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AT Destitution legal case –

major positive changes for clients with Pre-Settled Status accessing means-tested benefits due to Border Security, Asylum, and Immigration Act 2025

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Changes to AT Destitution legal case

- The coming into force of the *Border Security, Asylum, and Immigration Act* on 02/12/2025, has significantly widened access to means-tested benefits (such as Universal Credit, Housing Benefit, and Pension Credit) for individuals who hold Pre-Settled Status.

- Section 45 of the act allows all EU Nationals, and their family members, to be treated as 'beneficiaries' of the EU Withdrawal Agreement, regardless of when they first arrived in the UK.

- This means that all EU Nationals, and their family members, are able to access means-tested benefits if they are destitute (or at imminent risk of destitution) and unable to work, based on the AT Destitution legal case (*SSWP v AT*). This legal case is commonly also referred to as simply 'AT' or 'Pre-Settled Destitution'.

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Changes to AT Destitution legal case

- The process for assessing whether an individual with Pre-Settled Status is eligible for means-tested benefits remains largely the same, however, access to means-tested benefits for those with PSS who do not hold a 'qualifying right to reside' is now greatly increased.

- What this means, is that holding a qualifying right to reside is still the main way for an individual with PSS to access means-tested benefits, and still needs to be the start point for any means-tested benefits assessment.

- However, if an individual with PSS does not hold a qualifying right to reside at all, the changes from the *Border Security, Asylum, and Immigration Act 2025,* make it much more likely they will be able to access means-tested benefits based on the AT Destitution case.

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Means-tested benefit assessments for client with Pre-Settled Status

The process for assessing whether an individual with PSS can access means-tested benefits should be as follows:

1. Do they have a qualifying right to reside based on their own economic activity in the UK – currently or in the past? (i.e. current worker status, retained worker status, or retained worker status through illness).

2. Do they have a permanent right to reside?

3. Do they have an EEA 'family member' living in the UK, from whom they can mirror a qualifying right to reside or permanent right to reside?

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Means-tested benefit assessments for client with Pre-Settled Status (continued)

4. Do they have a permanent right to reside?

5. If none of the above apply, are they unable to work due to illness? – If so, they may be able to utilise the AT Destitution case.

The AT Destitution case is not a route to means-tested benefits for everyone with PSS who does not hold a qualifying right to reside, as applicants need to be unable to work due, however, the scope of who AT Destitution can benefit is now significantly broadened.

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How to utilise the AT Destitution case

- First and foremost, to utilise the AT Destitution case, and individual needs to be unable to work. This will usually be due to health issues, but can also be due to childcare needs.

- The health issues impacting a client can be due to a physical illness or injury, or a mental health condition, including substance and alcohol addiction issues. The best way to demonstrate that a client is unable to work due to an illness is for them to be issued with a Fit Note by their GP.

- Once it was been established an individual is unable to work, it can then be assessed whether they meet the other thresholds required for AT Destitution.

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How to utilise the AT Destitution case (continued)

- In addition to being unable to work, and individual also needs to demonstrate that they are destitute or at imminent risk of destitution.

- If an individual is rough sleeping or staying in a night shelter this is sufficient for them to be considered destitute.

- An individual will be considered to be at 'imminent risk' of destitution, if they will lose their accommodation without access to means-tested benefits. For example, an individual staying in a temporary immigration bedspace, or someone who will be evicted from their accommodation due to not being able to pay their rent.

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How to utilise the AT Destitution case (continued)

Finally, an individual applying for means-tested benefits based on AT Destitution also needs to demonstrate they are not in receipt of:

- sufficient of regular support from a third party (e.g. friends, family, or charities)
- sufficient support from the Local Authority

This is generally straightforward to demonstrate, as the DWP cannot deny an application based on AT Destitution due to the applicant having the 'potential' to get support from third parties or the Local Authority. As long as someone is not getting support from third parties that is sufficient to resolve their destitution, and is not getting support under the Care Act, they will be able to utilise AT Destitution.

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AT Destitution UC application process

- Before assisting any client with Pre-Settled Status to submit a UC application, it should first be determined the basis on which they are eligible for UC.

