



Neutral Citation Number: [2026] UKUT 320 (AAC)
**Appeal No. UA-2025-001617-ULCW,
UA-2025-001620-USTA**

RULE 14 Order: It is prohibited to publish or disclose the identity of the respondent or her appointee in connection with these proceedings. Breach of this order may be treated as a contempt of court, punishable by imprisonment, fine or other sanction.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

SECRETARY OF STATE FOR WORK AND PENSIONS

Appellant

- v -

RB (BY HER APPOINTEE AB)

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: Clare Gratrex (DMA Leeds)

Respondent: Dylan Konrad Kreolle Solicitors

On appeal from:

Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Judge/Panel:	Tribunal Judge S Rizzo
First-tier Tribunal Case No:	1704791655770916 and 1696510717386598
First-tier Tribunal Venue:	Cambridge
First-tier Tribunal Hearing Date:	2 April 2025

SUMMARY OF DECISION

UNIVERSAL CREDIT – limited capability for work (45.3)

The claimant was, at the time of the relevant decision on 1 September 2021, an 18-year-old student in non-advanced education who was in receipt of Personal Independent Payment (PIP), but had not previously applied for Universal Credit (UC).

The First-tier Tribunal had erred in holding that the claimant fell within the exception in regulation 14(1)(b) of *The Universal Credit Regulations 2013* (SI 2013/376) (the UC Regulations). As it stood at the relevant time, that exception only applied if the Secretary of State had determined, on or before the date of the claim to UC, that the claimant had limited capability for work (LCW) (or was to be treated as having LCW). By virtue of regulations 38 and 39(6) and (7) of the UC Regulations, a claimant can only be treated as having LCW on the basis of paragraph 4 of Schedule 8 if a work capability assessment (WCA) has determined that they do not have LCW.

The First-tier Tribunal erred in assessing for itself whether, as at the date of claim, the claimant met the condition in paragraph 4 of Schedule 8 to the UC Regulations for being treated as LCW. The First-tier Tribunal's task was to stand in the shoes of the Secretary of State as at the date that the original decision was made on 1 September 2021 and consider whether, as at the date of the original claim to UC on 19 August 2021, the Secretary of State had determined the claimant to have LCW, or that she should be treated as having LCW. There was only one answer to that question, which was that there had been no such determination. Regulation 14(1)(b) accordingly did not apply. The First-tier Tribunal had also been wrong to regard regulation 2(1A) of the Social Security (Medical Evidence) Regulations 1976 as being relevant to the appeal.

The Upper Tribunal allowed the appeal, set aside the First-tier Tribunal's decision and re-made the decision so as to uphold the Secretary of State's revised entitlement and overpayment decisions.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remake it by dismissing the claimant's appeals against the Secretary of State's entitlement and overpayment decisions of 9 June 2023.

REASONS FOR DECISION

Introduction

1. One of the basic conditions for entitlement to Universal Credit (**UC**) is that the person "is not receiving education" (see sections 3 and 4(1)(d) of the Welfare Reform Act 2012 (**WRA 2012**)). This case concerns one of the exceptions to that basic condition for claimants who are (among other things) entitled to Personal Independence Payment (**PIP**) and who have Limited Capability for Work (**LCW**) or Limited Capability for Work-related Activity (**LCWRA**), or who are to be treated as such, in the circumstances set out in regulation 14(1)(b) of *The Universal Credit Regulations 2013* (SI 2013/376) (**the UC Regulations**), in the version in force between 5 August 2020 and 14 December 2021.

2. The benefit claimant in this case is, through her appointee, the respondent to this appeal, but I will refer to her as **the claimant**. The First-tier Tribunal decided that the claimant fell within the regulation 14(1)(b) exception and so was entitled to UC between 19 August 2021 and 18 July 2022. The Secretary of State for Work and Pensions (**the Secretary of State**) appeals, with permission, against that decision. The appeal is resisted by the claimant.
3. Both parties have made written submissions in relation to the appeal and are content for me to determine the case on the papers without a hearing. Having regard to the nature of the appeal and legal issue in dispute, I am content that it is appropriate, proportionate and fair for me to determine the appeal without a hearing, as permitted by rule 34(1) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) (**the UT Rules**).

