IN THE UPPER TRIBUNAL **Appeal No. UA-2022-001601-USTA**
ADMINISTRATIVE APPEALS CHAMBER **[2024] UKUT 305 (AAC)**

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

Between:

SO

Appellant

- v -

Secretary of State for Work & Pensions

Respondent

Before: Upper Tribunal Judge Mitchell

Hearing: 26 February 2024 at Cardiff Civil Justice Centre

Representation: For the Appellant, Clare Sharp of Universal Credit Essentials

For the Respondent, Richard Howell, of counsel, instructed by the Government Legal Department

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal.
The decision of the First-tier Tribunal, taken on 22 March 2022 under case reference SC/188/22/00193, did not involve an error on a point of law. Under section 11 of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal dismisses this appeal.

REASONS FOR DECISION

Introduction

1. Arrangements for financial assistance for students, including availability of grants, are different in England and Wales. The universal credit legislation, however, is the same for England and Wales. This appeal is about how these two regimes connect, in particular whether a Welsh student whose maximum student loan is reduced on account of a grant should nevertheless be treated as having an un-reduced loan for the purposes of the Universal Credit income assessment.

Background

DWP decision-making

2. For academic year 2021/22, the Appellant was a full-time second-year undergraduate student at the University of Wales Trinity Saint David. Since the Appellant was resident in Wales, Student Finance Wales, acting for the Welsh Government, were responsible for providing the Appellant with education-related financial assistance. While not stated in the First-tier Tribunal's papers, the amount of the Appellant's maintenance grant suggests that she was not living at home while studying.

3. Student Finance Wales informed the Appellant that her financial support for academic year 2021/22 would consist of:

- Student loan (£5,350) (maintenance loan);
- Welsh Government Learning Grant (WGLG) (£2,939);
- Special Support Grant (£5,161);
- Parent's Learning Allowance (£1,821);
- "Total grant available to you: £9,921".

4. The Appellant also claimed Universal Credit. The Secretary of State's Universal Credit decision of 8 October 2021 included an income assessment. This seems to have "automatically disregarded" the Appellant's Special Support Grant of £5,161 and her Parent's Learning Allowance of £1,821. The DWP's First-tier Tribunal submission suggested that the entire amount of the Appellant's WGLG was included

as unearned income and it was this, when added to the actual amount of the Appellant's student loan, produced a deemed unearned income of £8,289. This was the same amount as the maximum student loan that the Appellant, according to the DWP, could have acquired. The Appellant accepted that her actual maintenance loan of £5,350 fell to be taken into account as 'student income' for Universal Credit purposes but disputed that she should be treated as having received any greater amount of student loan income than that.

5. The above description of the DWP's decision-making is not framed in definite terms. There is a reason for this. The precise steps taken by the DWP in calculating the Appellant's income are not entirely clear. The First-tier Tribunal submission is capable of being read as stating that the DWP both treated the Appellant as having the maximum student loan of £8289 and took the entire WGLG account into account. This cannot have happened. The DWP's final income figure shows that they did one or the other, but not both. Whatever decision-making route was taken the practical destination was the same so far as the Appellant was concerned. The Appellant's income for Universal Credit purposes exceeded her actual student loan income by £2,939, which was the amount of her WGLG according to Student Finance Wales data. The Appellant appealed to the First-tier Tribunal.

First-tier Tribunal's reasons

6. The First-tier Tribunal determined the Appellant's appeal on the papers. The Tribunal dismissed the Appellant's appeal and, in doing so, confirmed the Secretary of State's Universal Credit income calculation. The Tribunal's findings included:

(a) "there is no provision in the Regulations, including **Regulation 70** specifically stating that the WGLG should be excluded in full, or in any amount, from a student's income when calculating that students' entitlement to Universal Credit" (paragraph 21 of the Tribunal's reasons);

(b) all Welsh students received a "base amount" of WGLG of £1,000 and "this base grant is disregarded pursuant to regulation 68(4) when a student receives a loan and a WGLG" (paragraph 22);

(c) the "maximum loan amount which the Appellant received…should be taken into account…- Regulation 69(1). But the "base amount of" of WGLG in the sum of £1,000 which she received is disregarded" (paragraph 23);

(d) since the Appellant "receives a WGLG with a Special Support Grant…the [DWP] correctly took into account her WGLG in full…I am persuaded by the [DWP's] contention that in the appellant's circumstances the WGLG is added onto her loan

because the maximum loan amount available would be reduced by the same amount of her grant" (paragraph 24).

