IN THE UPPER TRIBUNAL **Case No** CE/2386/2016
ADMINISTRATIVE APPEALS CHAMBER

Before UPPER TRIBUNAL JUDGE WARD

Interim Decision:

1. I make an order under rule 14 prohibiting the publication of any matter likely to lead members of the public to identify the claimant in these proceedings or her children.

2. The case is to be known as SSWP v LM (ESA) (Interim Decision). LM are not the claimant's true initials.

3. The appeal is allowed to the extent that I conclude that the decision of the First-tier Tribunal sitting on 27 April 2016 under reference SC319/15/01641 involved the making of an error of law and is set aside.

4. With a view to remaking the decision under section 12(2)(b) of the Tribunals, Courts and Enforcement Act 2007, I find as fact that :

(a) the claimant was last employed between 11 May 2011 and 16 December 2011. Her employment was in work that was genuine and effective;

(b) without a material break she then became entitled to employment and support allowance until 15 June 2012 and then to credits for unemployment until around 5 October 2012;

(c) during the period in (b) and notwithstanding that on 15 June 2012 she was found not to have Limited Capability for Work for the purposes of employment and support allowance and subsequently claimed jobseekers allowance and received credits for unemployment she was incapable of work; during such period such incapacity was temporary;

(d) from 5 October 2012 or thereabouts to 21 November 2013 or thereabouts she continued to be incapable of work and such incapacity was temporary;

(e) by a date on or around 21 November 2013 her incapacity had become permanent for the purposes of Article 17 of Directive 2004/38 and Regulations 5 and 15 of the Immigration (European Economic Area) Regulations 2006.

5. Each party must, within one month, file a submission as to how Article 17 and/or Regulations 5 and 15 should be applied in the light of the above findings.

REASONS FOR DECISION

1. This case, concerned as it is with a Polish national whose illness and other circumstances are matters for considerable sadness, while an extreme case, highlights the evidential difficulties which an EU national may face in establishing whether or not they have a right to reside derived from EU law or the UK implementing regulations. The case and has required considerable investment of time and care by the Upper Tribunal in order to exercise its inquisitorial jurisdiction.

2. One aspect of this case which I hope may assist others concerned with establishing the work and benefits history of EU nationals in difficult or uncertain circumstances may be found in the detailed evidence provided in this case by the National Insurance Contributions Office ("NICO") through the Data Protection Unit – PAYE & Self Assessment Unit of HMRC as to how the contributions record which not infrequently forms part of the First-tier Tribunal's ("FtT's") papers in cases of this type should be interpreted. The contributions record was a key part of the evidence that was before the FtT in this case and appears in redacted form as Appendix 2. It was printed on 3 September 2015 and records data up to and including the 2012/13 tax year, but none is recorded for 2013/14 or 2014/15. I am grateful to those who have provided full and helpful answers on behalf of NICO to a number of detailed questions. The key findings based on that evidence are set out in Appendix 1 to this decision and are commended to those with an interest in the area, whether or not they wish to read the decision as a whole. Whilst some of the material in Appendix 1 may be either obvious or widely known, other parts may not be.

3. The respondent claimant had appealed successfully to the FtT against the DWP's decision dated 29 June 2015 that, in effect, her claim for employment and support allowance ("ESA") failed because she lacked the right to reside.

4. The FtT accepted an apparent concession by the Secretary of State that the claimant had acquired worker status during her period of employment with I Ltd which had ended on 24 April 2009. The FtT's key reasoning was set out in its decision notice (which it subsequently endorsed in its statement of reasons):

> "[The claimant] has a diagnosis of schizophrenia. She has lived a chaotic lifestyle as a result of her condition and has spent periods in hospital. I find that when she was not claiming benefits then she was suffering the effects of temporary illness. She is literate and skilled and there is every reason to believe that she is able to undertake genuine and effective work in the future when she is sufficiently recovered.
>
> Given that a period of 5 years has elapsed during which [the claimant] has retained worker status I find that she has a permanent right to reside in the UK from 27 April 2015."

5. Permission to appeal was given by the FtT judge.

6. The Secretary of State's original grounds of appeal, written by representative A, appeared to me to be flawed, in that they (inter alia) overlooked material evidence that had been before the FtT, relied on evidence that had not been before the FtT, failed to apply correctly the decision (albeit it was subject to appeal) in *TG v SSWP (PC)* [2015] UKUT 50 and appeared to criticise a conclusion of the FtT which seemed to flow logically from the rest of its findings. That said, I considered there were a number of points, albeit not raised by the Secretary of State, which called into question the legal validity of the FtT's decision.

7. I set those points out in detailed directions dated 28 September 2016. The directions also invited the parties to consider whether they would request the Upper Tribunal to use its power to make orders and/or give directions for the production of further evidence. (There are periods when, perhaps because of the claimant's mental health difficulties, her circumstances were explained barely or not at all in the evidence which the FtT had.) Finally, I indicated that I would be minded to view sympathetically an application to hold an oral hearing in the city where the claimant lives (which is not a regular venue for this Chamber), in view of her apparent considerable vulnerability which emerged from the papers, to facilitate her giving evidence in the event that the FtT's decision fell to be set aside and remade.

8. In a submission, the claimant's representative indicated she was having difficulty contacting her. Whether for that reason or not, the submission did not move matters forward very much. The representative indicated that she had no comments to make in response to the directions of 28 September. The submission made a number of rather vague comments about the evidence, none of which amounted to an application to the Upper Tribunal to use its powers to make directions or orders. It indicated that an oral hearing was not required. Subsequently the representative was able to make contact with the claimant, but in spite of further directions indicating the apparent problems with the previous submission, a follow-up submission did not materially advance matters either. A request was made by letter dated 23 February 2017 for the Upper Tribunal to exercise its powers. It contained the wrong legal references, failed to explain what evidence it was sought to obtain or from whom, or to give any details of the steps, if any, taken to obtain whatever evidence it was that the Upper Tribunal was being asked to obtain through the use of its powers. This was surprising and an opportunity was then (exceptionally) provided to the supervising solicitor of the organisation concerned to supplement the previous submissions but no response was forthcoming at that stage.

