



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2020-000306-USTA**

On appeal from: First-tier Tribunal (Social Entitlement Chamber)

**Between:**

**BK**

Appellant

- v -

**Secretary of State for Work and Pensions**

Respondent

**Before: Upper Tribunal Judge Rowley**

Decision date: 8 March 2022

**Representation:**

Appellant: Did not attend

Respondent: Ms Julia Smyth, Counsel

## **DECISION**

**The decision of the Upper Tribunal is to dismiss the appeal.**

## **REASONS FOR DECISION**

### Introduction

1. The issue on this appeal is the definition of “undertaking a full-time course of advanced education” in regulation 12(2)(a) of the Universal Credit Regulations 2013.
2. The claimant appeals against the decision of the First-tier Tribunal of 18 March 2020. The tribunal had dismissed the claimant’s appeal against the decision of the Secretary of State for Work and Pensions (“the Secretary of State”) of 14 October 2019 that the claimant was not entitled to Universal Credit from 16 September 2018 because he was “receiving education” for the purposes of section 4(1)(d) of the Welfare Reform Act 2012 and thus did not satisfy a basic condition of entitlement.
3. Permission to appeal was given by a District Tribunal Judge on the ground that “the term ‘full-time’ used in reg. 12 of the Universal Credit Regulations is not defined ... [and] it is arguable that full-time might refer to the actual number of hours of study rather than classification by the particular educational institution”.

The claimant's non-attendance at the hearing before the Upper Tribunal

4. At the claimant's request, I held an oral hearing of the appeal on 10 February 2022. The Secretary of State was represented at the hearing by Ms Smyth of Counsel. I am grateful to Ms Smyth for her helpful submissions.
5. The claimant did not attend the hearing. Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 gives the Upper Tribunal the discretion to proceed with a hearing in a party's absence so long as two criteria are met, namely: (a) the Upper Tribunal is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) the Upper Tribunal considers that it is in the interests of justice to proceed with the hearing.
6. Having perused the Upper Tribunal's file I was satisfied that the claimant had been notified of the hearing. Even if I had been wrong about this, I was satisfied that reasonable steps had been taken to notify the claimant of the hearing. Not only had notice of the hearing been sent to the postal address and email address provided by the claimant, a clerk to the Upper Tribunal had also (unsuccessfully) attempted to contact him on the mobile telephone number provided by him to inform him of the hearing date on three occasions, including the day of the hearing.
7. Turning to the second criterion, I accepted Ms Smyth's submission that it was in the interests of justice to proceed with the hearing. I bore in mind that the claimant had not made an application to adjourn the hearing. Furthermore, it was reasonable for me to take the claimant's non-attendance as an indication that he did not wish to proceed with his appeal, so there would be little point in adjourning in any event. There has to be finality in proceedings.
8. When applying rule 38, I had to seek to give effect to the overriding objective of rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Having considered the relevant factors, I was satisfied that the claimant had had an opportunity to participate fully in the proceedings, and that any adjournment would cause unnecessary delay. In all the circumstances, I was of the view that it was proportionate to proceed with the hearing in the claimant's absence, and that it was fair and just to do so.

Facts

9. I will set out the facts which are relevant to the issues on the appeal. On 24 September 2018 the claimant began a Master of Arts course in Comparative Literature and Criticism at Goldsmiths, University of London. It is not in dispute that that course was one of advanced education for the purposes of the Universal Credit Regulations 2013.
10. In support of his claim for Universal Credit the claimant provided a document headed "CONFIRMATION OF ENROLMENT". It was dated 13 October 2018 and was addressed to the claimant. It was written by the Records and Enrolments Manager, Student Services "On behalf of Goldsmiths, University of London".
11. After having set out the claimant's name and date of birth, this is what the document said:

"We can confirm that the above-named is enrolled on the following programme of study at Goldsmiths, University of London:

Programme: MA LITERARY STUDIES – COMPARATIVE LITERATURE AND CRITICISM Year 1

Mode of Study: FT – Full time >24 weeks

Commenced: 24/09/2018

Expected end: 28/09/2019

The student's programme of study constitutes 21 hours or more study per week, for a period of at least 24 weeks.

If you have any further queries regarding this student's status please contact [email address] quoting reference [...]"

12. In support of his claim, the claimant provided two further letters from Goldsmiths, dated 30 April 2019 and 21 August 2019 respectively. Each was sent from the Department of English and Comparative Literature and was addressed "to whom it may concern".

13. The letter dated 30 April 2019 was sent by the "Postgraduate Co-ordinator, English and Comparative Literature". It was in these terms:

"This letter is to confirm that [the claimant] is currently enrolled in the full-time MA Literary Studies: Comparative Literature and Criticism.

The 2018-19 course began on September 24<sup>th</sup> 2018 and will run until September 28<sup>th</sup> 2019. Throughout term, he is required to attend classes and/or undertake independent study for at least six hours per week.

Please contact me if you require any further information.