7. While the First-tier Tribunal's reasoning was not entirely clear, the result was. For Universal Credit purposes, the Appellant's WGLG of £2,939 was to be taken into account as part of her unearned income.

Grounds of appeal

8. The Appellant was granted permission to appeal against the First-tier Tribunal's decision on three grounds, described as follows in the Upper Tribunal's permission determination:

> "***ground 1*** - with the greatest of respect, the First-tier Tribunal's reasons indicate that it arguably had little appreciation of the nature of the legislative scheme it was required to apply, and thereby misdirected itself in law. The Tribunal seemed to think it was relevant that the WGLG is not specifically mentioned in the [Universal Credit Regulations 2013] but made no reference to the applicable definition of "grant". The Tribunal appears to have thought that regulation 68(4) applies when a student receives a loan and a grant, but it seems to me that regulation 68(4) deals with the case of a student without any student loan…Regulation 70 was mentioned, underlined and in bold, yet I struggle to see why it was of any relevance let alone such significance (regulation 70 only applies where a student's income is based on grant income);
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> ***ground 2*** – if the Tribunal deemed the Appellant to have received a maximum student loan of £8289, it arguably gave inadequate reasons for its decision… Regulation 69(1) applies where the student would be able to acquire "the maximum student loan" by taking reasonable steps to do so. The Student Finance Wales documentation arguably suggests that the Appellant acquired the maximum student loan that was available to her. In those circumstances, it is not at all clear to me what 'reasonable steps' she could have taken to persuade Student Finance Wales to increase the amount of her student loan. Arguably, the Tribunal's reasons were inadequate because it failed to explain what reasonable steps the Appellant should have taken in order to obtain the supposed 'maximum student loan' of £8,289;
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> - ***ground 3*** – if the Tribunal arrived at an income calculation for the Appellant by adding the WGLG to the actual student loan received, arguably its reasons were also inadequate. Unless a grant falls within the exceptions in regulation 68(3), then, for a student with a student loan, regulation 68(3) requires the grant to be disregarded. The Tribunal's reasons do not explain why the Appellant's

> WGLG was taken into account, i.e. why it was one of the exceptional types of grant that are not disregarded under regulation 68(3). If the Tribunal disregarded only part of the WGLG, its reasons were arguably inadequate because it failed to explain why one part of the grant fell to be disregarded but the rest did not."

The Welsh Government's involvement in these proceedings

9. The Upper Tribunal invited the Welsh Government to apply to be made a party to these proceedings. This invitation was extended in the light of the Welsh Government's obvious policy interest, and because the Welsh Government's assistance in explaining student finance arrangements in Wales might have been of assistance to the Upper Tribunal. However, the Welsh Government informed the Upper Tribunal that it did not wish to be made a party to these proceedings.

Legislative framework

Student finance for Welsh students

10. Much of the following description of Welsh student finance legislation, as at the date of the Secretary of State's determination of the Appellant's claim for Universal Credit, is drawn from the skeleton argument of Mr Howell, who appears for the Secretary of State. I am grateful to Mr Howell for his assistance.

11. Student finance in Wales is governed by regulations made by the Welsh Ministers, the Education (Student Support) (Wales) Regulations 2018 (2018 Regulations). The 2018 Regulations are made under section 22 of the Teaching and Higher Education Act 1998.

12. Part 7 of the 2018 Regulations (regulations 43 to 52) provides for the Welsh Ministers to make available, to an eligible student, a 'base grant' and a maintenance grant. The purpose of these grants is "the student's living and study costs" (regulation 43). The amount of the base grant for each academic year for a full-time student is £1,000 (regulation 45). The amount of the maintenance grant (if any) is dependent on various factors including the student's household income and their living arrangements (regulation 46). The maximum amount of maintenance grant for a full-time student living away from home and not studying in London is £7,100.

13. Where a full-time student qualifies for a base grant or maintenance grant, and meets a qualifying condition in regulation 51 of the 2018 Regulations, the base grant and so much of the maintenance grant for a full-time student as does not exceed £4,161, is to be treated as a 'special support payment' (regulation 50(1)). It is not disputed that the Appellant satisfied a qualifying condition in regulation 51. Regulation 50(2) provides that a special support payment is intended to meet (a)

costs of books and equipment; (b) travel expenses; and (c) childcare costs, "in connection with an eligible student undertaking a designated course". However, I have not been taken to any provision which provides for the payment to vary according to a student's particular requirements. For instance, the special support payment for a student without dependent children (and hence without childcare costs) appears to be the same as for one with children.

