



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
MR JUSTICE FORDHAM
BETWEEN:

CO/987/2020

THE QUEEN ON THE APPLICATION OF
(1) MS SIDRA KAUSER
(2) JL

Claimants

and

THE SECRETARY OF STATE
FOR WORK AND PENSIONS

Defendant

ORDER

UPON JL applying by consent to be joined to the claim, and for anonymity, on 14 July 2020

AND UPON the Defendant notifying the Court and the parties by letter dated 31 July 2020 that she no longer intends to defend the claim

AND UPON the Defendant agreeing to refer the Claimants for a work capability assessment within 28 days

AND UPON the parties having agreed to the disposal of this claim without a hearing pursuant to CPR 54.18, for the reasons in the Agreed Statement annexed to this Order pursuant to CPR PD54A §17.1

AND UPON the Court being satisfied as to the appropriateness of the terms of this Order, including (a) the necessity for the anonymity order for the reasons given in paragraph 13 of the Agreed Statement and (b) as to the basis for the declaration for the reasons agreed between the parties

AND BY CONSENT

IT IS ORDERED THAT:

1. JL is joined as the Second Claimant.
2. The Second Claimant be granted, pursuant to CPR r39.2(4), anonymity in the terms specified in the Schedule to this Order. The Second Claimant is to be identified only as JL.
3. The claim for judicial review is allowed.



4. The decisions that the Claimants had no entitlement to Universal Credit dated 4 December 2019 (Kauser) and 23 April 2020 (JL) are quashed.
5. The Defendant shall pay the Claimants' reasonable costs of this claim, to be the subject of detailed assessment if not agreed.
6. The Defendant shall within 14 days of the date of this order make a payment on account of £12,000 plus VAT in respect of the Claimants' costs.

IT IS DECLARED THAT:

7. The Defendant breached regulation 14(b) of the Universal Credit Regulations 2013 ("the Regulations"), when read with regulation 38 and 39(1)(a), of the Regulations in:
 - (i) failing to determine whether the Claimants had limited capability for work; and
 - (ii) failing to conduct a Work Capability Assessment before deciding the Claimants' entitlement to Universal Credit.

Fordham J

DATED the 7th day of October 2020

BY THE COURT

Served this 26th day of October 2020
REF: REK/LCA/00238249/1

SCHEDULE TO THIS ORDER
(see paragraph 2 of the Order)

1. Pursuant to CPR Rule 39.2 (4) there shall be no publication in any newspaper or other media or other disclosure of any name, address, image or other information tending to identify the Second Claimant in relation to his involvement in these proceedings.
2. In any publication or broadcast relating to these proceedings the Second Claimant shall be known by the letters JL.
3. Pursuant to CPR Rule 5.4C a person who is not a party to the proceedings may obtain a copy of the Statement of Case, Judgment or Order from the Court records only if a Statement of Case, Judgment or Order has been anonymised such that: (a) The Second Claimant is referred to in those documents as JL. (b) The address of the Second Claimant has been deleted from those documents.



4. For the purposes of this claim including any Statement of Case, Judgment, Order or other document the Second Claimant shall be known by the letters JL.
5. In so far as any Statement of Case, Judgment, Order or other documents to which anyone might have access pursuant to CPR Rule 5.4 A – D at any time does not comply with paragraph 3 above, the Second Claimant's Solicitors have permission to file with the Court copies of any such document adjusted so that it does comply. Such copies are to be treated for all purposes as being in substitution for the relevant original; and the originals are then to be retained by the Court in a sealed envelope marked "not to be opened without the permission of a Judge or Master of the Queen's Bench Division".
6. Any interested party, whether or not a party to the proceedings, may apply to the Court to vary or discharge this Order, providing that any such application is made on notice to the Second Claimant's Solicitor and that 7 working days' prior notice of the intention to make such an Application is given. The court will effect service of the application.