9. Meanwhile representative B on behalf of the Secretary of State had filed a submission agreeing with the points on which I had challenged representative A's submission and inter alia (perhaps with a degree of misplaced encouragement, since corrected, from me) appearing to concede a point which representative A – notwithstanding the apparent concession by the Secretary of State in the FtT but, as it turns out, rightly - had previously sought

to dispute, namely that the claimant had had 12 months employment that had been registered under the Accession (Immigration and Worker Registration) Regulations 2004 ("the 2004 Regulations"). Representative B's submission was silent about the points I had identified of my own motion in the directions of 28 September. The submission did however provide additional evidence: that a job grant of £250 had been paid to the claimant on 23 May 2011.

10. The FtT explained in the statement of reasons:

> "For the reasons that I explained in the decision notice…in which I surveyed the history of [the claimant's] illness I was content that her illness had been temporary. I remind myself that the question here is whether it is temporary as opposed to permanent. Her condition is known to be one that can wax and wane and one that does not render a suffer[er] necessarily incapable of work on a permanent basis. I took the further view that the break in time was not material here and that even in the event that [the claimant] had worked on occasion any work that she had done would not detract from my overall finding and nor would it undermine her retained worker status. Indeed it is set law that the retained status need not be on the [same] footing throughout any period in issue."

11. Whilst I acknowledge the understanding and humanity expressed in the above views, in my view the conclusion is based on insufficient engagement with the evidence by the FtT, leading to inadequate findings of fact and insufficient reasons being given. There was evidence before the FtT of 15 weeks of JSA claim in 2009/10, 52 weeks during 2010/11 and 4 weeks in 2011/12. The evidence for 2011/12 also showed 30 weeks on working tax credit and the contribution codes for three employers. 2012/13 shows a further 15 weeks which were the subject of a JSA claim resulting in credits. Additionally, one of the employers' contribution codes which had appeared the previous year appears again.

12. The conclusions ignore the 71 weeks in which the claimant appeared to have been available for employment, evidenced by the JSA claims. They further ignore the 30 weeks of employment in 2011/12. While not dissenting from the judge's understanding of the effects of the claimant's condition, a total of 101 weeks is too much to be glossed over in such a way: this is not patently a person who was trying work for short periods of time, only to find because of her illness that she could not manage it and giving up again.

13. Successfully claiming jobseekers allowance ("JSA") requires a person to be available for work. Whilst reasonable relaxations are permissible under reg.13(3) of the Jobseekers Allowance Regulations 1996 in the light of a person's state of health, the fundamental principle remains. I am unable to see from the statement of reasons how the judge's conclusion was consistent with the claims for JSA between 23 December 2009 and 11 May 2011 (or thereabouts) and between 18 June 2012 and 5 October 2012. While of course it is possible to retain the right to reside on a number of different bases

sequentially, if that was the case, then findings of fact would be necessary as to the circumstances in which each JSA claim came to an end.

14. A similar inconsistency can be found in relation to the claim for working tax credit lasting for 30 weeks in 2011/12, for which the claimant would have had to have worked for 16 hours a week (Tax Credit (Entitlement and Maximum Rate) Regulations 2002, reg 4). If there was an apparently significant period of work at this time, then I do not see how, despite that, the tribunal considered the claimant was "temporarily unable to work".

15. Accordingly, I set the FtT's decision aside for insufficiency of findings and inadequacy of reasons.

16. Prior to remaking the decision, I issued, on the Upper Tribunal's own initiative, orders under rule 16 directed to (a) the tax credit office and (b) the National Insurance Contributions Office (as to which see [2] above) and the parties' representatives were given the opportunity to make representations in relation to the material received. This in turn elicited, for the first time, a printout of the claimant's medical record and accompanying hospital letters, in all a considerable volume. I allowed it to be submitted. It has unfortunately not been accompanied by the sort of detailed analysis I would have expected.

17. It is now common ground in the light of the claimant's representative's submission of 20 August 2017 that her work with I Ltd was not continuous: rather, her first job with them, which was properly registered under the 2004 Regulations, was from 31 October 2007 to 24 October 2008 i.e. marginally short of the 12 months required before a person would cease to be subject to the 2004 Regulations. She then re-started with I Ltd so as to work from 23 February 2009 to 24 April 2009, unregistered. This is supported both by the payslips the claimant was able to produce at the time but which are no longer in evidence (p6) and by the evidence from NICO (p399) that:

> "Customer has two postings with the same employer. Our records show leaving date in the first employment, therefore she has 2 employments with the same employer. As they both have diferent payroll numbers they are classed as 2 separate employments."

18. The gap between 25 October 2008 and 22 February 2009 (inclusive) cannot be bridged by the applicant's work with T Ltd (which had originally also been registered.) Although no end date of work with T Ltd is in evidence, it must have finished no later than 05/04/2008 (the end of the 2007/08 tax year): see the contributions record and the evidence from NICO, which indicates that while it is possible to have been working for an employer for less money than the Lower Earnings Limit, that would have resulted in the employer's name appearing for the relevant tax year followed by a row of zeros. As it does not, the claimant did no work for T Ltd in the 2008-09 tax year.

19. A registration certificate expired on the date on which the worker ceased working for that employer, thus the certificate obtained in respect of the first employment with I Ltd was not valid for the second employment with I Ltd: see

reg 7(5) of the 2004 Regulations. The requirement to re-register on a change of job was upheld by the House of Lords in *Zalewska v Department for Social Development* [2008] UKHL 67 and I am required to follow it.

20. The claimant's representative seeks to rely on reg 2(8) of the 2004 Regulations[1], which provided:

> "(8) For the purpose of paragraphs (3) and (4), a person shall be treated as having worked in the United Kingdom without interruption for a period of 12 months if he was legally working in the United Kingdom at the beginning and end of that period and any intervening periods in which he was not legally working in the United Kingdom do not, in total, exceed 30 days."

She submits that "the appellant is 7 days short of the 52 weeks requirement however she is covered by the above legislation and satisfies this requirement." However, reg 2(8) requires a person to have been legally working in the UK at the beginning and end of the 12 month period, so a person who falls short by reason of not having worked at the end will not qualify. That is so, even though an equally short gap earlier on, followed by a resumption of work, might have led to the requirements of the 2004 Regulations being met.