14. The Appellant's special support payment was £5,161. In other words, the maximum permitted amount of maintenance grant was treated as a special support payment (since the fixed amount of base grant (£1,000) must have made up the rest of the special support payment).

15. The 2018 Regulations make no mention of a 'Welsh Government Learning Grant'. I am informed by Mr Howell, for the Secretary of State, that the Welsh Government Learning Grant is 'a shorthand for the base and maintenance grant'. That does not make sense, at least in the case of this Appellant. The Appellant's base grant was included as part of her special support payment, as was the majority of her maintenance grant, and she was informed that she would receive a separate amount in the form of a WGLG. As explained below, in legal reality this Appellant's Welsh Government Learning Grant was simply a label for what remained of her maintenance grant after £4,161 of it had been treated as part of her special support payment.

16. Part 8 of the 2018 Regulations (regulations 53 to 60) deals with maintenance loans. Maintenance loans are made available "in respect of living costs for an academic year" (regulation 53).

17. Regulation 55(1) provides that, for a full-time student, the amount of maintenance loan payable is the maximum amount of maintenance loan available to the student minus the amount of maintenance grant payable to the student under regulation 46.

18. Regulation 55 is not made expressly subject to regulation 56. However, regulation 56(1) provides that, "where a full-time student qualifies for a special support payment under regulation 50, the amount of maintenance loan payable to the student is calculated in accordance with paragraph (2)". I understand it is accepted that this Appellant's maintenance loan entitlement was governed by regulation 56 rather than regulation 55.

19. Regulation 56(2) sets out a number of steps for the calculation of a student's maintenance loan. For present purposes, I need only mention steps 5 and 6. Step 6 provides that the amount of maintenance loan payable is arrived at by deducting that

part of any maintenance grant that is not treated as special support payment from the notional maximum amount of student loan calculated at step 5.

20. A parents' learning grant, in respect of costs associated with certain dependants of the student, is provided for by regulations 73 and 74 of the 2018 Regulations. It appears that this grant has no effect on the amount of a student's maximum student loan.

Universal Credit: student income

21. The description below relates to the Universal Credit legislation as it stood when the Secretary of State decided the Appellant's claim for Universal Credit (7 October 2021).

22. The Universal Credit 'basic conditions', in section 4(1) of the Welfare Reform Act 2012 (2012 Act), include a requirement that a person "is not receiving education". However, regulations made under section 4(2) may provide for exceptions. It is not disputed that the Appellant was excepted from the 'not receiving education' requirement by regulation 14 of the Universal Credit Regulations 2013 (2013 Regulations).

23. Section 8(1) of the 2012 Act provides that the amount of an award of Universal Credit is the maximum prescribed amount less amounts to be deducted pursuant to section 8(3). The deductible amounts under section 8(3) include a claimant's unearned income, calculated in accordance with regulations. The regulations are contained in Chapter 3 of Part 6 of the 2013 Regulations (regulations 65 to 74). All of the claimant's unearned income in respect of an assessment period is deducted from the claimant's maximum amount (regulation 22(1)(a)).

24. A person's unearned income is any of their income falling with the descriptions in regulation 66(1) of the 2013 Regulations. Those descriptions include "student income" (regulation 66(1)(e)).

25. Regulation 68(1) of the 2013 Regulations provides that a person who is "undertaking a course of education, study or training…and has a student loan…or a grant in respect of that course, is to be treated as having student income in respect of" the assessment periods specified in regulation 68(1)(a) to (c). It is not disputed that the Appellant was to be treated as having student income under regulation 68.

26. Regulation 68(7) defines "grant" as "any kind of educational grant or award, excluding a student loan…", and "student loan" as "a loan towards a person's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998".

27. Regulation 68(2) provides that "where a person has a student loan…their student income…is to be based on the amount of that loan". In those circumstances, any "grant in relation to the period to which the loan applies is to be disregarded" except for any amount specified in regulation 68(3). The excepted amounts include "any amount intended for the maintenance of another person in respect of whom an amount is included in the award" (regulation 68(3)(b)).

28. If regulation 68(2) does not apply (i.e. a person does not have a student loan), the person's student income "for any assessment period in which they are treated as having that income is to be based on the amount of that grant" (regulation 68(4)).

