeal, if an order in her favour would be of enduring benefit to her. I understood Mr Underwood eventually to accept this. In Chadwick LJ’s words, Mrs Deugi ought not to be deprived of some benefit or advantage to which she would have been entitled if the original decision had been taken in accordance with the law. Conceding the issue alone would only lead to quashing the decision. But Mrs Deugi was asking the judge to vary the decision, and she maintained that a varied decision such as she obtained from the judge would give her an enduring benefit. As I have said, Mr Underwood was not instructed to argue that the appeal is entirely academic.’*

25. The case is a clear example of an appeal in relation to an earlier decision remaining extant notwithstanding a change in circumstances in terms of eligibility and/or a further application/decision/review by the authority. The concession as to the change of circumstances by an appellant is not an implicit abandonment of the earlier application or appeal: the proposition is contrary to the approach approved by Court of Appeal in Deugi. The case makes clear that the relevant analysis when there has been a change of circumstances (whether by reason of later application or a concession relating to present eligibility) is to consider whether the extant appeal has become academic. If so, the Court has the power to strike out, or stay, the appeal. This question is considered further below under issue (4).

(2) Jurisdiction

26. For what it is worth, the judgment in Deugi is equally inconsistent with VWDC’s argument, albeit not pursued orally by Mr Lane, that by (a) their entertaining a fresh application or (b) Ms Fertre accepting that she is not presently homeless or (c) in response to that fresh application, VWDC determining under s. 202 that the appellant is not homeless, somehow deprives the Court, by way of jurisdiction, of the power to consider the s.204 appeal arising out of the first application.

(3) Is A abusing the court’s process by maintaining the appeal?

27. The Court has an inherent power to strike out an appeal without determining it, where to allow it to proceed would be an abuse of the process of the court. *Halsbury’s Laws* expresses that power as follows:

*‘The most important ground on which the court exercises its inherent jurisdiction to stay proceedings is that of abuse of process. This power will be exercised where the proceedings are shown to be frivolous, vexatious or*



*harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the claimant might not, or probably would not, succeed, but that he could not possibly succeed on the basis of the pleadings and the facts of the case.'*

Civil Procedure, Volume 12, para. 1033.

28. In its written submissions, VWDC contended, firstly, that it was an abuse of the court's process to continue with an appeal under the first application as she has made a second application which supersedes it. This is effectively just a restatement of the abandonment argument above. The second application does not supersede the first, which continues to regulate the position between the parties as at the date of that decision. Determining whether that historic position was right or wrong in light of a second application may have become academic (and thus liable to be struck out), but it is not abusive to continue an appeal in respect of that first determination pursuant to the statutory right to do so.
29. VWDC contended, secondly, that it was an abuse of the court's process to seek to establish by this appeal that she was eligible in 2022, whilst at the same time ceasing to assert that she is eligible in 2024. This plainly misstates Ms Fertre's position. Ms Fertre has not ceased to assert that she was 'eligible' in 2022. Indeed, Ms Fertre is not ceasing to assert that she remains eligible (defined narrowly by reference to the PSS/WA eligibility issue); she merely accepts that presently she is no longer homeless. This change of circumstances does not of itself render the appeal abusive.
30. Mr Lane did not pursue in oral argument VWDC's written submission that '*it appears that [Ms Fertre's] motivation for pursuing this appeal is to further a political agenda*'. Having considered the evidence of Ms Fertre, had that submission been pursued I would have rejected it. There is nothing, in my judgment, about the continuing pursuit of the appeal which, of itself, is frivolous, vexatious or harassing or manifestly groundless or in which there is clearly no cause of action in law or in equity so as to render its pursuit, in light of the changed circumstances, an abuse of process.

(4) Academic

31. Notwithstanding the different ways in which VWDC articulated, in my view unsuccessfully, its case, this issue is really the nub of the dispute.
32. VWDC's case is that the appeal has been rendered academic by the fact that Ms Fertre presently has the benefit of a 6 month assured shorthold tenancy, expiring in October 2024, and that whether Ms Fertre may become homeless or threatened with homelessness upon the expiry of that tenancy is speculation. It points out that in November 2025, Ms Fertre will in any event get indefinite leave to remain and the question of threshold eligibility for assistance disappears.