21. In consequence, I conclude that the claimant never completed 12 months in registered employment.

22. No submission has been made that this is a case where principles of proportionality should be deployed to allow a person who narrowly misses meeting the conditions to qualify, as in C-413/99 *Baumbast*. However, in *JK v Secretary of State for Work and Pensions (SPC)* [2017] UKUT 0179 (AAC) the Secretary of State made, and Upper Tribunal Judge Rowland accepted, a concession that it would be disproportionate to enforce against the claimant the requirements of the 2004 Regulations. The person whose work history was in issue was the son of the claimant in that case, a Polish national. He had initially had a 1 year student visa from 30 March 2003. He worked from April 2003 to June 2004 for "South Pacific Treats" which was permitted by the rules in force up to the end of April 2004. In April 2004 he did no work for them, instead returning to Poland to avoid being in breach of immigration law once his visa expired. On 1 May 2004 Poland joined the EU, the son returned and carried on where he left off. After he finished with South Pacific Treats he went on to other jobs and periods of unemployment when he was paid JSA. None of his jobs was registered under the Worker Registration Scheme, in the belief that he had clocked up 12 months of lawful work by 1 May 2004 anyway and could benefit from the transitional protections in the 2004 Regulations without needing to register. The making and acceptance of the concession appear predicated on there being continuing scope for argument, in the circumstances of particular cases, that it would be disproportionate to enforce against a claimant a particular requirement of the 2004 Regulations. The

[1] The reference in her submission of 5 October 2017 to reg 8(8) is a slip.

facts of *JK* are quite specific, involving a misunderstanding leading to a breach of the 2004 Regulations by a person who appeared demonstrably concerned to have acted lawfully. However, the doctrine of proportionality is not so confined. Indeed, in *Baumbast*, the gap bridged by the application of the doctrine was a small shortfall in the scope of Mr Baumbast's otherwise comprehensive sickness insurance cover. If it were capable of making the difference to the outcome of this case whether the doctrine of proportionality could be invoked so as to overlook the 7 day shortfall in the period of the claimant's work while registered, it would be appropriate to raise the point, of the Upper Tribunal's own motion, with the Secretary of State.

23. Let it be assumed therefore that by reason of the doctrine of proportionality, the claimant's rights fall to be examined regardless of the small shortfall in her period of registration, with the consequence that she could rely on her first period of work with I Ltd to achieve the status of "worker". To retain such status, when no longer working, she would have to bring herself within Article 7(3) of the Directive, which would require her to have been in "duly recorded involuntary unemployment" and to have "registered as a jobseeker with the relevant employment office". *SSWP v MK(IS)* [2013] UKUT 163 held that, in order for worker status to be retained, these requirements must have been complied with without "undue delay". In the present case, the contributions record does not show any claim for JSA or otherwise for credits for unemployment between 24 October 2008 and 22 February 2009, a period of virtually 4 months. The claimant appears to have been in receipt of working tax credit during that time and the likely inference is that she relied on that to tide her over until such time as she could get more work. The chance to provide oral evidence to the Upper Tribunal has not been taken up and there is no other written evidence on this issue. I Ltd is a specialist cleaning company, not an agency. If the claimant was relying on more work from I Ltd being forthcoming (as admittedly eventually happened), she was relying solely on one business for further work, which on the face of it appears excessively restrictive. In *SSWP v Elmi* [2011] EWCA Civ 1403, the Court of Appeal emphasised that the requirement to register was an additional requirement. Registering of course has the consequence of bringing an individual into contact with the State's facilities to assist with finding employment, a consideration of some importance given the historical development of EU law in this area with its emphasis on promoting labour mobility. On the evidence available to me in this case I would conclude, were the point to arise, that there was undue delay involved in not registering for almost 4 months.

24. In consequence, I do not pursue the proportionality issue further.

25. The Secretary of State's submission to the FtT was ambivalent with regard to whether the claimant had completed 12 months of registered employment. Whether or not the FtT was entitled to accept what it regarded as a concession might be the subject of debate. However, as I have held the FtT's decision to be in error of law for other reasons, it is not a question which need detain us. When it comes to remaking the decision, though, my position is as set out above.

26. Difficult legal issues may arise where a person does have a worker registration certificate but not for the full 12 month period. These are being examined in two cases in this Chamber, *RP v SSWP (ESA)* [2016] UKUT 422 (AAC), in which a reference has been made to the Court of Justice of the European Union (as C-618/16 *Prefeta*), and *SSWP v NZ* (CE/98/2015), in which there have been a series of interim decisions, but in which submissions are awaited following the decision of the Court of Appeal in *SSWP v Gubeladze* [2017] EWCA Civ 1751, before a final decision can be given. However, in the light of the conclusions I reach below on the evidence now available to me, the same legal issues do not arise in the present case.

27. For the above reasons, the claimant had no worker status to retain from 2007-2009 and is unable to rely on events in that period as the foundation for establishing a right of permanent residence based on 5 years' lawful residence.

28. The claimant may however have an alternative argument, essentially starting from the period of work with V Ltd in 2011, which was after the end of the worker registration scheme on any view of the law, thus the issues concerning the validity of that scheme considered by the Court of Appeal in *Gubeladze* (on appeal from *TG v SSWP*) are not relevant to the present case. However, I cannot assume that thereafter she was incapable of work - at various times prior to that she appears to have had some capacity to work despite her illness, which had already necessitated hospital admissions in 2008 and 2009. If she could establish that her incapacity was temporary down to the date of the DWP's decision under appeal, that would result in her retaining worker status under Art 7 of the Directive/reg 6 of the Immigration (European Economic Area) Regulations 2006/1003 ("the 2006 Regulations"). If on the other hand I were to conclude that her incapacity had become permanent before that date, a number of questions would arise under Article 17 of the Directive and/or regulations 5 and 15 of the 2006 Regulations. These include whether the legislation requires 2 years actual residence (which the claimant on any view would have) or 2 years lawful residence (to which the closing part of Art 17(1) and reg 5(7) might be relevant, hence the further submissions directed.) The "actual or lawful residence" question was the other issue on which the Court of Appeal ruled in *Gubeladze*, in favour of lawful residence. Whether that case will go any further appears to be unresolved at the time of writing.

29. Article 17 of the Directive provides so far as material:

> "1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:
> …
> (b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.
> …

> Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment."

