

THE HIGH COURT

RECORD NUMBER 2017/781 P

BETWEEN:

**JOLYON MAUGHAM, STEVEN AGNEW
JONATHAN BARTLEY and KEITH TAYLOR**

PLAINTIFFS

-AND-

IRELAND and THE ATTORNEY GENERAL

DEFENDANT

STATEMENT OF CLAIM

Delivered this 31ST day of March 2017
by McGarr Solicitors of 12 City Gate, Lower Bridge St.
Dublin 8, Solicitors for the Plaintiffs

I PARTIES

1. The first named plaintiff is a barrister and Queen's Counsel of the Bar of England & Wales, and a director of The Good Law Project Ltd.
2. The second named plaintiff is a Member of the Legislative Assembly ("**MLA**") of Northern Ireland for the constituency of North Down.
3. The third named plaintiff is Co-Leader of the Green Party of England and Wales.
4. The fourth named plaintiff is the Member of the European Parliament ("**MEP**") for the constituency of South East England.
5. The plaintiffs are nationals of the United Kingdom of Great Britain and Northern Ireland ("**the UK**"), and each is a European citizen (per Article 20 of the Treaty on the Functioning of the European Union ("**the TFEU**")).
6. The plaintiffs belong to the category of persons with directly effective rights under the Treaties of the European Union ("**the Treaties**"). Further, they qualify as persons/workers with directly effective rights under the Treaties. Further, the second named plaintiff is a resident of Northern Ireland (**NI**) and entitled to Irish citizenship by reason of Article 2 of the Irish Constitution and Article 1(iv) of the Belfast Agreement.

7. The plaintiffs also belong to the category of persons who are beneficiaries of the *status quo* established by the Common Travel Area (“**CTA**”) and the Belfast Agreement. The second and fourth named plaintiffs are elected public representatives and members of two respective legislative organs.
8. The defendant is a Member State of the European Union (“the **EU**”).
9. The defendant is a member with voting rights on and within the Council of the European Union, an institution of the EU, and is, through the Taoiseach, represented on the European Council of the EU. Further the defendant is a contracting party to the European Economic Area Agreement (“**EEA**”) and the Belfast Agreement.
10. Further or alternatively, the defendant is joined in its capacity as the party answerable to European citizens, including the plaintiffs, in European Union law before the courts of Ireland, in respect of the public and private interest issues raised herein by reason of its duty, pursuant to Article 4(3) of the Treaty of European Union (“the **TEU**”) and otherwise arising from the various agreements identified at paragraphs 7 and 9 above.
11. The rights and obligations of the plaintiffs and the defendant are assigned and prescribed by the Treaties of the European Union.

II ARTICLE 50 NOTIFICATION

12. Subsequent to an advisory Referendum held on the 23rd June 2016, the British Government served formal written notice on the 29th of March 2017, pursuant to Article 50 of the TEU of a decision and intention of the UK to withdraw from the EU.
13. The said Article provides for a two year period from the date of notification to permit the conclusion of an Agreement between Britain “the Departing Member” and the Remaining Members at the end of which, in the absence of Agreement on the terms of any continued relationship as between the Departing Member and the EU, no further entitlements purport to exist to access by the Departing Member to the EU.
14. It is unclear, but capable of interpretation, that upon exercise of a decision to formally notify of an intention to withdraw pursuant to Article 50 then there is consequent removal of established rights of UK nationals together with Irish nationals resident in the UK. It is open to interpretation that the process is irrevocable and cannot be stood down avoiding the cessation of Membership of the European Union and the removal of acquired rights.

III PLAINTIFFS’ INTERESTS

15. The plaintiffs, as EU citizens, have acquired rights to access to the Union for the purposes of exercising all of the rights and entitlements of EU citizens throughout the Union. Such rights include, *inter alia*, rights of establishment, free movement and rights commonly and currently exercised by all British citizens as citizens of the EU and have vested in those citizens including the plaintiffs by reason of their present Membership. Such rights as have already vested in the individual citizens including, *inter alia*, the plaintiffs cannot be removed by reason of the exercise by the British Government of Article 50.
16. Similarly, the rights, privileges and entitlements enjoyed by the plaintiffs pursuant to the various agreements identified at paragraphs 7 and 9 are rights whose continued exercise, implementation and application in Ireland continue independent of and regardless of any consequence that may flow as a result of the withdrawal by the Departing Member from the EU pursuant to the Article 50 process.
17. The plaintiffs claim expressly and explicitly the dual acquired rights pursuant to:
 - (a) the existing TEU entitlements, privileges and benefits; and
 - (b) such rights, entitlements, benefits and privileges as flow from the Belfast Agreement and the Good Friday Agreement granting, permitting and allowing free movement, rights of establishment and rights of citizenship to the plaintiffs and also reciprocal entitlements to Irish citizens within the Territory of the Departing Member.