29. Regulation 68(5) treats a student, in certain circumstances, as having acquired a student loan which they have not in fact acquired:

> "(5) A person is to be treated as having a student loan…where the person could acquire a student loan…by taking reasonable steps to do so."

30. Where, under regulation 68(2), a person's student income is to be based on the amount of a student loan for a year, the "amount to be taken into account is the maximum student loan…that the person would be able to acquire in respect of that year by taking reasonable steps to do so" (regulation 69(1)). For the purposes of calculating the maximum student loan, "it is to be assumed that no reduction has been made on account of…any grant made to the person" except in the case of certain excepted types of grant (regulation 69(2)(b)). The excepted types of grant include "any amount intended for the maintenance of another person in respect of whom an amount is included in the award".

31. Regulation 70 sets out rules for calculating student income where, under regulation 68(4), a person's student income is to be based on the amount of a grant.

32. The calculation of a person's student income, in relation to a Universal Credit assessment period, is dealt with by regulation 71, but, for present purposes, I need not describe the steps involved.

Arguments

Secretary of State

33. The Secretary of State accepts that the First-tier Tribunal's reasoning is not a model of clarity and that, in certain respects, it misdirected itself in law. In substance, however, the Tribunal made the only decision open to it, namely that the Appellant's Welsh Government Learning Grant was, in practice, to be treated as student income,

and thus included within her unearned income, for the purposes of her claim for Universal Credit.

34. The Appellant's actual student loan amount constituted student income. It was a loan towards her maintenance and provided pursuant to regulations made under section 22 of the 1998 Act. Since the Appellant had a student loan, regulation 68(2) of the 2013 Regulations required her student income to be based on the amount of that loan. The First-tier Tribunal misdirected itself in law when it found that regulation 68(4) applied because that provision only applies where regulation 68(2) does not. However, that was an immaterial error. The same applies to the Tribunal's erroneous reliance on regulation 70, a provision that was irrelevant in this Appellant's case because it only applies where student income is to be based on the amount of a grant.

35. The question for the First-tier Tribunal was the amount of the Appellant's student loan, as determined in accordance with the 2013 Regulations. The general rule is that any grant is to be disregarded (regulation 68(3)). The Secretary of State submits that none of the Appellant's grants fell within the prescribed exceptions to the general rule. On the face of it, therefore, the Appellant's Welsh Government Learning Grant (£2,939), special support payment (£5,161) and parent's learning grant (£1,821) were to be disregarded.

36. The amount of a person's student loan, for the purposes of the 2013 Regulations, may exceed the actual amount of the loan. This is because regulation 69(1) provides that, where regulation 68(2) applies, the maximum student loan is deemed to be the maximum "that the person would be able to acquire in respect of that [academic] year by taking reasonable steps to do so".

37. The Secretary of State submits that a further deeming provision, not referred to in the First-tier Tribunal's reasons, is the key to this appeal (the Appellant does not object to the Secretary of State arguing this point, which did not feature in the grounds of appeal). This provision is regulation 69(2). The Secretary of State's skeleton argument submits that the effect of regulation 69(2) is as follows:

> "It provides that in determining the maximum amount of student loan that would reasonably be available to the Appellant, "it is to be assumed no reduction has been made on account of… (b) any grant made to the person".

38. Turning to the Welsh student finance legislation, the Secretary of State observes that the Appellant's notional maximum student loan, for the purposes of the 2018 Regulations, must have been subject to a deduction for "the amount of any maintenance grant payable to the student that is not treated as special support payment" (regulation 56(2) of the 2018 Regulations, which applied because the Appellant was in receipt of a special support payment). The Welsh Government Learning Grant is in reality a maintenance grant payable under regulation 46 of the 2018 Regulations. By virtue of regulation 50(1), it is not treated as a special support payment. Returning to the 2013 Regulations, this means, according to the Secretary of State, that, for the purposes of regulation 69(2) of those Regulations, the amount of the Appellant's Welsh Learning Grant was deemed to be available as part of her maximum loan amount. Any other construction would deprive regulation 69(2) of any substantive effect.

39. The First-tier Tribunal's ultimate conclusion that the Appellant's maintenance grant was to be "added onto her loan" was correct in law and accurately reflected the operation of regulation 56 of the 2018 Regulations. The Appellant's argument that her loan could not have been reduced by her maintenance grant is wrong.