30. Regulation 15 of the 2006 Regulations provides so far as material:

> "(1) The following persons shall acquire the right to reside in the United Kingdom permanently—
> …
> (c) a worker or self-employed person who has ceased activity;
>
> (1A) Residence in the United Kingdom as a result of a derivative right of residence does not constitute residence for the purpose of this regulation.
> …"

The relevant definition and other material are provided by Regulation 5:—

> "(1) In these Regulations, *"worker or self-employed person who has ceased activity"* means an EEA national who satisfies the conditions in paragraph (2), (3), (4) or (5).
> …
> (3) A person satisfies the conditions in this paragraph if—
> (a) he terminates his activity in the United Kingdom as a worker or self-employed person as a result of a permanent incapacity to work; and
> (b) either—
> (i) he resided in the United Kingdom continuously for more than two years prior to the termination; or
> (ii) [not material]
> …
> (7) Subject to regulations 6(2) , 7A(3) or 7B(3), for the purposes of this regulation—
> (a) periods of inactivity for reasons not of the person's own making;
> (b) periods of inactivity due to illness or accident; and
> (c) in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,
> shall be treated as periods of activity as a worker or self-employed person, as the case may be."

31. Turning to relevant caselaw, the Court of Appeal's decision in *Samin v City of Westminster* [2012] EWCA Civ 1468; [2013] 2 CMLR 6 was subsequently appealed to the Supreme Court, but not on any point which affects the Court of Appeal's decision for present purposes, by which the Upper Tribunal is, of course, bound. The Court had had the opportunity of reviewing previous authorities. I gratefully adopt the summary of them by Hughes LJ, giving the judgment of the Court:

"16. Regulation 6(2)(a)[2] has been considered in the English courts.

17. The point first arose in SSHD v FMB [2010] UKUT 447 in the Immigration and Asylum Chamber of the Upper Tribunal. There the question arose because the claimant was a member of the family of a Swedish citizen. She claimed the right of permanent residence under Regulation 15 on the basis of her father's status. Thus the case turned on whether he had been a qualifying person within Regulation 6 for the relevant period of 5 years. He had been a teacher for about two years and then had been unable to work through illness for nearly four years, when he became a student. The Immigration Judge who had heard the evidence had characterised father's absence from work as 'temporary'. The Upper Tribunal (Blake J) held that he was entitled to do so. In so holding, the Upper Tribunal accepted the argument that 'temporary' was to be contrasted with 'permanent', citing the appearance of the latter word in Article 17 and Regulation 5 (see above). It did not itself rule on whether the claimant's father was temporarily or permanently unable to work; it simply held that this was a question of fact and that the Immigration Judge had made no error of law in treating the inability as temporary. That certainly involved accepting that a four year absence from work may be capable of being temporary, but goes no further than that. It appears that the father was awaiting newly available prescription medication. It follows that the Upper Tribunal was not purporting to lay down any rule for when a condition is temporary and when it is permanent.

18. In De Brito v SSHD [2012] EWCA Civ 709 the relevant worker had given up work in July 2005 with a painful leg. In due course the condition was diagnosed as chronic osteomyelitis. After, but not before, the diagnosis, it was clear that his incapacity to work was permanent. He sought the permanent right to reside, relying on Regulation 15(1)(c), which would avail him only if he had achieved two years working residence before the permanent incapacity arose. The Upper Tribunal had held that the incapacity had been, objectively judged, permanent from the outset and thus that the claimant had not got the necessary two years qualification. It asked itself the question whether on all the available evidence there had been realistic prospects of the claimant returning to the labour market. The claimant's case before the Court of Appeal was principally that an absence is temporary when the claimant himself reasonably thinks it is. This Court disagreed and held that the test is objective. The court also adopted the dichotomy formulated in FMB between temporary incapacity on the one hand and permanent incapacity on the other, observing that which any particular case is amounts to a question of fact. It helpfully observed that (a) the fact that a person has not in fact worked does not necessarily mean that the incapacity is permanent; there might be another reason for not working, and (b) conversely what looks likely to be permanent

[2] i.e. the provision in domestic law concerned with retaining worker status on the basis of being temporarily unable to work

> incapacity may not be if for example one is waiting for surgery or new medication (as in FMB). It approved the testing of a temporary incapacity by asking whether there were realistic prospects of a return to work. It held that the Upper Tribunal had clearly been entitled to conclude that in this case the incapacity had always been permanent. There is no inconsistency between FMB and de Brito; each turns on its facts.
>
> 19. In Konodyba v Royal Borough of Kensington and Chelsea [2012] EWCA Civ 982 the claimant suffered from a paranoid personality disorder together with depression and anxiety. The personality disorder in particular meant that she was unable to engage with any care which might have helped. She had been in that condition for some four years. The Housing Act reviewer had determined that her inability to work was not temporary. This court held that he was entitled so to conclude. En route to that conclusion it too accepted the dichotomy between temporary and permanent incapacity, and the relevance of the test whether there was a realistic prospect of return to the labour market. Giving the judgment agreed by all members of the court, Longmore LJ said this:
>
> > "22. If a person is unlikely to be able to work in the foreseeable future there are no realistic prospects of her being able to return to work. Mr Stack went on to say: 'I cannot concur with your solicitor's view that your prospects of becoming self-employed in the foreseeable future is a realistic one.' I cannot think that Mr Stack's use of the words 'foreseeable future' connotes any error of law. After all…. no-one can be expected to peer into the unforeseeable future. It is also important that decisions of housing reviewing officers are not combed over to find errors of law when the same legal concept can be expressed in varying ways.
> >
> > 23. Ultimately the question whether Dr Konodyba was temporarily unable to work is a question of fact."

32. Counsel for Mr Samin submitted, by reference to European jurisprudence, that the appropriate test of whether a person is “temporarily unable to work” is to ask whether there is “any chance” of a return to work [20]. At [21] to [30] Hughes LJ reviewed the European authorities, noting that none of them involved any attempt to construe the particular words with which *Samin* (and the present case) are concerned. He continued:

> “30. … Next, the European cases support the antithesis which emerges from the English cases between temporary interruptions in employment on the one hand and permanent interruptions on the other. Thirdly, although these cases were not cited to the English courts in de Brito or Konodyba, they are entirely consistent with the approach there set out, which is that it is normally sensible to ask whether there is a realistic prospect of the individual returning to work.