- If it is decided they are eligible based on AT Destitution, the client will need to be issued with a Fit Note before submitting a claim.

- Once the client has submitted a UC claim, they will have an appointment arranged at the Jobcentre to submit their ID. In the weeks following this ID appointment, they will receive a phone call from a DWP Decision Maker to carry out their Habitual Residence Test (HRT).

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AT Destitution UC application process (continued)

In order to prepare for the HRT, the client can be supported to place the following note their UC journal:

For the attention of the Decision Maker:

Please note that this client is eligible to claim UC based on the SSWP v AT legal case (often referred to as 'AT', 'AT Destitution', or 'Pre-Settled Destitution'). Please consider this client's application against the SSWP v AT case, based on the points below. The assessment guidelines can be found in the following: 'ADM Memo 06-24: AT and the EU Charter of Fundamental Rights Assessment'.

- *The client is currently unable to work, and has been issued with a Fit Note by their GP*
- *They are homeless and destitute, and unable to meet their basic needs.*
- *They are unable to get sufficient and regular support from a third party including charitable sources, friends and family*
- *They are not currently in receipt of any support from the Local Authority*

Please additionally note that the SSWP v AT legal case applies to this client's application, as they are EU National with Pre-Settled Status, and are therefore a beneficiary under the EU Withdrawal Agreement. This is in accordance with Section 45 of the Border Security, Asylum and Immigration Act which came into force on 02/12/2025. Following the implementation of this act, the DWP have now confirmed that 'an assessment of whether a person is in scope of Article 10 WA (or equivalent) will no longer be required by the DWP'.

This therefore means that all applicants who are EU Nationals with Pre-Settled Status, are eligible to claim UC based on the SSWP v AT legal case, if they meet the conditions listed above. Details on this can be found in the following: 'ADM Memo 15-25: Border Security, Asylum and Immigration Act 2025'.

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AT Destitution UC application process (continued)

If the client is not currently destitute, but at imminent risk of destitution, they can be supported to add this line to the note:

The client is currently temporarily staying at a night shelter/in temporary accommodation, however, this placement will end if UC is not awarded, and they are therefore at imminent risk of destitution, in accordance with SSWP v AT caselaw. The fact that they have access to facilities in this accommodation currently, does not mean the client is not eligible for UC based on AT Destitution, as access to these facilities will end if they are not awarded UC, they are therefore at clear imminent risk of destitution.

The DWP Decision Maker carrying out the HRT, will likely cold call the client for the HRT. To avoid this, the client also be supported to add the following separate note to their journal:

For the attention of the Decision Maker:

Please note this client requires support from their Caseworker and Benefits Advisor at the homelessness charity St Mungo's with their Habitual Residence Test (HRT). They therefore cannot receive a cold call from a Decision Maker to carry out their HRT. They require a scheduled date for HRT so that they can ensure support is available.

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Individuals who benefit from the new act

- Due to the changes from the *Border Security, Asylum, and Immigration Act 2025*, the AT Destitution case can now be utilised by all EU Nationals with Pre-Settled Status, regardless of when they first entered the UK.

- This means, AT Destitution can now be utilised by EU Nationals who joined EU family members in the UK, after the UK left the EU on 31/12/2020.

- In addition, AT Destitution can now also be utilised by 'Third Country Nationals' with PSS, i.e. individuals who do not hold EU citizenship themselves, but have gained access to the EU Settlement Scheme, due to joining an EU family member in the UK.

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Individuals who *do not* benefit from the new act

- Despite the changes brought about by the *Border Security, Asylum, and Immigration Act 2025,* it still remains the case that the AT Destitution case cannot be utilised by individuals who have a pending application or appeal to the EU Settlement Scheme.

- Additionally, the DWPs position that the AT Destitution case cannot be utilised by those who are only EEA Nationals with Pre-Settled Status (i.e. individuals with PSS from Norway, Iceland, Lichenstein, and Switzerland) remains the same.

- This means EEA Nationals or Third Country Nationals with Pre-Settled Status who are the family members of EEA Nationals will still not be able to utilise the AT Destitution case, despite the changes from the new Act.