ANNEX TO THE ORDER:
PARTIES' AGREED STATEMENT ON MATTERS
JUSTIFYING THE PROPOSED AGREED ORDER
PURSUANT TO CPR PD 54A §17.1

Introduction

1. This judicial review claim concerns the operation of the legislative exemption in Reg 14(b) Universal Credit Regulations 2013¹ to the general rule in s 4 Welfare Reform Act 2012² that a person receiving education is not entitled to Universal Credit ("UC").
2. The claim challenged the Defendant's interpretation of Reg 14(b), as expressed through her written policy guidance to decision makers and applied to the Claimants. The Defendant's interpretation was that only claimants who had upon claiming UC *already* been determined by the Defendant to have limited capability for work ("LCW") could qualify for the exemption to the general rule that a person receiving education is not entitled to UC.
3. Thus both Claimants, who were receiving education, were entitled to a relevant disability benefit, and asserted LCW, were refused UC without any investigation of whether they had LCW.
4. This judicial review claim was filed on 4 March 2020. On 14 April 2020 the Defendant acknowledged service, without filing summary grounds of defence, indicating that she did not oppose the grant of permission but resisted the substantive claim. On 30 June 2020 Lang J granted permission to apply for judicial review.
5. On 14 July 2020 the parties filed an agreed draft order (which, so far as the parties are aware, has not yet been put before a Judge) adding JL as a claimant and providing for his anonymity, and providing that the Defendant would file detailed grounds of defence and

¹ Annexed to this statement (at Annex 1)

² Annexed to this statement (at Annex 2)



evidence by 31 July 2020.

6. On 31 July 2020 the Defendant wrote to the Court and the parties indicating that she no longer intended to defend the claim. She did not file any grounds of defence or evidence.
7. The Defendant has recently made amending regulations which supersede the legislation at issue in this claim, which give Reg 14(b) the effect contended for by the Defendant in her policy;³ but those amending regulations do not apply in relation to a claim for UC made before 5 August 2020.⁴
8. The parties agree that this claim should be disposed of without a hearing, on the terms set out in the attached draft order, for the reasons outlined below pursuant to CPR PD 54A §17.1.

Matters justifying the proposed Order

9. The parties agree that, upon the claimants claiming universal credit, the Secretary of State was required to determine whether they had limited capability for work (subject to the claimants meeting the basic conditions in section 4(1)(a) to (c), and the financial conditions in section 5 of the Welfare Reform Act 2012), if necessary, by conducting a work capability assessment.
10. By section 3(1) of the 2012 Act, a claimant is entitled to UC if a claimant meets the basic conditions. One of those basic conditions is that the claimant is “not receiving education” (see section 4(1)(d)). Regulations may provide for exceptions to the requirement to meet any of the basic conditions. Regulation 14(b) of the Universal Credit Regulations states that a person does not have to meet the basic condition in section 4(1)(d) of the Act (not receiving education) if the person is entitled to attendance allowance, disability living allowance or personal independent payment and has limited capability for work.
11. Part 5 of the Regulations is concerned with capability for work or work-related activity. Regulation 38 provides that the question whether a claimant has limited capability for work, or for work and work-related activity, is to be determined for the purposes of the 2012 Act and these Regulations in accordance with Part 5. Regulation 39 provides that 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 Part 5 of the Regulations or under Part 4 of the ESA Regulations; or (b) the claimant is to be treated as having limited capability for work (in the circumstances set out in regulation 39(6)).
12. Accordingly, the failure to refer the claimants for a work capability assessment under Part 5 of the Universal Credit Regulations to determine whether they had limited capability for work breached the then regulation 14(b) of the Regulations, when read with regulation 38 and 39(1)(a) of those Regulations.
13. Concerning the application for anonymity made by the Second Claimant, it is contended that on the facts of the Second Claimant's case, non-disclosure of his identity is necessary in order to protect his interests: CPR r.39.2(4). The parties agree that the interests of open justice are outweighed by the Second Claimant's interests in confidentiality, as protected by Article 8 ECHR. In particular:
 - a. The Second Claimant suffers with, amongst other conditions, autism and learning

³ The Universal Credit (Exceptions to the Requirement not to be receiving Education) (Amendment) Regulations 2020 (“the 2020 Regulations”).