40. The Appellant relies on guidance published by Student Finance Wales in 2020. The Secretary of State submits that this is not an admissible aid to statutory construction but, in any event, the guidance states "maintenance loan entitlement will be the total support amount minus WGLG entitlement" which is consistent with the Secretary of State's case.

41. The Secretary of State argues that it is unnecessary for any consideration to be given, for the purposes of regulation 69(2) of the 2013 Regulations, to whether the Appellant could realistically have persuaded Student Finance Wales to increase the amount of her loan. Had there been no reduction in the amount of the Appellant's student loan on account of her Welsh Government Learning Grant, the 'only available conclusion on the facts (given there is no dispute the Appellant was otherwise eligible for a student loan in the maximum amount) is that she could reasonably have obtained a loan in the sum of £8,239.00" which was her notional maximum amount under regulation 56(2) of the 2018 Regulations. This requires a fiction to be treated as fact but that is the very purpose of a deeming provision (*O'Connor v Chief Adjudication Officer* [1999] 1 FLR 1200).

42. The Secretary of State concedes that the First-tier Tribunal's discussion of the Appellant's 'base grant' of £1,000 has caused confusion. However, the Tribunal's outcome decision was correct. Since the Appellant was in receipt of a special support payment, the entire £1,000 base grant was treated as part of the Appellant's special support payment (regulation 50(1)(a) of the 2018 Regulations). What the Tribunal referred to as the Welsh Government Learning Grant was simply so much of the maintenance grant, under regulation 43 of the 2018 Regulations, as was not treated as a special support payment.

43. The Secretary of State submits that her preferred construction of the 2013 Regulations accords with longstanding government policy that full-time higher education is to be funded by student loans or grants rather than social security payments (see *O'Connor v Chief Adjudication Officer* [1999] 1 FLR 1200). That policy is served by treating a student whose maintenance loan has been reduced by reason of a maintenance grant in the same way as a student who has received the same total amount by way of a loan. The fact that student financing powers are devolved to the Welsh Government does not alter that longstanding policy and, moreover, social security is not a devolved competency.

Appellant

44. The Appellant submits that the First-tier Tribunal's decision undermines the Welsh Government's legitimate policy decision to 'lessen the financial impact on students by issuing a non repayable grant first which can be topped up by a maintenance loan if the student chooses to apply'. If the Secretary of State considered that this policy goal was inconsistent with Universal Credit policies, she could have amended the Universal Credit Regulations 2013, which were made five years before the Welsh Government's student finance regulations, but has not done so. The Appellant also argues that Student Finance Wales guidance supports her case.

45. The Appellant took out the maximum student loan available to her. However, the Welsh Government Learning Grant was issued to the Appellant first and she then 'topped up' her financing by way of a student loan. The Appellant's grant income should have been entirely disregarded in the Universal Credit income calculation because regulation 68 of the 2013 Regulations requires grants to be ignored in full unless they meet specific criteria. There is no evidence that any part of the

Appellant's grant satisfied these criteria. The Appellant cannot therefore understand why only part of her grant has been disregarded.

Conclusions

The statutory basis for the Appellant's student finance for 2021/22

46. Identifying the statutory basis for the various elements of the Appellant's student finance for academic year 2021/22 is complicated by Student Finance Wales' use of the non-statutory term 'Welsh Government Learning Grant' to describe part of that finance. Despite that, it is possible to ascertain with confidence the statutory basis for the various elements of the Appellant's student finance for 2021/22.

47. The Appellant was informed that she would receive a Welsh Government Learning Grant of £2,939 and a Special Support Grant of £5,161.

48. The Special Support Grant is clearly the same thing as the special support payment provided for by regulation 50 of the 2018 Regulations. I say that because the maximum special support payment is £5,161, which is the sum identified for this Appellant (£1,000 base grant and the first £4,161 of her maintenance grant).

49. What then was the statutory basis for the Appellant's Welsh Government Learning Grant of £2,939? This must really have been the remainder of the Appellant's maintenance grant (the portion not treated as Special Support Payment). I say that because the maximum maintenance grant for a full-time student not living at home, and studying outside London, is £7,100. And £4,161 (the portion of the Appellant's maintenance grant treated as special support payment) plus £2,939 equals £7,100.

50. So, using the terminology of the 2018 Regulations, the Appellant must have been awarded a maintenance grant of £7,100 and a base grant of £1,000. £4,161 of the maintenance grant, and the entire base grant, was treated as Special Support Payment. The remainder of the maintenance grant - £2,939 – was styled a Welsh Government Learning Grant by Student Finance Wales but that had no effect on its legal status as maintenance grant.

