

14-25 UC - Right to Reside - VB v SSWP UT decision effect upon self-employment

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Introduction

1. The purpose of this memo is to inform Decision Makers (DMs) about a recent Upper Tribunal (UT) decision¹ which provides that taking preparatory steps towards future genuine and effective self-employment is sufficient to satisfy the right to reside element of the habitual residence test (HRT) as a self-employed person.

[1 SSWP v VB \[2024\] UKUT 212 \(AAC\)](#)

Background

2. VB is a Norwegian national who has resided in the UK since July 2017. VB was in genuine and effective employment, but this ended in January 2019 due to pregnancy. Between February and April 2019 VB was actively looking for work but did not register her unemployment with DWP. During this time VB supported herself from her partner's earnings and their collective savings. VB was granted Pre-Settled Status (PSS) under the EU Settlement Scheme (EUSS) in September 2019.
3. After the birth of her child in June 2019, VB started looking into setting up a business and becoming self-employed. From March to November 2020, she bought some materials, a sewing machine and looked for inspiration and ideas online. In December 2020 VB registered with HMRC as a self-employed person and achieved the sale of two items within that month.

4. In March 2020 VB and her partner AD made a joint claim to Universal Credit (UC). AD was awarded UC and VB was considered an ineligible partner, because she failed the HRT.

What the Upper Tribunal decided

5. The UT found that VB had a right to reside as a self-employed person because leading up to the date of decision under appeal she had undertaken appropriate preparatory steps towards setting up a business. The UT explained that such steps must be taken towards a projected genuine and effective business and there must be “a reasonable degree of proximity in time between the preliminary steps and the implementation of the genuine and effective business which is being set up”.¹

1 [Para 34](#)

6. Evidence such as her purchasing materials and online research were considered relevant. The UT based its decision on the evidence postdating March 2020, including the future growth and development of her business spanning several years, that was now available to the court. Although VB's earnings in the tax years immediately following were not enough to establish VB's self-employment to be genuine and effective alone, collectively, the evidence established that the business was more than a mere intention and brought VB within scope of Article 49 TFEU¹.

1 [Paras 40 – 46](#)

7. DWP applied for permission to appeal to the Court of Appeal, but the application was refused by the UT on 5th December 2024, and by the Court of Appeal on the 24th February 2025. The Court of Appeal's permission decision is final and cannot be further reviewed or appealed. This means that the UT decision stands and its legal findings will have binding effect.

Impact upon decision making

8. The DM should consider VB when a claimant is relying on a right to reside as a self-employed person by undertaking preparatory steps to set up a 'genuine and effective' business. There must be both an intention on the part of the claimant to develop a genuine and effective business, and some active steps towards it. If there is no intention to develop the business, or no prospect of that particular business ever generating a sufficient income so as to become a genuine and effective business, then such cases would not satisfy VB. For example, writing a book for therapeutic purposes over profit demonstrates no intention to develop a genuine and effective business, even if all preparatory steps have been taken¹.

1 [SSWP v HH \[2015\] UKUT 0583 \(AAC\); SSWP v VB \[2024\] UKUT 212 \(AAC\) para 31](#)

9. If the claimant provides additional evidence that post-dates the initial HRT decision but shows at the time of the decision they were engaged in preparatory steps towards a self-employed business which has indeed

grown to become genuine and effective self-employment, such evidence should be considered and the decision reconsidered accordingly.

10. These preparatory steps must have begun and be continuing up until the self-employment became genuine and effective. These steps may be ongoing post claim date. In live claims, the claimant may have their own business that has not yet met the minimum income floor (MIF), but they intend to develop the business, so as to become a genuine and effective business.

Annotations

The number of this Memo should be noted against the following ADM paragraphs - [C1872](#), [C1315](#), [C1319](#)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [4/19](#) Requesting case guidance from DMA Leeds for all benefits.