Background

4. The claimant is a severely disabled young woman. She was born with a chromosome disorder, giving rise to multiple complex conditions including cerebral palsy, strabismus, chronic kidney disease, ectodermal dysplasia, scoliosis, Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD) and global developmental delays.
5. On 19 August 2021 she made, through her appointee, a claim to UC. She had as a child been in receipt of Disability Living Allowance (**DLA**). At the time of the claim to UC, she was 18 years old, in receipt of PIP and was enrolled at a further education college on Year 1 of a Level 2 City & Guilds Animal Care Diploma (non-advanced).
6. On 1 September 2021, a decision maker on behalf of the Secretary of State determined that the claimant had LCW, and was entitled to UC. This decision was made without carrying out a work capability assessment (**WCA**).
7. From May 2022 onwards, the appointee began receiving weekly calls from the jobcentre requesting that the claimant attend interviews with a recruitment agency. On 18 July 2022, following a meeting at the jobcentre with a work coach, a fit note was requested and the claimant was referred for a WCA.
8. There was then a complicated sequence of events as regards the claimant's entitlement to UC, which involved mistakes by the Department for Work and Pensions (DWP) for which the claimant has received some compensation through the complaints processes. For the purposes of this appeal, it suffices to note the following: on 11 August 2022 the decision of 1 September 2021 was superseded and the claimant's entitlement to UC was ended with effect from 19 July 2022; on 15 December 2022 the claimant was assessed as LCWRA at a WCA; a new claim to UC was made on 21 February 2023 and UC awarded from 15 March 2023.
9. On 9 June 2023, a decision maker decided that the decision of 1 September 2021 awarding the claimant UC had been made in official error, and that in fact the claimant was not entitled to UC throughout her award, having been in education

and having failed to meet any exceptions to the requirement not to be receiving education (“the entitlement decision”).

10. There was a lack of clarity about the nature of this 9 June 2023 decision, and directions were made by the First-tier Tribunal requiring the Secretary of State to provide further evidence of the decision made. However, as a matter of law, the 9 June 2023 decision can only have been, as the Secretary of State submits, a decision under section 9 of the Social Security Act 1998 (**SSA 1998**), by which the previous entitlement decision of 1 September 2021 was revised on grounds of official error. By virtue of section 9(3) of the SSA 1998, the revised decision took effect from the same date as the original 1 September 2021 decision, i.e. from 19 August 2021. It followed that the claimant had been overpaid £2,941.24 between 19 August 2021 and 11 August 2022, an amount that was recoverable by virtue of section 71ZB of the Social Security Administration Act 1992 (**SSAA 1992**) (“the overpayment decision”). The Secretary of State commenced recovery through the claimant’s benefits.
11. A revision decision triggers a fresh right of appeal to the First-tier Tribunal under section 12 of the SSA 1998, following mandatory reconsideration. This is the right of appeal that the claimant exercised in this case.
12. Following an oral hearing on 2 April 2025, the First-tier Tribunal allowed the appeals against both the entitlement and overpayment decisions, finding that the claimant was entitled to UC throughout the period 19 August 2021 to 18 July 2022, and that therefore she had not been overpaid. A Statement of Reasons (**SoR**) was subsequently provided on 19 June 2025.

The First-tier Tribunal decision

13. The First-tier Tribunal decided that the exception in regulation 14(1)(b)(ii) of the UC Regulations applied in the claimant’s case because it concluded, in the light of her health conditions, that she was to be treated as having LCW under Schedule 8 to the UC Regulations as at the date of her claim to UC. The First-tier Tribunal considered that the Secretary of State had had sufficient evidence as at that date to treat her as having LCW. The First-tier Tribunal referred to the Upper Tribunal decisions of *KS v SSWP* [2025] UKUT 015 (AAC) (**KS**) and *EE v SSWP* UA-2023-000846-ULCW and held that it was “unreasonable” for the purposes of regulation 2(1A) of the Social Security (Medical Evidence) Regulations 1976 (“Medical Evidence Regulations”) for the Secretary of State to have required any further medical evidence from the claimant and that the determination that she was LCW should have been made on or before the date of her claim to UC on the basis of the evidence in her claim form and her previous entitlement to DLA.