The defendant, therefore, in exercise of any functions under the Article 50 process and in so far as all other Members exercise such functions, in the context of entering into negotiations and concluding negotiations with the Departing Member, cannot remove any existing rights and cannot, in particular, change the nature of the relationship as currently exists between British citizens and Irish citizens by way of the re-establishment of a border or otherwise that in any way restricts the free movement, free access and free rights of establishment.

18. Pursuant to the process of negotiation, under Article 50(4) the Departing Member is removed, in a limited way from the European Council, however, the defendant is obliged to give effect in the course of the deliberations as are all other Remaining Members of the Union to:
 - (a) the continuation of established rights and vested rights in the plaintiffs and other British and Irish citizens; and

(b) the continued operation, implementation and applicability of the agreements referred to at paragraphs 7 and 9 above both in the context of their application in favour of the plaintiffs and Irish citizens.

19. In addition to the foregoing, the plaintiffs are entitled to the benefit of the provisions of the Irish Constitution, which obliges the defendant to take all steps necessary to give effect to the protection of the above vested rights of the European Council pursuant to negotiations under Article 50. In addition, the defendant cannot nor can the Remaining Members implement, exercise or refuse to permit the continued right of independent decision making vested in the defendant under Protocols 19, 20 and 21 relating both to the Common Travel Area and the Belfast Agreement.
20. In advancing the claim herein, the plaintiffs do so both in relation to their own private interests as EU citizens and in the public interest in the context of the manner and fashion in which the provisions of Article 50 apply and will be implemented in relation to the Departing Member, its impact on the vested rights of the Departing Member's citizens and its impact upon the Common Travel Area and the Belfast Agreement.
21. The defendant and the 27 Remaining Members of the European Union, both individually and via the European Council, purport to implement and apply an interpretation of Article 50 in the process arising therefrom:
 - (a) That automatically terminates the Departing Member's membership at the end of two years regardless of the conclusion of agreements and various matters;
 - (b) That the Article 50 process purports to have an impact upon and influencing effect on the provisions of the Common Travel Area and Belfast Agreement and the European Economic Area Agreement ("the **EEA**") such as to terminate the said Agreements and remove all rights, entitlements and procedures in operation as between the United Kingdom and Ireland, thereby, removing all such benefits unilaterally from the plaintiffs;
 - (c) That no Departing Member may withdraw an application submitted pursuant to Article 50 and that the only and inevitable consequence of such application is departure, regardless of the terms agreed or not, which thereby automatically affects the individual and personal and private rights of EU citizens and, in particular, the plaintiffs in relation to the exercise of all such vested rights of EU membership now present and rights under the Common Travel Area, the Belfast Agreement and EEA.

22. The defendant intends to apply the provisions of Article 50 and the consequences that flow therefrom as set out above, regardless of the views of the Irish people, and, in particular, in so much as the provisions of the Belfast Agreement and Common Travel Area will be affected and does so without seeking the views of the Irish citizens by way of referendum. In so far as the defendant purports to do so, the defendant relies upon the provisions of the Accession Treaty first signed in 1972 and amended variously and its implementation into Irish Law by way of Article 29 of the Irish Constitution, the latter granting as it does supremacy of European Law over Constitutional provisions.
23. The exercise of Article 50 does not give rise to the interpretation and application sought to be applied by the defendant and Remaining Members unilaterally or in session as the European Council in relation to:
- (a) An automatic expulsion of the Departing Member regardless of agreement on all matters pertaining to existing and established rights at the end of a two year period automatically;
 - (b) Preventing a Departing Member forming a decision in accordance with the will of its Parliament and constitutional requirements within the two year period following service of the Article 50 Notice and to dis-apply and revoke such a Notice;
 - (c) Operating to affect nor can it in any way affect or be capable of affecting, altering or dis-applying the provisions of the Common Travel Area Agreement, the Belfast Agreement and the EEA;
 - (d) Removing from individual British citizens and Irish citizens all such rights as have been established by reason of EU citizenship and in particular all rights established pursuant to the EEA, CTA and the Belfast Agreement.
 - (e) Permitting the exclusion of the British Government or any Member State from the business of the European Council in advance of a lawful Article 50 notification. The exclusion of the British Government from the business of the European Council between the 23rd of June 2016 and the 29th of March 2017 was unlawful and was an exclusion in which the defendant together with the remaining 27 Member States acted contrary to the lawful meaning, operation and equal purpose of the Treaties of the European Union;
 - (f) The manner and fashion in which the defendant and Remaining Member States, European Commission and European Parliament have respectively purported to interpret the provisions of Article 50, the said interpretations give rise to uncertainty as to effect and implementation and breach of the legitimate expectation.