> Although Mr Carter would have us substitute the question whether there is "any chance" of his doing so, he did not contend that any chance, however remote or improbable, would suffice, nor that a worker remains temporarily unable to work until all possibility of a return to work has been eliminated. Indeed, so to hold would expand 'temporary' inability to work to almost every case. The passing reference to "any chance" in Dogan was clearly not meant to be a definitive test for the meaning of Article 7(3)(a), but there is in the end no difference of any significance between Mr Carter's formulation and that of de Brito and Konodyba.
>
> 31. This court is bound by de Brito and Konodyba. We have considered the European cases in some depth because they were not referred to in either decision. If, having done so, there remained a doubt about the proper approach to the meaning of Article 7(3)(a) we ought to refer it to the CJEU. It is important that the application of domestic provisions based on Article 7(3)(a) should be applied consistently across the Union. There is, however, no room for any sensible doubt. The Article, and Regulation 6(2)(a) of the domestic Regulations, contain a specific test, namely whether the interruption is a temporary one or is not. Temporary is to be contrasted with permanent. The question is one of fact in every case; plainly the circumstances which will fall to be examined will vary infinitely. It will generally be helpful to ask whether there is or is not a realistic prospect of a return to work. It will generally not be helpful to ask if the interruption is indefinite; an indefinite absence from work may well not be temporary, but it might be, for example if an injured man is awaiting surgery which can be expected to restore him to fitness to work, but the date when it will be available is uncertain. This approach to the legislation, explained in de Brito and Konodyba, is entirely consistent with the objectives of the Directive as explained in its recitals and in the European cases."

33. Consistent with, but supplementing, the above, in CE/98/2015 *SSWP v NZ (second interim decision)* at [61] I expressed the view, which I continue to hold, that the test is whether there is a realistic prospect of the claimant's return to work that is "genuine and effective" in the sense in which that term is used in EU law and could do so with a degree of continuity realistically capable of being acceptable to an employer.

34. It is important to note that in *De Brito* the Court of Appeal held (at [29]) that the burden was on the claimant to establish that at any time after his employment terminated his absence from work was due to temporary incapacity.

35. I find as fact that the claimant first had contact with mental health services in April 2008 following a drug overdose, was admitted to hospital in May 2008 (p74) and again, on the stated ground of "drug psychosis", in July 2009. She was employed for 21 hours per week by V Ltd as a healthcare assistant from 11 May 2011 to 16 December 2011. By July 2011 social services had become involved in relation to her children and her behaviour had

necessitated her removal by the police to a place of safety, and subsequent assessment, pursuant to s.136 of the Mental Health Act 1983 (p422). By August the GP practice was noting drug misuse, the doctor noting (p422) "I would suspect more drug use than she admits." The claimant was in hospital between 31 October 2011 and 7 November 2011, for mental health: the discharge summary at p474 records a diagnosis of "drug intoxication due to amphetamines". Nonetheless, between November 2011 and February 2012 the claimant received drug and alcohol counselling, consistently tested negative for illicit drugs and only once had a positive reading for alcohol. The two children she had at that point were returned to her from local authority care. However, by April 2012 the claimant was noted as abusing alcohol and amphetamines again and in due course (by a date which I have not been able to locate in the evidence but which (p428) was no later than 18 January 2013) her children were returned to the care of the local authority.

36. Following her work with V Ltd, she had a period in receipt of income-related ESA, which terminated on 15 June 2012. The Secretary of State's inquiries have failed (p135) to establish whether a right to reside decision was reached on that ESA claim so there is no relevant inference for me to draw from that decision. Experience in other cases suggests that it is by no means axiomatic that the Secretary of State would have taken a right to reside decision in favour of the claimant before paying benefit.

37. The start date of that period of ESA is not in evidence, but from the records of the amounts paid, the Secretary of State's representative calculates that the claim would have commenced around Christmas 2011. (That made it virtually continuous with the end of the work with V Ltd.)

38. The reason why the ESA claim ended is in evidence: that she was adjudged not to have limited capability for work. That would be consistent with the claim she appears to have made for JSA between 18 June and 5 October 2012: being a jobseeker would (subject to issues around whether she had a genuine chance of being engaged which were not then at the forefront of the DWP's practice) have conferred a right to reside as would "worker" status if (as seems likely) it was retained from the work with V Ltd through the period on ESA – assuming her incapacity then to have been temporary - and subsequent job seeking. Nonetheless, it appears (p135) that by 20 October 2012 the Wick office of the DWP, which deals with right to reside issues, had issued a decision that she did not have the right to reside. It appears that she failed to attend and/or to supply the information required by the DWP. Her life may have been chaotic around this time: In July 2012 she was noted as "missing" for 6 weeks (p511).

39. She appears to have been in receipt of working tax credit until 8 August 2012 – it is not clear whether it was subsequently adjudged to have been overpaid. Its only significance for present purposes could be if it showed she had been working, a possibility which is highly unlikely to have arisen in the period Christmas 2011 to October 2012 to any material extent because the benefit claims she was making would have been inconsistent with such a

proposition, in the absence of very specific factors such as "exempt work" under reg 45 of the ESA Regulations 2008 (of which there is no evidence).

40. The claimant's representatives submit that she had a derivative right at this time. However, derivative rights do not count for the purposes of claiming permanent residence based on 5 years residence in accordance with the Directive: C-529/11 *Alarape and Tijani,* nor are they one of the grounds on which worker status can be retained under Article 7 of Directive 2004/38 nor its implementing regulations in the UK. I therefore need not examine the factual basis for such a submission.

41. The medical records indicate that in the first half of 2012 her GP was issuing a number of Forms Med 3 for "Alcohol and visual problems". She received support from the City Carers and Home Treatment Team in March and April 2012 and the Drug and Alcohol Team between 12 April and 14 June 2012 (the medical records indicated that binges of alcohol abuse led to binges of amphetamine abuse) and was finally discharged from the latter on 19 July 2012. The medical notes record missed appointments in July, August and December 2012. Despite that, it appears she may have done a limited amount of work: the contributions record does indicate that some work was done for another employer during the tax year 2012/13, though there is no evidence as to its extent other than that it always resulted in earnings below the Lower Earnings Limit and in the context of the evidence as a whole it is likely to have been very limited in scope.

42. It was around this time that the claimant appears first to have come to the attention of a number of local charities. There is evidence that the claimant was known to Charity E, between 2012 and 2016, which provided her with food, shower, laundry and clothing facilities and referred her to Street Outreach, Homeless Health Team and the Winter Night Shelter (which she used in 2012-13, 2013-14 and 2014-15). She was known to the street outreach team with regular contact between October 2012 and 25 March 2013 and at intervals thereafter through to 9 May 2014. She is reported as having been sleeping rough in November 2012 (p430) and homeless and without benefits in January 2013 and remained in receipt of support by way of free food, clothing, toiletries and laundry facilities over the next three years from another charity, Charity F.