Legal framework

14. By section 3 of the WRA 2012, a single claimant is entitled to UC if they meet the basic conditions and the financial conditions. The basic conditions are set out in section 4 of the WRA 2012 which provides, so far as relevant, as follows:

4 Basic conditions

(1) For the purposes of section 3, a person meets the basic conditions who—

- (a) is at least 18 years old,
- (b) has not reached the qualifying age for state pension credit,
- (c) is in Great Britain,
- (d) is not receiving education, and
- (e) has accepted a claimant commitment.

(2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).

...

(6) For the basic condition in subsection (1)(d) regulations may—

- (a) specify what “receiving education” means;
- (b) specify circumstances in which a person is to be treated as receiving or not receiving education.

15. The UC Regulations are made under that section. Regulations 5 and 12 define what it means to be receiving education for the purposes of the basic conditions as follows:

Meaning of “qualifying young person”

5.—(1) A person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of Part 1 of the Act and these Regulations—

- (a) up to, but not including, the 1st September following their 16th birthday; and
- (b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled on, or accepted for, approved training or a course of education—
 - (i) which is not a course of advanced education,
 - (ii) which is provided at a school or college or provided elsewhere but approved by the Secretary of State, and
 - (iii) where the average time spent during term time in receiving tuition, engaging in practical work or supervised study or taking examinations exceeds 12 hours per week.

(2) Where the young person is aged 19, they must have started the education or training or been enrolled on or accepted for it before reaching that age.

(3) The education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.

(4) “Approved training” means training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 M1 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 M2 which is approved by the Secretary of State for the purposes of this regulation.

(5) A person who is receiving universal credit, an employment and support allowance or a jobseeker's allowance is not a qualifying young person.

Meaning of “receiving education”

12.— (1) This regulation applies for the basic condition in section 4(1)(d) of the Act (not receiving education).

(1A) A qualifying young person is to be treated as receiving education, unless the person is participating in a relevant training scheme.

(1B) In paragraph (1A)

“relevant training scheme” means—

- (a) a traineeship, or
- (b) a course or scheme which—
 - (i) comprises education or training designed to assist a claimant to gain the skills needed to obtain paid work (or more paid work or better-paid work);
 - (ii) is attended by a claimant falling within section 22 of the Act as a work preparation requirement or as voluntary work preparation, and
 - (iii) the claimant has been referred to by the Secretary of State;

“traineeship means a course which—

- (a) is funded (in whole or in part) by, or under arrangements made by, the—
 - (i) Secretary of State under section 14 of the Education Act 2002, or
 - (ii) Chief Executive of Education and Skills Funding;
- (b) lasts no more than 6 months;
- (c) includes training to help prepare the participant for work and a work experience placement; and
- (d) is open to persons who on the first day of the course have reached the age of 16 but not 25;

(2) Except in circumstances where paragraph (1A) applies “receiving education” means—

- (a) undertaking a full-time course of advanced education; or
- (b) undertaking any other full-time course of study or training at an educational establishment for which a student loan or grant is provided for the person's maintenance.

(3) In paragraph (2)(a) “course of advanced education” means—

- (a) a course of study leading to—
 - (i) a postgraduate degree or comparable qualification,
 - (ii) a first degree or comparable qualification,
 - (iii) a diploma of higher education,
 - (iv) a higher national diploma; or
- (c) any other course of study which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher).

(4) A claimant who is not a qualifying young person and is not undertaking a course described in paragraph (2) is nevertheless to be treated as receiving education if the claimant is undertaking a course of study or training that is not compatible with any work-related requirement imposed on the claimant by the Secretary of State.

