Press Summary

19 November 2025

Simkova (Appellant) v Secretary of State for Work and Pensions (Respondent)

[2025] UKSC 41

On appeal from: [2024] EWCA Civ 419

Justices: Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lady Rose and Lord Richards

Background to the Appeal

Ms Michaela Simkova is a Slovakian national resident in England with a permanent right to reside in the United Kingdom. She claims entitlement to the child element of universal credit ("**UC**") in respect of her son, Markus, who at the relevant times resided with his grandparents in Slovakia.

The Welfare Reform Act 2012 ("**the WRA 2012**") introduced UC. Section 10(1) of the WRA 2012 provides that UC includes an amount for each child or qualifying young person for whom a claimant is responsible. Regulation 4(2) of the Universal Credit Regulations 2013/376 provides that a person is responsible for a child or qualifying young person who normally lives with them. Ms Simkova does not qualify for the child element of UC under domestic law because, although she paid for his upkeep, Markus lived with his grandparents.

However, Ms Simkova claims she has a directly effective right under Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ("**the Coordination Regulation**"). The Coordination Regulation continues to have effect in the United Kingdom, notwithstanding the withdrawal from the European Union, by virtue of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Authority (2019/C 3841/01) ("**the Withdrawal Agreement**"). The Withdrawal Agreement is implemented in domestic law by section 7A of the European Union (Withdrawal) Act 2018.

The Coordination Regulation applies to legislation concerning branches of social security identified in article 3(1). These branches include "family benefits", as set out in article 3(1)(j). The parties agree that if the Coordination Regulation applies Ms Simkova would qualify to receive the child element of UC. This is because article 67 entitles Ms Simkova to family benefits as if Markus were residing in the United Kingdom. The issue, therefore, is whether the

child element of UC is a family benefit within the meaning of article 3(1)(j) of the Coordination Regulation.

Ms Simkova also invites the Supreme Court to consider whether to refer the issue to the Court of Justice of the European Union ("**CJEU**") under article 158 of the Withdrawal Agreement.

On 26 July 2017, Ms Simkova made an application for UC, including a claim for the child element in respect of Markus. On 1 September 2017, the Secretary of State for Work and Pensions ("**SSWP**") decided that Ms Simkova was entitled to UC but left the child element to be determined. On 25 September 2017, the SSWP decided to award the child element. On 17 October 2019, however, the SSWP reversed that decision. This is the decision challenged in these proceedings.

On 31 January 2020, after mandatory reconsideration, the SSWP confirmed that Ms Simkova was not entitled to the child element. Ms Simkova appealed to the First-tier Tribunal which on 19 August 2020 allowed the appeal and awarded the child element. The SSWP appealed to the Upper Tribunal and on 21 February 2023 the Upper Tribunal allowed the appeal and decided that the entitlement to UC was to be calculated without the child element. Ms Simkova appealed to the Court of Appeal which on 26 April 2024 dismissed the appeal. Ms Simkova appeals that decision to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Lloyd-Jones and Lady Rose give the judgment, with which Lord Hamblen, Lord Sales and Lord Richards agree.

Reasons for the Judgment

Issue 1: Is the child element of UC a family benefit within the meaning of article 3(1)(j) of the Coordination Regulation?

The Coordination Regulation contains rules for the coordination of national social security legislation which fall within the framework of free movement of persons. These rules determine which Member State is responsible for providing which social security benefits in the context of free movement of persons **[17]**. If the Coordination Regulation applies the applicable law would be UK law and Ms Simkova would qualify by virtue of article 67 to receive the child element of UC. The only question, therefore, is whether the child element of UC is a family benefit for the purposes of the Coordination Regulation **[22].**

The characterisation of a benefit under the Coordination Regulation is a question of EU law. However, that characterisation must be conducted by reference to the substantive characteristics of the benefit in national law **[23]**. Two conditions must be satisfied for a benefit to be regarded as a social security benefit under article 3 of the Coordination Regulation **[25]**. First, the benefit must be granted to recipients on the basis of objective criteria without an individualised assessment of need. It is common ground that both UC considered as a whole and the child element of UC meet this condition **[26]**.

Secondly, the benefit must fall within one of the branches of social security listed in article 3(1) of the Coordination Regulation **[27] – [34]**. The parties agree that UC considered as a whole cannot be a coordinated social security benefit under article 3(1) of the Coordination Regulation because the overall purpose of UC is poverty relief **[41]**. Ms Simkova can only succeed in her claim to the child element of UC if EU law requires the Supreme Court to consider the child element as a free-standing benefit **[43] – [44]**.

The Court rejected Ms Simkova's submission that the child element of UC is severable from UC as a whole. No analogy can be drawn with child tax credit ("CTC"), which was a free-standing benefit regarded as a family benefit within the Coordination Regulation. The child element of UC has now replaced CTC and is deeply integrated into a generalised, composite

benefits scheme. The integration of the child element into UC is a matter of substance and not of presentation **[46].**

There is no basis or authority to treat different components of a single benefit as being open to separate characterisation under article 3(1) of the Coordination Regulation **[45] – [60]**. Nor do the authorities relied upon by Ms Simkova reveal an emerging doctrine of severance in which different elements within a single benefit are to be treated as separate **[61] – [81].** Severance is not the sort of regulatory mechanism or principle that can be implied into the detailed and complex regime of the Coordination Regulation **[79].**

Issue 2: Is it necessary for the Supreme Court to refer the matter to the CJEU under article 158 of the Withdrawal Agreement?

The Court held that it is not necessary to make a reference to the CJEU in light of the clear conclusion reached on Issue 1. It was therefore unnecessary to decide whether the court had the power to make a reference under article 158 of the Withdrawal Agreement **[82] – [84]**.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court