Kind regards"

14. The letter dated 21 August 2019 was sent by the "Department Business Manager, English and Comparative Literature".

"This letter is to confirm that [the claimant] is currently enrolled in the full-time MA Literary Studies: Comparative Literature and Criticism.

The 2018-19 course began on September 24<sup>th</sup> 2018 and will run until September 28<sup>th</sup> 2019. In term one, he enrolled on the modules 'Studies in Comparative Literature and Criticism' (Mondays, 10.00-13.00) and 'Theories of Literature and Culture' (Fridays, 10.00-13.00); in term two, the modules 'Literature and Philosophy' (Wednesdays, 09.00-11.00) and 'Between Languages: Multilingualism and Translation in Contemporary Literature' (Fridays, 14.00-16.00). Optional research skills modules ran from 14.00-16.00 on Wednesdays.

Students are also expected to undertake independent study for at least six hours per week. In term three, students are expected to prepare a dissertation with some tutorial supervision, but no scheduled teaching.

Please contact me if you require any further information.

Kind regards"

### The legal framework

15. It has long been the case that full-time students have been excluded from entitlement to certain benefits.

16. Pursuant to section 4(1)(d) of the Welfare Reform Act 2012, one of the basic conditions of entitlement to Universal Credit is that a person "is not receiving education". Section 4(6) provides for regulations to specify what "receiving education" means, and to specify circumstances in which a person is to be treated as receiving or not receiving education.

17. The relevant regulations are the Universal Credit Regulations 2013. Regulation 12 provides for the meaning of “receiving education”. I shall set out the relevant parts of the regulation, emphasising the key provision for the purposes of this appeal.

*Meaning of “receiving education”*

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

...

(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*

(b) *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.*

18. There is no definition of “full-time course of ... education” in the 2013 Regulations. Ms. Smyth cited a number of helpful authorities which have addressed the issue. It is, of course, right to say, as Ms Smyth acknowledged, that those cases were dealing with specific submissions on benefits other than Universal Credit, and that the statutory language has differed from time to time. Nonetheless, I accept Ms. Smyth’s submission that what the cases say about relevant evidence applies in the current context. In other words, in considering whether or not a course is “full-time”, a common approach has been adopted, and there is no reason to suggest that it should not apply in the context of regulation 12 of the 2013 Regulations.

19. The following propositions may be gleaned from the jurisprudence:

- a. Whether or not a person is undertaking a full-time course is a question of fact for the tribunal having regard to the circumstances in each particular case ((*R/SB 40/83* at [13]; *R(SB) 41/83* at [12]). Parameters have been set, as appear below:

- b. The words “full-time” relate to the course and not to the student. Specifically, they do not permit the matter to be determined by reference to the amount of time which the student happens to dedicate to their studies (*R/SB 40/83* at [14,15]; *R(SB) 2/91* at [7]; *R(SB) 41/83* at [11]).
- c. Evidence from the educational establishment as to whether or not the course is full-time is not necessarily conclusive, but it ought to be accepted as such unless it is inconclusive on its face, or is challenged by relevant evidence which at least raises the possibility that it ought to be rejected (*R/SB 40/83* at [18]), and any evidence adduced in rebuttal should be weighty in content (*R/SB 41/83* at [12]). See also *Flemming v Secretary of State for Work and Pensions* [2002] EWCA Civ 641, [2002] 1 WLR 2322 at [21]-[22] and [38]; and *Deane v Secretary of State for Work and Pensions* [2010] EWCA Civ 699, [2011] 1 WLR 743 where the Court of Appeal repeated an earlier statement in *Fleming* that:

“38 ... A tribunal of fact should, I think be very slow to accept that a person expects or intends to devote – or does, in fact, devote – significantly less time to the course than those who have conduct of the course expect of him, and very slow to hold that a person who is attending a course considered by the educational establishment to be a part-time course is to be treated as receiving full-time education because he devote significantly more time than that which is expected of him...”
- d. If the course is offered as full-time course, the presumption is that the recipient is in full-time education. There may be exceptions to the rule, such where a student is granted exemptions from part of the course: *Deane* [51].

#### The First-tier Tribunal

20. The First-tier Tribunal held an oral hearing of the claimant’s appeal. The claimant attended the hearing and gave evidence. As recorded in the Record of Proceedings, the claimant’s case to the tribunal was that he thought that “only [his] classes should be counted as hours of study”, and that independent study was only “a recommendation”. The claimant said that his “main argument” was that he was able to manage his time so that he was available for work despite the fact that he was studying for an MA, albeit he had not found a job.
21. The tribunal refused the claimant’s appeal. It found that the claimant “was a full-time MA student in the academic year 2018/19 and therefore is not entitled to Universal Credit from and including 24/09/2018.” The Statement of Reasons provided the reasons for the tribunal’s decision. Specific reference was made to the three letters from Goldsmiths referred to above, although it is fair to say that they were not analysed in any detail. (I should say that the tribunal’s Statement of Reasons contains typographical errors with regard to the dates of these letters, but nothing turns on that). The tribunal then briefly but accurately set out the respective parties’ cases.
22. The tribunal went on to state that in reaching its decision it had taken into account all of the oral and documentary evidence relevant to the decision. It said that it accepted the Secretary of State’s submissions. In concluding that the claimant was engaged in full-time education for the period 24 September 2018 to 28 September 2019, the tribunal found that:

“the description provided by Goldsmiths [was] determinative of the nature of the course in which [the claimant] was enrolled and ... this was a full-time postgraduate course of study.”