16. Regulation 14 sets out exceptions to the basic condition of “not receiving education”. It is a regulation that has been amended a number of times. By virtue of section 12(1) and (8)(b) of the SSA 1998, an appeal against a revised decision must be decided by reference to the circumstances obtaining at the time that the original decision was made. As this case is concerned with the Secretary of State’s decision of 1 September 2021 (as revised on 9 June 2023), the relevant version is the one in force between 5 August 2020 and 14 December 2021, i.e. following the amendments made by the Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2020/827 (**the 2020 Amendment Regulations**) and before those made by the Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2021/1224 (**the 2021 Amendment Regulations**).
17. That version of regulation 14(1) of the UC Regulations provided, so far as relevant, as follows (emphasis added to identify the words of particular importance to this case):

14. Exceptions to the requirement not to be receiving education

(1) A person does not have to meet the basic condition in section 4(1)(d) of the Act (not receiving education) if—

...

(b) the person is entitled to attendance allowance, disability living allowance, child disability payment or personal independence payment **and it has been determined—**

- (i) that the person has limited capability for work or limited capability for work and work-related activity on the basis of an assessment under Part 5 of these Regulations or Part 4 or 5 of the ESA Regulations;
- (ii) **that the person is to be treated as having limited capability for work under Schedule 8** or limited capability for work and work-related activity under Schedule 9;
- (iii) that the person is to be treated as having limited capability for work or limited capability for work and work-related activity under regulation 19(2)(b) or (4)(b) of the Universal Credit (Transitional Provisions) Regulations 2014,

and that determination was made on or before the date of claim to universal credit, where the person is receiving education on the date the claim is made, or the date on which the person starts receiving education, where the person starts receiving education after the date of claim to universal credit,

18. Further provision in relation to LCW and LCWRA is made in Part 5 of the UC Regulations. By regulation 38, the question whether a claimant has LCW or LCWRA “is to be determined for the purposes of the Act and these Regulations in accordance with this Part”.
19. Regulation 39 and Schedule 8 make provision for work capability assessment (**WCA**) and set out the circumstances in which a claimant will be determined as having LCW, or treated as having LCW. As relevant to this case, they provide (emphasis added):

39.— Limited capability for work

(1) A claimant has limited capability for work if—

- (a) it has been determined that the claimant has limited capability for work on the basis of an assessment under this Part or under Part 4 of the ESA Regulations; or
- (b) the claimant is to be treated as having limited capability for work (see paragraph (6)).

...

(6) Subject to paragraph (7), a claimant is to be treated as having limited capability for work if any of the circumstances set out in Schedule 8 applies.

(7) Where the circumstances set out in paragraph 4 or 5 of Schedule 8 apply, a claimant may only be treated as having limited capability for work if the claimant does not have limited capability for work as determined in accordance with an assessment under this Part.

Schedule 8 Circumstances in which a claimant is to be treated as having limited capability for work

...

4.— Risk to self or others

(1) The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work.

(2) This paragraph does not apply where the risk could be reduced by a significant amount by—

- (a) reasonable adjustments being made in the claimant's workplace; or
- (b) the claimant taking medication to manage their condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.

20. Regulation 40 and Schedule 9 make equivalent provision in relation to LCWRA as follows:

40.— Limited capability for work and work-related activity

(1) A claimant has limited capability for work and work-related activity if—

(a) it has been determined that—

(i) the claimant has limited capability for work and work-related activity on the basis of an assessment under this Part, or

(ii) the claimant has limited capability for work related activity on the basis of an assessment under Part 5 of ESA Regulations; or

(b) the claimant is to be treated as having limited capability for work and work-related activity (see paragraph (5)).

...

(5) Subject to paragraph (6), a claimant is to be treated as having limited capability for work and work-related activity if any of the circumstances set out in Schedule 9 applies.

(6) Where the circumstances set out in paragraph 4 of Schedule 9 apply, a claimant may only be treated as having limited capability for work and work-related activity if the claimant does not have limited capability for work and work-related activity as determined in accordance with an assessment under this Part.

Schedule 9 Circumstances in which a claimant is to be treated as having limited capability for work and work-related activity

...