33. Mr Cox concedes on behalf of Ms Fertre that the Court has the inherent jurisdiction to strike out a s. 204(1)(a) appeal which is shown to be academic, in the sense that the appeal is pointless because the appellant no longer has any interest (in the sense of benefit) in the outcome. In Ainsbury v. Millington (Note) [1987] 1 W.L.R. 379, 381 Lord Bridge of Harwich, with whom the other members of the House agreed, held:

*‘In the instant case neither party can have any interest at all in the outcome of the appeal. Their joint tenancy of property B which was the subject matter of the dispute no longer exists. Thus, even if the House thought that the judge and the Court of Appeal had been wrong to decline jurisdiction, there would be no order which could now be made to give effect to that view. It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.’*

34. Mr Lane, conversely, accepts that even where there is no interest, a Court may nevertheless in its discretion, permit a matter to continue. In ‘Judicial Review’ (6<sup>th</sup> Edition), the editors neatly encapsulate the position:

*‘The court does not beat the air in vain. Although the court has a discretion to determine an academic claim where there is public interest in doing so, the normal principle is that the court does not decide hypothetical questions...It may have become otiose or pointless to grant a remedy because the relevant detriment to the claimant has been removed or because nothing in practice will change of the remedy is granted.’*

35. As to what may be relevant to the issue of whether a dispute was or had become academic, in Deugi, in the passage already quoted above, the Court of Appeal referred to ‘some benefit or advantage’ and ‘enduring benefit’. In Stanley v Welwyn Hatfield Borough Council [2021] H.L.R. 12 identified, by reference to Deugi, the identification of a ‘some distinct factor giving rise to a legitimate interest in pursuing the quashing of the first decision’. In Ugiagbe v London Borough of Southwark [2009] H.L.R. 35, Lloyd LJ (with whom Jacob and Sedley LJ agreed) quashed the Council’s decision and then, in the context of remedy, stated at [30]-[31]:

*‘After the judge had dismissed the appeal, the Appellant obtained accommodation by way of a secure tenancy in the private sector. If that were to provide stable and settled accommodation, in which she can stay for some time, it may render the question whether she became intentionally homeless in November 2007 a point of only theoretical interest. Unfortunately, although the Appellant’s solicitors told the court of this development promptly, they did not give the same information to the Council, in breach of the elementary rule that a party must not write to the court without copying the letter to the other side. The solicitors have apologised, and the person who was responsible had left their employment some time ago. The facts only became known to the Council shortly before*

*the hearing of the appeal. It then contended that the appeal was academic, and ought not to be pursued.*

*However, on enquiry, [Counsel for the Council] told us that the Council was not, and could not be, in a position to ensure that, if the Appellant were to become homeless again, and were to apply to it or to any other relevant housing authority, the Council's finding, in its original and review decisions, that it was satisfied that she had become intentionally homeless in November 2007 would not be taken into account. On the Appellant's part, we were told that the accommodation cannot be relied on to be stable, and that there is a risk that she may again become homeless. In those circumstances it seems to me that the point is not necessarily academic, though it affects the order that the court should make on the appeal.'*

36. This case makes clear that a risk of future homelessness can be a sufficient interest such the matter is not academic. In light of this, Mr Lane's submission that the benefit or interest has as a matter of principle to be an actual, present benefit is not correct. There are plainly some matters which are so based upon speculation as to be fanciful, and such matters could not be legitimate interests for the purposes of persuading the Court that the matter pursued is not academic.
37. In the present case, I am entirely satisfied that Ms Fertre has a strong and legitimate ongoing interest in the resolution of the appeal. This assessment must, of course, be premised upon the necessary assumption that Ms Fertre is successful in the appeal, an issue in respect of which I plainly form no view whatsoever.
38. This is for the following combination of factors:
  - (1) if VWDC had not made an error of law (assuming that it has) in the 2021 Eligibility Decision, Ms Fertre would have the enduring benefit of a determination of threshold eligibility for assistance under Part 7 of the 1996 Act;
  - (2) this is a real benefit in circumstances where the risk that Ms Fertre is made homeless or threatened with homelessness is not fanciful. Ms Fertre describes the risk as a 'serious' one, and I accept that characterisation. Her present status as not homeless or threatened with homelessness is the first time she has been in this situation since 2021. Her assured shorthold tenancy is for 6 months and there is no inevitability about its renewal (I note in Ugiagbe the tenancy was a secure one, but on the facts in that case it was still not regarded as stable). Ms Fertre's accommodation is shared with other people with mental health difficulties and its continued appropriateness as accommodation depends upon the happenstance of the needs of a new sharing tenant, over which Ms Fertre exercises no control. It may also be that, should Ms Fertre's mental condition require hospitalisation as it has done in the recent past, she would lose her accommodation;