51. The student loan available to the Appellant was reduced by an amount equal to the remainder of the Appellant's maintenance grant (the part not treated as special support payment). That follows from Steps 5 and 6 of the student loan calculation provided for by regulation 56 of the 2018 Regulations.

52. The Appellant also received a Parent's Learning Allowance of £1,821 but I need not dwell on this because it was not any type of re-labelled maintenance grant. Since it was not, in law, a maintenance grant it could not have operated to reduce the student loan available to the Appellant under regulation 56 of the 2018 Regulations.

Application of the student income provisions of the Universal Credit Regulations 2013

53. In the words of regulation 69(2) of the 2013 Regulations, the Appellant's maximum student loan was reduced 'on account of' a grant made to her. As explained above, the Appellant's maintenance grant reduced the amount of student loan available to her by £2,939. The maintenance grant was not, in whole or in part, an excepted type of grant under regulation 69(2)(b). It was not, as the Appellant argues, an amount intended for the maintenance of another person. That is because, under the 2018 Regulations, the maximum maintenance grant provisions do not take account of any person other than the student (a separate part of the 2018 Regulations – Part 11 – deals with grants for dependants).

54. This Appellant's student income was to be based on the amount of her student loan (regulation 68(2) of the 2013 Regulations). That meant the amount to be taken into account was the maximum student loan that the Appellant would have been able to acquire by taking reasonable steps to do so. In identifying this maximum loan, the Regulations required it to be assumed that no reduction had been made on account of any grant. It is clear therefore that this Appellant's maximum student loan was to be treated as £5,350 (actual student loan) plus £2,939 (amount by which maximum loan reduced on account of maintenance grant).

55. The more difficult question is whether, for a claimant in the Appellant's circumstances, a finding that reasonable steps were not taken is required in order for unearned income to include a student loan amount that exceeds the actual student loan received.

56. In this respect, the different formulations used (the role played by 'reasonableness') by regulations 68(5) and 69(1) are instructive. The former refers to a person who "could acquire" a student loan by taking reasonable steps to do so. The latter refers to the maximum student loan that a person "would be able to acquire" by taking reasonable steps to do so. Why, then, does regulation 68(5) refer to a person

who 'could acquire' a student loan by taking reasonable steps to do so but regulation 69(1) refers to the amount that a student 'would be able to acquire' by taking reasonable steps? This must have been deliberate. There must have been a reason for the different language used in these two deeming provisions both of which are contained in the same part of the 2013 Regulations (indeed in successive regulations) and are concerned with the same general issue.

57. In my judgment, the formulation used by regulation 68(5) directs attention squarely to the reasonableness of the actions taken by a particular student (see Upper Tribunal Judge Poynter's decision in *IB v Gravesham BC and Secretary of State for Work & Pensions (HB)* [2023] UKUT 193 (AAC)). By departing from the language of regulation 68(5) in the next provision to deal with reasonableness in the context of student loans, the legislator must have intended a different approach. In my judgment, in these legislative circumstances the term 'would be able' was chosen because the identification of the maximum amount under regulation 69(1) was intended to be done on a notional basis. That explains why the legislator, in regulation 69(1), did not replicate the language of regulation 68(5) and refer to the amount that a student 'could acquire' by taking reasonable steps. Under regulation 69(1), the question is the amount that a notional student, whose material circumstances match those of the claimant, would, by taking reasonable steps, be able to acquire. Regulation 69(1) does not require an analysis of the reasonableness of the steps in fact taken by a particular student. And, in identifying the regulation 69(1) amount, regulation 69(2) requires any grant-related reduction in the actual amount of student loan to be ignored.

58. Applying the above construction to the Appellant's circumstances, it is clear that the notional maximum student loan that she would have been able to acquire by taking reasonable steps to do so was £5,350 (actual loan) plus £2,939 (amount by which available loan reduced on account of a grant, that reduction being ignored by virtue of regulation 69(2)). By a very roundabout and opaque route, this was the amount included by the First-tier Tribunal as part of the Appellant's unearned income. The Tribunal arrived at the correct result. Its errors were immaterial, and its ultimate decision did not involve an error on a point of law. I must therefore dismiss this appeal.

59. Finally, I apologise for the delay in giving this decision. Shortly after the hearing, I suffered serious injuries in an accident which kept me away from my duties.

Upper Tribunal Judge Mitchell

Authorised for issue on 10 September 2024.