4. Risk to self or others

The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work-related activity.

The parties' submissions

The Secretary of State's submissions

21. The Secretary of State submits that the First-tier Tribunal erred in law by assessing for itself whether the claimant met the condition in Schedule 8 of the UC Regulations for being treated as LCW as at the date that the claim to UC was made rather than determining whether the claimant fell within the regulation 14(1)(b) exception as at the date of the original decision under appeal, i.e. 1 September 2021 (as revised on 9 June 2023), as required by section 12(8)(b) of the Social Security Act 1998 (**SSA 1998**). The Secretary of State submits that the First-tier Tribunal was bound to find that the claimant's case did not fall within regulation 14(1)(b) because, as at the date when the claim to UC was made on 19 August 2021, she had not been "determined" as having LCW as required by that regulation, and could not lawfully have been "determined" to have LCW on the basis of paragraph 4 of Schedule 8 as there had been no WCA as required by regulation 39(7).

22. The Secretary of State relies on *KL (by MR) v SSWP* [2024] UKUT 392 (AAC) (**KL**) at [25] per Upper Tribunal Judge Wikeley in support of the proposition that there was no duty on the Secretary of State to decide the claimant's claim to UC by any specific date. The Secretary of State submits the Medical Evidence Regulations do not assist because they concern only the date from which a determination takes effect, which is not the same thing as the date on which a determination is made, which is what matters for the purposes of regulation 14(1)(b).
23. The Secretary of State further observes that the High Court in *R (Kays) v SSWP* [2022] EWHC 167 (Admin) (**Kays**) and the Court of Appeal in that case ([2022] EWCA Civ 1593) rejected challenges to the lawfulness of the version of regulation 14 that was in force at the relevant time in this case and confirmed (at [9] in the judgment of Swift J and [14] in the judgment of the Court of Appeal) that the effect of regulation 14(1)(b) was that the determination as to whether a claimant has LCW or LCWRA had to precede the making of the claim for a claimant to fall within that exception. The Secretary of State points out that this was the policy intent of the amendment, as made clear in the Explanatory Notes.

The claimant's submissions

24. The claimant resists the appeal. Through her representative, she argues that the First-tier Tribunal did not err in law and that the First-tier Tribunal was right to assess for itself whether the claimant met the requirements for being treated as LCW as at the date that she made her claim to UC on 19 August 2021. The claimant submits that the First-tier Tribunal was also plainly right to find that she was to be so treated as she fell within the terms of Schedule 8 paragraph 4. The claimant submits that Schedule 8 does not require a prior work capability assessment, or formal administrative act in order to apply. It is a set of deeming provisions. The claimant further argues that her interpretation of the Regulations must be correct for policy reasons as follows:

20. ...within the statutory scheme, there is no mechanism by which a disabled student in continuous full-time education – who has never previously claimed UC – could ever obtain an LCW determination before making a claim. A WCA referral can only be made after day 28 of an awarded UC claim. It cannot be requested in advance, and there is no other route to a formal LCW determination available to such a claimant. The consequence of the Secretary of State's interpretation is therefore not merely that [the claimant] failed to satisfy a procedural requirement; it is that an entire class of claimant – disabled students moving directly from school into further education with no prior UC claim history – is structurally and permanently excluded from regulation 14(1)(b)(ii), because the precondition his interpretation requires is one they can never satisfy. That cannot be a correct reading of the statute. Parliament cannot have intended to create a condition of entitlement that is procedurally impossible for an identifiable class of disabled claimants to meet. The Schedule 8 paragraph 4 route must therefore be capable of operating on the basis of the claimant's factual medical circumstances at the date of claim – which is precisely what the tribunal found.

21. This point is reinforced by the facts of [the claimant's] own case. Had DWP processed her claim on 19 August 2021 rather than 1 September 2021, the LCW determination would have been recorded on the date of the claim itself, and no issue would have arisen. The regulation's timing requirement - that the determination be made on or before the date of claim - was designed to prevent students from claiming UC and then enrolling in education after the fact. It was not designed to be defeated by the speed of DWP's own administrative processing. To allow a 13-day administrative delay - caused entirely by DWP, not by any act or omission of [the claimant's] - to extinguish entitlement that would otherwise clearly have existed is to elevate a processing accident into a jurisdictional bar. The statute cannot bear that construction.