- (3) the enduring benefit of the certainty provided by a determination of Ms Fertre's threshold eligibility in the context of Ms Fertre's mental health is also an entirely legitimate one for the Court to take into account. Assuming success, I accept that the mental reassurance and confidence that local authorities will have to accept that Ms Fertre passes the threshold eligibility test for homelessness and housing assistance is a benefit. This, of course, is a real and present benefit, even though it is to some degree parasitic upon the fact that there is a risk Ms Fertre will find herself in need of such assistance in the future, which I have already found to be the case;
- (4) I also accept that it is legitimate for the Court to consider the collateral benefit in relation to her position on the housing register under Part 6 of the 1996 Act, even though this benefit does not directly relate to the Part 7 decision. Ms Fertre's unchallenged evidence is that she plans to apply for social housing to enable her younger daughter to have staying contact with her and to live with her. Under VWDC's Housing Allocations Policy issued February 2019, paragraph 11.i the 'priority order' for most applicants is usually according to the date they originally applied to go on the housing register, called the 'registration date.' VWDC's decision that Ms Fertre was not eligible for homelessness assistance would, if successfully challenged, mean that Ms Fertre's registration date could reflect the date she actually applied (and was rejected on grounds of ineligibility), namely October 2021. There is a real, as opposed to fanciful, prospect that a decision of the Court confirming her eligibility (if that is the outcome of the appeal) could have the collateral benefit in respect of the date VWDC would recognise Ms Fertre's registration and therefore her position on the waiting list. It is not relevant to whether this is a real benefit the Court may have regard to that Ms Fertre could/should have challenged the housing registration rejection as well: in reality she was challenging the eligibility question through the Appeal.
39. In the circumstances, I do not regard the Appeal as academic, nor that it should be struck out.
40. Even if I was wrong on my assessment of benefit, I remind myself that although the normal principle is that the Court does not decide hypothetical questions, the Court retains a discretion to determine an academic claim where there is public interest in doing so.
41. I consider that the point in issue is of considerable public importance. The importance of the case is underlined by the three intervener applications. The Secretary of State for Levelling Up, Housing and Communities, for example, describes the issue as one with '*broader ramifications*' involving '*legal issues of wider significance*' affecting most income-related welfare benefits. The3Million Ltd describes the issue as one potentially affecting '*a large cohort of Union citizens*'. The Independent Monitoring Authority describes the issues

as being ‘of significant public importance and they may have considerable implications for other cases and situations, beyond this appeal. In this regard the IMA cites the most recently published UK Government statistics which note that as of December 2023, there are over 2 million citizens with pre-settled status with the UK’. There are two county court cases in which argument on the issue has been heard, but in respect of which judgments are awaited, although this would be the first time the issue is to be considered by the High Court.

42. I of course bear in mind, in the exercise of my discretion on this alternative basis, that the financial burden of this specific appeal lies with one specific local authority. However, even through the lens of just one local authority - and acknowledging there is no specific evidence on this point before the Court – having to deal with decisions and the reviews of decisions on the same basis multiple times is itself a financial burden that will be alleviated with certainty on the point one way or the other. I also bear in mind that this burden is being multiplied throughout England and Wales, which burden caused by uncertainty is falling on the public purse.
43. Particularly given the proximity to the forthcoming hearing, even if, contrary to my findings above, Ms Fertre had been unable to identify an ongoing legitimate interest such that the issue was truly academic, I would depart from the normal position and, in light of the public interest in the point in issue, permit the appeal to continue.
44. In light of the foregoing, it is not necessary for me to consider the arguments relating to section 31(2A) Senior Courts Act 1981, which were not pursued with any vigour by Mr Lane in oral argument.
45. In the circumstances, I dismiss the application to strike out the Appeal.

#### The Intervenor Applications

46. It was, in the event, not necessary to hear orally from the proposed Intervenors, although I am grateful to Mr Cornwell (Counsel for the Secretary of State for Levelling Up, Housing and Communities), Mr Charles Bishop (Counsel for The3Million Ltd) and Ms Samantha Morrison (Senior Legal Advisor to Independent Monitoring Authority for the Citizens’ Rights Agreements) for their written submissions.
47. The applications by the Secretary of State for Levelling Up, Housing and Communities and the Independent Monitoring Authority for the Citizens Rights Agreements were, in the event, not opposed by either party. The application of The3Million Ltd was opposed by VWDC, but in oral argument fairly accepted in a light touch submission that its objection was tied up, at least to some degree, with its perception that the issue was academic and that intervening would not be proportionate. Having extended the time estimate from 1.5 to 2 days (to which neither party objected), the concern about timing fell away.

48. I am in no doubt that, given the nature and importance of the issue, efficient written and brief oral intervention by each of the three Intervenors from their different areas of expertise and experience will be of considerable assistance to the Court, and I grant the applications. I leave the parties to agree directions for the service of written submissions and the timetable for oral submissions, and to revert to the Court in writing if the matter cannot be agreed.