43. On 18 January 2013 the claimant saw her GP, having visited the local mental health clinic the previous day. The note (p428) (which is not entirely consistent with the history above but I do not consider the discrepancies material) records:

> "Problem: Drug psychosis NOS. History: Children back in care. Attended [mental health] clinic yesterday. Poor sleep…reports stopped alcohol October and no drugs. Court hearing due children and rent arrears .Not opening door or mail. Attended alcohol team to request of social services for testing to establish off drugs and alcohol. Talks to self has nightmares."

A Med 3 was issued backdated to 22 November 2012 for 3 months on the stated ground of "alcohol problems and depression". The notes record the doctor speaking to the "alcohol worker" to arrange drug and alcohol screen "to allow us to refer to MHT if all clear." There is no record of any response, nor of any subsequent referral to the "MHT". I infer that either the claimant failed to attend or that the screen was not "all clear".

44. The claimant is recorded (p431) as having told her GP in September 2013 she had been "homeless since February" and had had her documents stolen, so she needed to re-apply "so then she can look for a job". It appears she had a brief hospital admission in June 2013 for physical problems (p430).

45. In November 2013 she was recorded as "mood very low and increasingly paranoid and now hears voices – sound like family members in Poland but with her all the time and sleep increasingly poor". In December 2013 the police again exercised their powers under s.136 of the 1983 Act (p540) on the basis of the claimant's agitated and bizarre behaviour placing herself and others at risk and she was subsequently admitted under s.2 (p542). She was, nonetheless, attempting to recover her children from foster care. She was admitted again under s.2 of the 1983 Act between 3 January 2014 and 15 January 2014 following a brief psychotic episode, suspected to have been drug-induced, and then again from 31 October 2014 to 7 December 2014 with evidence of acute psychosis (p570). On 9 January 2015 she was recorded as having been missing from supported accommodation for 7 days. A Community Psychiatric Nurse was involved with the claimant from January 2015 (p68). On 27 April 2015, by then 6 months pregnant, the claimant was denying the pregnancy even after scan photos were shown her and she was then again admitted under s.2 of the 1983 Act converted to s.3 on 22 May 2015 and rescinded on 26 June 2015. She was discharged on medication on 15 July 2015 and was placed under the care of the Assertive Outreach Team. Her third child, born while she was in hospital, was taken into care.

46. The discharge summary gives as primary diagnosis "schizophrenia – currently in remission (F20). Depression secondary to schizophrenic episode (F20.4)". Secondary diagnosis is stated as "Polysubstance misuse in remission in protective environment (F19.21) Social difficulties, including housing issues and involvement of Children's social services (Z60 and Z65)". The discharge summary notes that "[The claimant] has a complex psychiatric history with multiple previous admissions with loss to follow up." She was said, at that point, to be responding well to treatment but " at risk of relapse if she does not maintain good compliance with medications" (p47). A social worker noted around this time (p48) that the claimant had "made significant progress over the past couple of months gaining insight into her mental health and the impact of substance misuse on her well being: [she] continues to be motivated to make positive changes to her life and is engaging with the necessary services to support her ongoing needs."

47. Before she was discharged, the claim which is the subject of present proceedings was made. A habitual residence review record is at p39, dated 23 June 2015. It gives the names of three employers: one simply says "Ltd",

which does not advance matters, one is the "Rightful Staff Agency", a name which does not appear on the contributions record, and the third is V Ltd, where the claimant had not worked since 2011. I derive no assistance from this document additional to what is evident from other documents.

48. Looking at evidence post the DWP's decision under appeal for the purposes of what it might say about the circumstances obtaining down to the date of that decision, on 27 July 2015 the claimant's GP signed a Med3 covering the period to 16 October 2015. In December 2015 she ceased taking her medication, against advice. She restarted in February 2016. There was a series of failed encounters for important medical purposes, such as following up possibly abnormal gynaecological test results. By March 2016 she was registering for short courses of a few hours duration at the local "Recovery College", a facility run by the NHS with sessions on such topics as "Introduction to Recovery Principles" and "Your wellness plan". There is no evidence whether she attended. An entry in the medical notes for 10 March 2016 records her as "unfit for work". In April 2016 however, she stopped taking her medication again, left her supported accommodation and all efforts to contact her proved unsuccessful at the time. By November 2016 she had left supported housing: whether with the approval of the professionals seeking to assist her or of her own volition is unclear – in any event, she was not contacting her representative. In April 2017 the medical notes record (p452) "chronic unemployment – schizophrenia and chronic psychotic disorder". In July 2017 she is recorded as denying that she had a mental illness and as not having taken medication for over a year. She was recorded as unwilling to engage with the police or social services and to have the capacity to make such decisions. She was noted (p603) as "functioning reasonably well[…] with regard to personal care…and has described plans for the future including possibly getting a job and finding permanent accommodation." Three days later she presented at Accident and Emergency in a state of "acute intoxication". By August 2017, the Assertive Outreach Team in whose care she continued reported she was once again taking her medication as her mental state had been "unstable" and (p408) she had begun engaging with the appropriate agencies.

49. It is clear that detailed professional analysis of the impact of the claimant's mental health on her capacity for employment is not going to be forthcoming. Despite her 2008 encounter with mental health services and hospitalisation, the claimant had evidently been well enough to work for I Ltd subsequently and indeed to have done so well enough to be re-engaged by the company thereafter. Further, notwithstanding her admission for "drug psychosis" in 2009, I am prepared to assume that the claimant was capable of work for V Ltd when she started it in 2011. A business such as V Ltd providing healthcare services will be regulated to a significant degree and is unlikely to have taken the risk of taking on an employee in respect of whom significant mental health concerns existed at that point. I also consider that, apart from when she was in hospital in Autumn 2011, she was capable of doing the work. It seems probable that V Ltd would have dispensed with her services sooner if she had not been able to perform the duties of the job, even if she had already had a degree of poor mental health and involvement with illicit drugs.