The appeal to the Upper Tribunal

23. The claimant sought permission to appeal to the Upper Tribunal. As I have said, a District Tribunal Judge gave permission to appeal on the ground that “the term ‘full-time’ used in reg. 12 of the Universal Credit Regulations is not defined ... [and] it is arguable that full-time might refer to the actual number of hours of study rather than classification by the particular educational institution”.
24. In his grounds of appeal the claimant argued that the letters from Goldsmiths were unclear as to whether the course was part-time or full-time, not least because the two letters from the Department of English and Comparative Literature indicated that he was not required to study for the 21 hours per week stated in the official enrolment letter.
25. Ms Smyth submitted that Goldsmiths, a reputable educational institution, had throughout described the course as “full-time”, and the formal description of the course as such in the “official” confirmation of enrolment document was highly significant. The last paragraph of that letter, inviting the reader to contact the records and enrolments manager if they had any queries about the claimant’s status, indicated that the letter had been designed to be given out by the claimant to enable him to show his status on the course. In any case, submitted Ms Smyth, any arguable lack of clarity in the descriptions of the number of hours of study in the correspondence was outweighed by the repeated and consistent description of the course as “full-time” in each of the letters.
26. Ms Smyth went on to submit that, in the light of the propositions of law set out at paragraph 19 above, the tribunal adopted the correct approach. It was right not to look at the number of hours the claimant was spending on the course. If the course was a full-time course, it would avail the claimant nothing to show how many hours of study he did. Ms Smyth again stressed that what was crucial was how Goldsmiths had categorised the course. Ms Smyth pointed out that such categorisations carry implications not only for potential claims for benefits, but also for matters such as the amount of fees to be paid and, perhaps, eligibility for university accommodation. It followed that one should assume, in the absence of evidence to the contrary, that an educational institution’s categorisations have been given careful and proper consideration by the institution which, of course, has expert knowledge and experience of its own courses.
27. Furthermore, Ms Smyth stressed that it was noteworthy that the claimant had not sought to adduce any other material which might have contradicted Goldsmith’s categorisation of the course as “full-time”. Thus, there was nothing, certainly nothing compelling, to outweigh the classification which had been provided by Goldsmiths.
28. In summary, Ms Smyth submitted that no error of law had been demonstrated.

Analysis

29. I accept Ms Smyth's submissions. The issue as to whether the claimant was undertaking a full-time course of advanced education was a question of fact to be determined by the tribunal on the basis of the evidence before it. I am satisfied that, on the basis of that evidence, the tribunal correctly focussed on how the course was described by the educational establishment that was providing the course. It was open to the tribunal to conclude, as it did, that that description was that the course was a full-time one. The tribunal's reasons were sufficient to explain this conclusion.
30. That said, I must go on to consider whether the tribunal then applied the correct test when it found that Goldsmith's description was "determinative"? Strictly speaking, as set out above, it is well-established that an educational establishment's description of its course is *not* necessarily conclusive. However, it is equally well-established that if the course is offered as a full-time course, the presumption is that the claimant is "undertaking a full-time course", and the course provider's categorisation ought to be accepted unless it is considered to be *prima facie* inconclusive or it has been challenged by weighty evidence.
31. In the light of these principles, in describing Goldsmith's description as "determinative" did the tribunal overstate the test? Ms Smyth submitted that I should look at the Statement of Reasons in the round to establish what the tribunal meant by "determinative". The tribunal specifically addressed the claimant's case. Goldsmith's categorisation was not inconclusive on its face, nor had it been challenged by any evidence that had raised the possibility that it ought to have been rejected.
32. I accept Ms Smyth submissions. Whilst the terminology which the tribunal adopted was, perhaps, unfortunate, nonetheless it was not sufficient to amount to an error of law in the light of the tribunal's overall analysis. Therefore, looking at the Statement of Reasons as a whole, I am satisfied that the tribunal did not err in law in describing Goldsmith's categorisation of the course as "determinative".

Conclusion

33. For the reasons given above, my decision is that the tribunal's decision was not erroneous in point of law. The tribunal applied the correct legal test, and decided as a matter of fact that the claimant was "undertaking a full-time course of advanced education" within the meaning of regulation 12(2)(a) of the Universal Credit Regulations 2013. That factual conclusion was one which the tribunal was entitled to come to on the evidence before it.
34. Accordingly, I dismiss the appeal.

Authorised for issue

**A. Rowley, Judge of the Upper Tribunal**

Dated: 8 March 2022