⁴ Reg 1(2) of the 2020 Regulations.



difficulties. Disclosing these conditions is a relevant part of his case. They do constitute, however, sensitive medical information and the Second Claimant does not wish for them to be divulged to the world;

- b. The Second Claimant is a young adult who has previously suffered with anxiety. There are concerns that if the Second Claimant's name was to be widely publicised in the context of this challenge, his mental health may deteriorate as a result; and,
- c. This claim has the potential to be a high-profile case, with media interest, exacerbating the potential for the concerns set out above to be realised.

The effect of the proposed Order

- 14. §§1-2 of the Order join JL and give him anonymity, as the parties had previously agreed.
- 15. The proposed relief declares the correct position in law, and quashes the unlawful decisions taken in relation to the Claimants' UC claims. The Defendant will as a result subsequently reassess the Claimants' entitlement to UC, and (subject to the Claimants meeting the basic conditions in section 4(1), and the financial conditions in section 5, of the 2012 Act) will in the course of that assessment conduct WCAs for both Claimants. If the Defendant determines that the Claimants have LCW, the Claimants' UC entitlement will take effect from the dates upon which their claims were refused, being 4 December 2019 (First Claimant) and 23 April 2020 (Second Claimant).
- 16. The order provides for payment of the Claimants' costs because they have succeeded.

ANNEXES TO THE AGREED STATEMENT:

Annex 1: Universal Credit Regulations 2013 regulation 14

14 Exceptions to the requirement not to be receiving education

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

- (a) *the person—*
 - (i) *is undertaking a full-time course of study or training which is not a course of advanced education,*
 - (ii) *is under the age of 21, or is 21 and reached that age whilst undertaking the course, and*
 - (iii) *is without parental support (as defined in regulation 8(3));*
- (b) *the person is entitled to attendance allowance, disability living allowance or personal independence payment and has limited capability for work;*
- (c) *the person is responsible for a child or a qualifying young person;*
- (d) *the person is a single person and a foster parent with whom a child is placed;*
- (e) *the person is a member of a couple, both of whom are receiving education, and the other member is—*
 - (i) *responsible for a child or qualifying young person, or*
 - (ii) *a foster parent with whom a child is placed; or*
- (f) *the person—*
 - (i) *has reached the qualifying age for state pension credit, and*
 - (ii) *is a member of a couple the other member of which has not reached that age.*

Annex 2: Welfare Reform Act 2012 section 4

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).*
- (3) *For the basic condition in subsection (1)(a) regulations may specify a different minimum age for prescribed cases.*
- (4) *For the basic condition in subsection (1)(b), the qualifying age for state pension credit is that referred to in section 1(6) of the State Pension Credit Act 2002.*
- (5) *For the basic condition in subsection (1)(c) regulations may—*
- (a) *specify circumstances in which a person is to be treated as being or not being in Great Britain;*
 - (b) *specify circumstances in which temporary absence from Great Britain is disregarded;*
 - (c) *modify the application of this Part in relation to a person not in Great Britain who is by virtue of paragraph (b) entitled to universal credit.*
- (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.*
- (7) *For the basic condition in subsection (1)(e) regulations may specify circumstances in which a person is to be treated as having accepted or not accepted a claimant commitment.*

BY ORDER OF THE COURT

NOTE: Pursuant to CPR Part 40.7(1) this order takes effect from the date it was made. In the light of the Covid-19 pandemic many court staff are working remotely. A sealed order (as required under CPR Part 40.2(2)(b)) is or will be available by liaison with the court office.