50. The evidence unsurprisingly indicates the need for compliance with medication and avoidance of illicit substances. This has been a repeated issue, the latter in particular leading to a series of emergency assessments and admissions. While the claimant made a commendable effort in late 2012 to moderate her drugs and alcohol consumption, leading temporarily to the return of her two older children, it appears that sadly this could not be sustained. At times the claimant has been unable to attend adequately to her own needs, including in relation to such matters as important medical appointments, and has been heavily dependent on others for basic necessities of life. Against that background it is very difficult to see a realistic likelihood of her performing work on any kind of sustained basis.

51. If the claimant's actions were to be viewed as a lifestyle choice (and I note that she is said to have capacity to make decisions not to co-operate with e.g. care services), it would not help her, as she would then have to fulfil the requirements to retain worker status on the basis of involuntary unemployment which, not having registered with the jobcentre, she is plainly unable to do. In any event, I see her many difficulties as a function of her illness. The fact that there were differing diagnoses by the medical profession at various times (compare for instance the terms of the 2012 Med 3s and the 2015 discharge summary) emphasises in my view that the schizophrenia, substance abuse and social stressors cannot realistically be separated out and together point to an incapacity for work.

52. It is also notable that in an extensive bundle of medical records and supporting correspondence, there is no indication of professionals considering the possibility of work for the claimant, nor, on her part, of anything beyond the merest aspiration. Nor is there evidence of more than the most tentative steps by way of proposed courses to promote self-reliance and so on (which there is no evidence that she attended). Indeed, more recently, the evidence has been categorical that she is unemployed and that that state is "chronic".

53. I am of course required to decide the case on the basis of the circumstances obtaining at the date of the DWP's decision under appeal, namely 29 June 2015. By then it was 3½ years since she had last worked. Her GP had concluded that she was unfit for work in 2012. I do not know the reason for her discharge from the Drug and Alcohol Team in July 2012: on the evidence it is at least as likely to have been for missed appointments as because treatment had been satisfactorily completed. While I note the view of the DWP's examining doctor that the claimant did not have limited capability for work, I am required to apply a more general concept of incapacity for work, capable of being applied across the EU, not the more specific domestic statutory test of limited capability for work and I do not regard the latter as determinative. It is unlikely that the claimant would have been in a position to challenge the DWP's decision and, having been found not to have limited capability for work, she may have felt she had little choice but to make a claim for JSA. In my view the claimant was incapable of work throughout the time from when her work with V Ltd finished. Nothing in the facts I have found demonstrates any kind of sufficient change for the better between January

2012 and Summer 2015 and I conclude that the claimant was incapable of work at the date of the DWP's decision.

54. Was the incapacity temporary or permanent and if it became the latter, when did it do so? I do not consider it had become permanent in early 2012. The receipt of counselling, negative drug and alcohol tests and return of her older children from care (see [35]) suggest that, at that time, the direction of travel was forward. The claimant was still (on the view I have reached) incapable of work, but the measures adopted appeared to have been helping her, at least to a degree. Thereafter whilst as I have found she remained incapable of work, despite her claim for JSA, the fact that she was able to comply with sufficient of the conditions[3] to secure credits for unemployment suggests that her condition had not at that point become chronic. Further, as noted above, she may have at least attempted a small amount of work. These factors are in my view sufficient to discharge the burden on her of showing that her incapacity was at this point temporary.

55. For a while thereafter, although the claimant faced problems ([43]), the diagnosis was still of the not self-evidently intractable "alcohol problems and depression". However, the period(s) of at least intermittent rough sleeping in late 2012 and early 2013 will not have helped a person with already vulnerable mental health and it appears that by a date on or around 21 November 2013 there had been a significant downturn. The GP was able to record comparative judgements: the claimant was "increasingly" paranoid and "now" heard voices. This was followed by an increase in the number of hospital admissions and in the florid nature of the psychoses experienced in December 2013 following recent amphetamine misuse (details at p572) October 2014 (with presentation regarded by medical professionals as a "significant development in her mental disorder") (pp570-575) and April 2015. The evidence in my view shows a continuing and more entrenched instability and inability to engage with the treatment which might have brought about improvements, a factor to which it is legitimate to have regard (*Konodyba*). On the available evidence, managing the condition requires compliance with medication and abstinence from illicit substances, two things which the claimant has consistently not been able to do on a sustained basis.

56. I therefore conclude that as from a date on or around 21 November 2013, the claimant became permanently incapable of work for the purposes of Art 17 of Directive 2004/38 and regulations 5 and 15 of the 2006 Regulations.

57. It is right to give the parties an opportunity to make written submissions, should they so wish, as to the effect of Article 17 and/or regulations 5 and 15

[3] The conditions are stipulated by reg 8A of the Social Security (Credits) Regulations 1975 and require, inter alia, that a claimant is available for employment, is actively seeking employment and does not have limited capability for work.

in the light of these findings of fact before a final decision is issued.

CG Ward
Judge of the Upper Tribunal
12 December 2017

APPENDIX 1

Findings in relation to record of claimant's NI contributions and credits

1. In the second column, headed "Class", "C1" denotes a Class 1 contribution, "CR1" a Class 1 credit and CR3 a Class 3 credit.

2. In the third column headed "CATEG", A denotes that the employee had earnings at or above the Lower Earnings Limit ("LEL") in at least one pay period in the tax year; X denotes that the employee did not have earnings at or above the LEL in any pay period in the tax year earn enough to warrant NI contributions.

3. Immediately to the right of the third column annotations have been provided by an unknown hand. All the entries other than those marked with initials denoting a benefit or tax credit (ESA, JSA, WTC etc.) or a source of entitlement to a credit (e.g. HRP) are a code indicating the identity of a particular employer. [In the case of the companies referred to in the decision as I Ltd, T Ltd and V Ltd the judge has substituted those initials for the annotations by the "unknown hand" in order to help maintain the claimant's anonymity].

4. The codes appear to have been added by an officer of the DWP. DWP have a view across into HMRC's National Insurance and Pay As You Earn system via their eNIRS2 system. HMRC is able to identify the names of the employers (and did so in this case) and does not know why DWP supplies only abbreviations.

5. The heading "20xx Tax Year" relates to the tax year beginning in that year, so that e.g. "2012 Tax Year" is the tax year 2012/13.