24. The exercise of Article 50 does not give rise to the interpretation and application sought as identified on the 29th of March 2017 by the European Institutions in particular the European Commission and European Parliament in relation to:
- (a) The unilateral triggering and/or reversal of a Notification in writing of an intention to withdraw from the European Union as being declared an irrevocable step under TEU;
 - (b) The expulsion and/or exclusion of a Member State from the functions and Treaty obligations laid down by the said Treaties; and
 - (c) The revocation of a formal Article 50 Notification and its approval by means of a simple majority vote of the European Parliament.
25. The proceedings herein concern the interpretation and application of EU Law and, in particular, the provisions of Article 50 and the consequences thereof for EU citizens including the plaintiffs. As such the said interpretation of the Treaty raises in these proceedings questions of fundamental European Law capable of affecting all citizens within the EU and as such, in the absence of an interpretation by the Irish Courts to the effect that the provisions of Article 50 and the consequences that flow therefrom are *acte clair*, gives rise to a necessity for a reference by means of a preliminary ruling pursuant to Article 267 TFEU of these proceedings to the Court of Justice of the European Union in so far as they are confined to European Union law.
26. In so far as the plaintiffs as British Nationals and EU citizens have acquired rights such rights being equivalent, indiscriminate and applicable to all EU citizens are as set out and particularised at **Annex 1** hereto.
27. The courts of Ireland are more closely associated with the issues and matters raised herein owing to the fact that Ireland is or will/could be the Member State where British nationals will seek to exercise their directly effective rights under the Treaty, either as a home, a place to study or work, a port of entry into the EU, or access point into the Single Market.
28. The courts of Ireland have full jurisdiction to consider matters of EU law pursuant to Article 274 TFEU subject only to the exceptions provided for by the Treaties reserving certain questions exclusively to the CJEU.
29. The plaintiffs seek and are entitled to seek an effective remedy pursuant to Article 47 of the Charter of Fundamental Right of the European Union (“**CFREU**”).

AND THE PLAINTIFFS CLAIM:

Declarations and in the alternative interpretations of the Treaties of the European Union that:

1. In Article 50 of the Treaty on European Union (“**TEU**”), any notification pursuant thereto of a decision by a Member State to withdraw from the European Union is revocable at the discretion of such Member State, and on notice of such revocation, the Treaties of the European Union shall not cease to apply to the Member State in question as set out in Article 50;
2. In view of the formal notification by Notice dated 29th March 2017 of the decision by the United Kingdom of Great Britain and Northern Ireland (“**UK**”) to withdraw from the European Union in accordance with its constitutional requirements, or in the absence of any lawful notification to the European Council, pursuant to Article 50 TEU, of any such decision, then:
 - a. The exclusion of the UK from meetings of the European Council since 23 June 2016, the publication of guidelines on negotiations with the UK, and the appointment of negotiator(s) are not actions taken pursuant to Article 50 TEU;
 - b. The Treaties of the European Union shall not cease to apply to the UK and any European Citizen resident in the UK, or UK citizen resident in Ireland/the European Union, until and at the earliest, two years after lawful notification to the European Council; and
 - c. The exclusion of the UK or any Member State from the business of the European Council in advance of a lawful Article 50 notification was unlawful and was an exclusion in which Ireland together with the remaining 27 Member States acted contrary to the lawful meaning, operation and purpose of the Treaties of the European Union;
3. In European Union law, notwithstanding the withdrawal of a Member State:
 - directly effective rights enumerated in the Treaties of the European Union, the Charter of Fundamental Rights of the European Union, the European

Economic Area Agreement (“the EEA Agreement”), and or derived from the general principles of European Union law,

- which have been conferred on, acquired by and or exercised by citizens of the European Union and or workers and or nationals of a Member State,
 - a. are preserved for as long as the Treaties continue in force;
 - b. continue to be exercisable by such citizens, workers and or nationals within Ireland (for as long as Ireland is a Member State) and the territory of the European Union; and
 - c. remain enforceable at the instance of such citizens, workers and or nationals in Ireland/the territory of the European Union and or as against the Union, and its Member States, including Ireland;
- 4. A notification to the European Council by a Member State of a lawful decision to withdraw from the European Union, pursuant to Article 50 TEU, is not notice in writing to Ireland and other Contracting Parties to the EEA Agreement, pursuant to Article 127 of the EEA Agreement;
- 5. In European Union law, the rights of free movement of persons, goods, services and capital in the EEA Agreement and other rights derived therefrom or from the general principles of European Union law, are directly effective in Ireland and the territory of the EEA in the same manner and to the same extent as equivalent rights enumerated in the Treaties, or derived therefrom, notwithstanding the withdrawal of a Contracting Party as a Member State from the European Union;
- 6. Notwithstanding the withdrawal of the UK from the European Union, and any agreement made in that regard pursuant to Article 50 TEU, Protocols 19, 20, and 21 to TFEU, by reason of same and or the principle of subsidiarity:
 - a. Remain in force unless and until revoked or amended by Treaty.
 - b. Preserve Ireland’s rights, obligations and prerogatives under the British-Irish Agreement 1999 (“the Belfast Agreement”) including maintaining in force:

- i. the British-Ireland Agreement Act 1999;
 - ii. the Common Travel Area; and
 - iii. Legislation establishing or affecting All-Ireland and Cross-Border bodies;
7. The authority of the Government of Ireland to exercise the executive power of the State in or in connection with its participation in or with the European Council is prescribed by the Treaties, save as reserved to Ireland by the Treaties.

AND FURTHER THE PLAINTIFFS' CLAIM IS FOR:

8. Where the defendants deny the plaintiffs' entitlements to the declarations and or interpretations sought in paragraphs (1) to (7) above, and or subject to this Honourable Court determining that a decision on a question on the interpretation of the Treaties is necessary to enable it to give judgment, a request to the Court of Justice of the European Union ("the CJEU"), pursuant to Article 267 TFEU, to give a preliminary ruling on the interpretation of the Treaties concerning or touching upon the matters set out above at (1) – (7) and in addition:
 - a. whether or not the UK was excluded from meetings of the European Council prior to lawful notification pursuant to and in compliance with Article 50 TEU,
 - b. the extent to which the Treaties of the European Union cease to apply to any UK citizen resident in the European Union on the withdrawal of the UK from the European Union,
 - c. the extent to which competence has been transferred to the Union in respect of matters covered by or touching on the Common Travel Area and or Belfast Agreement,

which request includes (if this Honourable Court so determines) a request that the President of the CJEU decide, pursuant to Article 105 of the Rules of Procedure of the Court of Justice, if the nature of the case requires that the reference be dealt with within a short time, such that it be determined pursuant to an expedited procedure derogating from the provisions of those Rules;

9. If so required, an effective remedy pursuant to Article 47 of the CFREU.
10. Such further, alternative and other relief as this Honourable Court shall deem appropriate in the interests of justice and in the Irish and European public interest and for legal certainty.
11. The costs of these proceedings.

Ronan Lupton BL
Joseph Dalby SC
Martin Hayden SC

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INDORSEMENTS ON JURISDICITON

1. The Court has the power to hear and determine the claim under Article 4 of Regulation No. 1215/2012.
2. No proceedings between the parties concerning the same cause of action are pending in another Member State of the European Union

ANNEX 1

THE ACQUIRED RIGHTS OF BRITISH NATIONALS AND EU CITIZENS

1. Citizens of the European Union have acquired the following rights pursuant to EU law, which persist within the territory of the Union following the withdrawal of the UK from the European Union.
 - a. The right to citizenship of the EU (Article 20 TFEU);
 - b. Under citizenship, the right to the benefits provided for in the Treaties (Article 20 (2) TFEU);
 - c. The right to move, reside and work freely in the EU;
 - d. The right to free movement of capital and services;
 - e. The right of freedom of establishment;
 - f. The right to stand and vote for election to the European Parliament;
 - g. The right to seek selection as a candidate for election to the European Parliament;
 - h. The right to seek a reference to the CJEU pursuant to Article 267 TFEU when litigating questions of EU law;
 - i. Rights to non-discrimination; (Articles 10, 17, 18 and 45 TFEU, Article 21 CFREU);
 - j. The right to equal treatment on grounds of nationality (Article 45 TFEU);
2. In addition such citizens are entitled to rely upon, in the enforcement of the rights enumerated above, the European *acquis* and the general principles of Union law, including the principles of legal certainty, proportionality, transparency, and good administration.
3. Further, European citizens, and British nationals in particular following the withdrawal of the UK from the European Union, have a legitimate expectation that their rights, and the enforcement of those rights, are protected by the Union, its institutions, its Member States, including the defendant.

4. The foregoing rights and expectations manifest as obligations on the defendant (as well as other Member States) following withdrawal of the UK from the EU to:
 - a. accord to British nationals their acquired rights and entitlements and to avoid and refrain from actions calculated to directly or indirectly deprive them of those rights or obstruct access to them.
 - b. avoid discriminating, expressly or by implication, against British nationals in breach of Articles 10, 17, 18 and 45 TFEU and Article 21 CFREU;
 - c. provide British nationals with good administration, avoid discriminating, expressly or by implication, against the Plaintiffs in breach of Articles 10, 17, 18 and 45 TFEU and Article 21 CFREU.

THE HIGH COURT

2017 Record No. 781 P

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