25. The claimant distinguishes the case of *KL* on the basis that the claimant in that case was not already in education at the date of the UC claim, concerned a student in advanced (University) education and a claimant who was awaiting a WCA rather than someone who could be deemed as LCW by virtue of Schedule 8.
26. The claimant distinguishes the *Kays* cases on the basis that they, too, were not concerned with the Schedule 8 "treated as having LCW" route. The claimant further argues that the policy justification for regulation 14(1)(b) advanced by the Secretary of State in that case, which led the courts to uphold the 2020 Amendment Regulations as lawful, do not apply in her case:

28. Crucially, in *Kays* the court was considering claimants who were in advanced (higher) education, had access to student finance and Disabled Students' Allowance (DSA), and were seeking to use UC as a supplementary benefit on top of other state funding. The entire rationale of the 2020 amendment, as identified by the court in *Kays*, was to close a 'workaround' by which disabled students in higher education could access UC as an additional income stream alongside student finance and DSA.

29. [The claimant's] situation was the direct opposite of the policy target. She was in non-advanced further education. Students at that level have no entitlement to student finance and no entitlement to Disabled Students' Allowance - these are provisions exclusively for higher education. [The claimant] could not access either. UC was not a supplement to other state support: it was her sole income beyond PIP. She had no earnings. Her father's income placed the family above the threshold for Child Benefit, meaning that income stream was also unavailable. Her mother, who acts as her appointee and full-time carer, receives only Carer's Allowance. The family had no other income or assets beyond a mortgaged family home. [The claimant] was precisely the kind of wholly financially dependent, severely disabled young person in non-advanced education that the original regulation was designed to protect - and precisely the kind of claimant the 2020 amendment was never intended to reach.

27. The claimant further submits that the First-tier Tribunal's application of the Medical Evidence Regulations was correct and in line with guidance in the recent Upper Tribunal decision of Upper Tribunal Judge Church in *KS v SSWP* [2025] UKUT 015 (AAC) (**KS**).

My decision

28. In short, I consider the Secretary of State's submissions in this case to be correct.
29. As noted above, by virtue of section 12(1) and (8)(b) of the SSA 1998, the First-tier Tribunal was required to determine the claimant's entitlement to UC by reference to the law as it stood at the time of the original entitlement decision of 1 September 2021, and thus by reference to the text of regulation 14(1)(b) as it stood between the 2020 and 2021 Amendment Regulations.
30. That text was clear that there had to have been, on or before the date of the claim to UC, a 'determination' either that the claimant had LCW or LCWRA following a WCA, or a 'determination' that the claimant was to be treated as such by virtue of Schedule 8 or Schedule 9 to UC Regulations.
31. Moreover, although I appreciate that Schedule 8 and Schedule 9 to the UC Regulations take the form of 'deeming' provisions, using the term "treated as", the Schedules are not freestanding. Regulation 14(1)(b) as it stood at the relevant time made clear that, for that exception to apply, there needed to have been a 'determination' by the Secretary of State that the claimant fell to be treated as LCW or LCWRA. However, even if regulation 14(1)(b) had not at the time specified that there needed to be a 'determination' by the Secretary of State to that effect (as it has not since the 2021 Amendment Regulations), the same answer would obtain in this case. That is because regulation 38 provides that the question whether a claimant has LCW or LCWRA "is to be determined" for the purposes of the WRA 2012 and the whole of the UC Regulations (i.e. including for the purposes of regulation 14) in accordance with Part 5 of the Regulations. Regulation 39(7) (which is in Part 5) makes clear that a claimant can only be treated as having LCW by virtue of paragraphs 4 or 5 of Schedule 8 if the claimant does not have LCW "as determined in accordance with" a WCA. The effect of regulation 39(7) is thus to make the carrying out of a WCA a condition precedent to the application of paragraphs 4 or 5 of Schedule 8 to a claimant's case. Regulation 40(6) makes identical provision in relation to the requirement for a WCA before a claimant can be treated as having LCWRA under paragraph 4 of Schedule 9. There is therefore no doubt that the claimant in this case, who in principle falls to be treated as LCW under paragraph 4 of Schedule 8, cannot benefit from the exception in regulation 14(1)(b) unless, on or before the claim to UC, there has been a determination to that effect following a WCA.
32. No argument based on a contention that the Secretary of State is under a duty to make a quicker determination in order to enable claimants in the position of this claimant to obtain the benefit of the exception can assist. Upper Tribunal Judge Wikeley was correct in *KL* at [25] about there being no duty on the Secretary of State to make a decision by a particular date, but even without that authority I would have reached the same conclusion in this case. It is hopeless to suggest