6. The entries for:
(a) Cont/Credit No.4 for the Tax Year 2012; and
(b) Cont/Credit No 4 for the Tax Year 2010
each commence with "C1" (denoting contributions) when no benefits are themselves liable to contributions, but may carry credits. This is a quirk of the system needed for tax purposes, in that the C1 line where benefits are concerned will always contain a row of zeros and the accompanying credits are dealt with by a separate line for CR1, in effect covering the same period.

7. The column "Total Primary Cont/Value" represents the total in any given tax year of the contributions actually paid by an employee, something which supposes that in some weeks, though it need not be all, s/he has been paid a sum exceeding the Primary Threshold.

8. The column "Total Earnings Factor" represents the totality of sums earned (a) at the LEL + (b) between the LEL and the Primary Threshold (PT) + (c) between the PT and the Upper Earnings Limit. This is because of s.6A of the Social Security Contributions and Benefits Act 1992 which provides that for earnings in any tax week not less than the LEL and not more than the PT the earner is treated as actually having paid a class 1 contribution and the earnings are treated as earnings on which such a contribution has been paid.

9. As noted at [2], where the data shows NI category “X”, with 0.00 Total Earnings Factor, it indicates the employee was in employment but earned below the LEL in all earnings periods. For NI category “A”, the employee must have had earnings at or above the LEL in at least one pay period in the tax year, and if all of their earnings were between the LEL and the PT, then the Total Earnings Factor would have a positive value and the Total Primary Cont/Value would remain £0.00.

10. Where in any given tax year, there is more than one line relating to the same employer (see for instance 2008 tax year, Cont/Credit Nos 1 and 2 “Ideal”), this shows 2 postings with the same employer. Other records available to HMRC show a leaving date for the first employment and that the two employments have different payroll numbers.

APPENDIX 2

Tax Year Contributions / Credits

From 2004 (ccyy) To 2014 (ccyy)
Type Current ◉ Historical ○ Display

2014 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status

No Data Available for 2014

2013 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status

No Data Available for 2013

2012 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
3	C1	X	Art 4c		£0.00	£0.00	£0.00	£0.00	VALID
4	C1	X	DWP (c		£0.00	£0.00	£0.00	£0.00	VALID
1	CR1		ESA	5	£0.00	£535.00	£0.00	£0.00	VALID
5	CR1		SSA	15	£0.00	£1605.00	£0.00	£0.00	VALID
2	CR3		CHB	30	£0.00	£3210.00	£0.00	£0.00	VALID
2012 Tax Year Totals				50	£0.00	£5350.00	£0.00	£0.00	

2011 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
3	C1	X	[V Ltd]		£0.00	£0.00	£0.00	£0.00	VALID
4	C1	X	Art 4c		£0.00	£0.00	£0.00	£0.00	VALID
5	C1	X	Cept –		£0.00	£0.00	£0.00	£0.00	VALID
1	CR1		ESA	19	£0.00	£1938.00	£0.00	£0.00	VALID
6	CR1		SSA	4	£0.00	£408.00	£0.00	£0.00	VALID
2	CR3		CHB	33	£0.00	£3366.00	£0.00	£0.00	VALID
7	CR3		UTC	30	£0.00	£3060.00	£0.00	£0.00	VALID
2011 Tax Year Totals				86	£0.00	£8772.00	£0.00	£0.00	

2010 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
2	C1	X	Art		£0.00	£0.00	£0.00	£0.00	VALID
4	C1	X	SSA		£0.00	£0.00	£0.00	£0.00	VALID
3	CR1		SSA	52	£0.00	£5044.00	£0.00	£0.00	VALID
1	CR3		CHB	52	£0.00	£5044.00	£0.00	£0.00	VALID
2010 Tax Year Totals				104	£0.00	£10088.00	£0.00	£0.00	

2009 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
2	C1	A	[I Ltd]		£5.38	£269.00	£0.00	£0.00	VALID

3	C1	X AT Act		£0.00	£0.00	£0.00	£0.00	VALID
5	C1	X SSA		£0.00	£0.00	£0.00	£0.00	VALID
4	CR1	SSA	15	£0.00	£1425.00	£0.00	£0.00	VALID
1	CR3	HRP ...	52	£0.00	£4940.00	£0.00	£0.00	VALID
2009 Tax Year Totals			67	£5.38	£6634.00	£0.00	£0.00	

2008 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
1	C1	A [I Ltd]			£0.00	£1356.00	£0.00	£0.00	VALID
2	C1	A [I Ltd]			£14.72	£553.00	£0.00	£0.00	VALID
4	CR3	LOTC		53	£0.00	£4770.00	£0.00	£0.00	VALID
2008 Tax Year Totals				53	£14.72	£6679.00	£0.00	£0.00	

2007 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
1	C1	A [I Ltd]			£0.00	£1267.00	£0.00	£0.00	VALID
2	C1	A [T Ltd]			£5.66	£251.00	£0.00	£0.00	VALID
3	CR3	LOTC		34	£0.00	£2958.00	£0.00	£0.00	VALID
2007 Tax Year Totals				34	£5.66	£4476.00	£0.00	£0.00	

2006 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
1	C1	A A & T			£10.66	£193.00	£0.00	£0.00	VALID
2	C1	A [T Ltd]			£44.30	£1153.00	£0.00	£0.00	VALID
3	C1	X HR Gro			£0.00	£0.00	£0.00	£0.00	VALID
4	C1	X HR Gro			£0.00	£0.00	£0.00	£0.00	VALID
5	C1	A Blue A			£119.33	£2151.00	£0.00	£0.00	VALID
6	C1	A Blue A			£8.15	£171.00	£0.00	£0.00	VALID
7	C1	X The Be			£0.00	£0.00	£0.00	£0.00	VALID
8	C1	X Staff			£0.00	£0.00	£0.00	£0.00	VALID
2006 Tax Year Totals				0	£182.44	£3668.00	£0.00	£0.00	

2005 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status
1	C1	X Draege			£0.00	£0.00	£0.00	£0.00	VALID
2	C1	X Staff			£0.00	£0.00	£0.00	£0.00	VALID
2005 Tax Year Totals				0	£0.00	£0.00	£0.00	£0.00	

2004 Tax Year Contributions / Credits

NI Credit Exercise ☐ NTC Exercise ☐

Cont/ Credit No.	Class	CATEG	ECON	Number of Conts / Credits	Total Primary Cont / Value	Total Earnings Factor	Contracted out Primary Cont. Value	Contracted Out Earnings Factor	Status

No Data Available for 2004