that the Secretary of State is under a duty to carry out a WCA and make a determination on the same day that a claim is made in order to create an entitlement that would not exist if the Secretary of State acted on a normal administrative timetable.

33. Nor are the Medical Evidence Regulations relevant to the application of the regulation 14(1)(b) exception. As the Secretary of State submits, those Regulations, and Upper Tribunal Judge Church's decision in *KS*, were concerned with the date from which a determination of entitlement to UC should take effect in accordance with regulation 28 of the UC Regulations. Regulation 28(2)(b) makes express reference to the Medical Evidence Regulations so as to provide that, if it has been determined that a claimant is entitled to the LCWRA element of UC, the date on which a claimant complies with the requirements of the Medical Evidence Regulations shall be taken as the start date of the three-month waiting period before the LCWRA element is included in the UC award. The Medical Evidence Regulations are not referred to in regulation 14(1)(b) and have no bearing on whether the exception in regulation 14(1)(b) applies.
34. Finally, the claimant's policy arguments about the effect of the regulation 14(1)(b) exception do not assist her in the context of this appeal. There is no ambiguity in the UC Regulations which would justify having regard to a policy argument such as that raised by the claimant in order to resolve an issue of interpretation. The effect of the Regulations is clear for the reasons already set out above. I add that it is plain from the definition of "qualifying young person" in regulation 5, and the terms of regulation 12(1A), that young people in non-advanced education are generally excluded from entitlement to UC unless participating in a relevant training scheme. There is a specific exception in regulation 14(1)(a) for such young people if they are without parental support (as defined) – an exception not available to those in advanced education. The claimant did not fall within that exception at the relevant time because she had parental support (as defined). The exception in regulation 14(1)(b) for those in receipt of PIP is clear on its face and applies (like the other exceptions in regulation 14(1)(c)-(f)) to all claimants regardless of their age or the type of education they are in. There is no ambiguity about it.
35. The effect of the Regulations as they stood at the relevant time is consistent with the policy intent of the Regulations, as set out in the Explanatory Memorandum to the 2020 Amendment Regulations. Further, as is noted at [9] of Swift J's decision in the *Kays* case, that had always been the policy intent. The 2020 Amendment Regulations were made in order to correct what the Secretary of State had come to accept was a deficiency in the drafting of the original UC Regulations in this respect. The claimant is therefore wrong to suggest that regulation 14(1)(b) in its original form was intended to benefit claimants in her position. That has never been the policy intent. The policy intent, as it was explained by the Secretary of State in a witness statement in the *Kays* case, quoted at [34] of Swift J's judgment, was as follows:

“...The exception in Regulation 14(1)(b) is aimed only at those disabled students who are already in receipt of UC (or legacy benefits such as ESA) and who wish to enter into full-time education. The Secretary of

State's policy is to ensure that those disabled claimants who are already receiving these benefits are not discouraged from moving into full-time education, which would better their prospects of obtaining employment, by the risk of losing their existing benefits. In other words, the policy is in place to enable existing benefit claimants, who might not otherwise consider a course of study, to embark upon such a course, in order to improve their prospects of obtaining work and reduce, or even end, their reliance upon state benefits. The exception is not targeted at disabled students who are not in receipt of UC (or ESA) at the time they move into full-time education. These students will have taken the decision to move into full-time education in circumstances where they are not reliant on income-related state benefits and where they know they will be reliant on support with their everyday living expenses from the student finance system. Additional expenses incurred as a result of a student's disability will be met through disability-related benefits, such as PIP/DLA, through the Disabled Student's Allowance and through University bursaries."

36. The claimant is right to point out that in the *Kays* case the Secretary of State sought to justify the scope of the regulation 14(1)(b) exception in part on the basis that students in advanced education will have access to student finance, Disabled Students' Allowance and University bursaries to which students in non-advanced education do not have access. However, that was no doubt because that case concerned a University student and so that was the focus of the evidence; similar points could be made about the availability of local authority support through Education Health and Care Plans (EHC Plans) for many young people in non-advanced education who are entitled to PIP, as well as parental support and disabled students' bursaries.
37. The Secretary of State has not advanced evidence of justification in this case because it has not been necessary to do so. The claimant has deployed policy arguments in this case in an effort to support her interpretation of the Regulations, but, for the reasons given above, that interpretation is incorrect. The claimant has not sought to challenge the lawfulness of regulation 14(1)(b) in these proceedings. The lawfulness of regulation 14(1)(b) in public law terms (i.e. domestic law rationality) could in any event only be challenged by way of judicial review as happened in the *Kays* case (where it was found to be lawful).
38. In principle, it was open to the claimant to raise in these proceedings an argument that the regulation breached the claimant's rights under the Human Rights Act 1998 (**HRA 1998**) and the European Convention on Human Rights (**ECHR**) so that the First-tier Tribunal was required by section 3 of the HRA 1998 to adopt a Convention-compliant interpretation of the regulation. If such an argument had been raised, as it was in the *Kays* case, the Secretary of State would have had to produce justification evidence as he did in the *Kays* case. However, the claimant has not raised such an argument. Nor have I considered it appropriate to invite the parties' submissions on such an argument of my own motion for two reasons. First, because the claimant is legally represented but has not raised that argument either before the First-tier Tribunal or on this appeal. Secondly, because I do not consider that such an argument would have a realistic prospect of success.

39. An argument based on Article 14 of the ECHR, read together with Article 1 of Protocol 1, failed in the *Kays* case for reasons that would apply in large part in this case too. Further, in this case, the nub of the claimant's policy argument is that regulation 14(1)(b) is indirectly discriminatory in its effect because, although it applies to young people in both advanced and non-advanced education who are entitled to PIP, young people in non-advanced education are placed at a greater disadvantage by being denied UC because they do not have access to student finance and Disabled Students' Allowance. However, (i) as already noted, there are other forms of support available to students in non-advanced education that were not mentioned in the *Kays* case because that was not dealing with a student in non-advanced education; (ii) even if the disadvantage of which the claimant complains exists, it is not caused by regulation 14(1)(b) but by differences in the support available to students in advanced and non-advanced education which are well-established and long-standing, and I do not consider that it could successfully be argued that the Secretary of State should have used regulation 14(1)(b) to remedy that difference for one particular category of non-advanced students; (iii) that is particularly so given the existence of the exception in regulation 14(1)(a) for students in non-advanced education without parental support, which means that regulation 14 as a whole treats non-advanced students more favourably than advanced students so that if they are at a disadvantage, that is (to some degree) addressed by regulation 14(1)(a).

Conclusion

40. For all these reasons, I conclude that the First-tier Tribunal's decision was in error of law. I allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal. There was only one right answer in this case, and it was the one reached by the Secretary of State on 9 June 2023. I therefore re-make the decision so as to dismiss the claimant's appeal against the entitlement and overpayment decisions made on that date.

Rule 14 Order

41. The respondent is a vulnerable young person without litigation capacity. In order to protect her interests, it is necessary to derogate from the principle of open justice by making an anonymity order under rule 14. I make this order of my own motion. Anyone affected by this order may apply for it to be set aside or varied.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 18 August 2026