Neutral Citation Number: [2026] EWHC 2129 (Admin)

Case No: AC-2026-LON-002491

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 August 2026

Before :

MR JUSTICE JOHNSON

- -

Between :

(1) BATH SPA UNIVERSITY
(2) BUCKINGHAMSHIRE NEW UNIVERSITY
(3) LEEDS TRINITY UNIVERSITY
(4) LONDON METROPOLITAN UNIVERSITY
(5) SOUTHAMPTON SOLENT UNIVERSITY **Claimants**

- and -

(1) SECRETARY OF STATE FOR EDUCATION
(2) STUDENT LOANS COMPANY LIMITED **Defendants**

- and -

(1) NATIONAL UNION OF STUDENTS UK
(2) UNIVERSITIES UK
(3) MILLIONPLUS **Interested Parties**

- -
- -

Joanne Clement KC, Ishaani Shrivastava and Christian Davies (instructed by Mills & Reeve LLP) for the Claimants
Julia Smyth KC, Leon Glenister KC, Hafsah Masood, Natasha Jackson and Claudia Hyde (instructed by the Government Legal Department) for the First Defendant
Ewan West KC and Clíodhna Kelleher (instructed by Browne Jacobson LLP) for the Second Defendant

Hearing dates: 28 and 29 July 2026

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Approved Judgment

This judgment was handed down by release to The National Archives on 10 August 2026

Mr Justice Johnson:

1. The claimants seek judicial review of the Secretary of State's decision that full-time university degree courses which require extensive study at home and attendance every weekend during the term but not on weekdays ("weekend-only courses") are "distance learning" courses rather than "in-attendance" courses. The consequence of the decision is that students on weekend-only courses are not entitled to grants or loans for maintenance support.

2. The claimants say that:

   (1) The Secretary of State's decision is based on an incorrect interpretation of the statutory definition of distance learning course in regulation 2(1) of the Education (Student Support) Regulations 2011 (see paragraph 59 below).

   (2) The decisions of the Secretary of State and the Student Loans Company frustrate the claimants' legitimate expectation that weekend-only courses would be treated as in-attendance courses.

   (3) If the Secretary of State's interpretation is correct, then the statutory definition of a distance learning course is irrational.

   (4) The Student Loans Company has not adequately reinstated grants and maintenance loans to students who have, since the Secretary of State's decision, transferred to in-attendance courses.

3. The claim was issued on 28 May 2026. The claimants sought expedition because of the impact of continued uncertainty as to the correct classification of weekend-only courses. On 5 June 2026, Chamberlain J made directions for expedition. He listed a hearing on 28 and 29 July 2026 to determine the application for permission to claim judicial review and, if permission were granted, immediately to determine the substantive claim.

The parties and the evidence

4. The Student Loans Company was incorporated in 1989. It is an executive non-departmental public body which is responsible for the administration of student finance schemes that were introduced from 1990. It operates an online Courses Management Service. Universities register their courses on that online service. When they do so, they must specify whether the course is a distance learning course. That enables the Student Loans Company to identify which students are eligible for different grants and loans.

5. Each of the claimants is a university that, at some point since 2018, introduced weekend-only courses. When they did so, they did not specify that the courses were distance learning courses. They were therefore treated as in-attendance courses.

6. The claimants rely on the witness statements of David Newman, University Secretary and Registrar at Bath Spa University, Professor Sarah Williams, Pro Vice-Chancellor (External Collaborations) at Buckinghamshire New University, Caroline Thomas, University Secretary and Registrar at Leeds Trinity University, Professor Julie Hall, Vice-Chancellor and Chief Executive at London Metropolitan University and Tania Struetzel, Director of Student Success at Southampton Solent University.

7. The Secretary of State relies on witness statements of Hollie Godsmark, Deputy Director for Higher Education System Integrity in the Department for Education.

8. The Student Loans Company relies on witness statements of Derek Ross, its Executive Director for Higher Education and Further Education Reform.

9. I have taken the facts from these witness statements and the extensive documentation that was put before the court.

The facts

10. There is a long history of universities offering distance learning courses, as opposed to in-attendance courses. The University of London offered correspondence courses in the 1800s. In 1966, a White Paper, "University of the Air", proposed the provision of higher education that would be delivered through correspondence, television and radio, supplemented by residential courses. This led to the establishment of the Open University in 1969 to enable access to higher education for those who did not have the opportunity to attend traditional universities. Those undertaking Open University courses were generally required to attend a residential summer school for a week, and also a residential weekend, but were otherwise able to study from home. At least one other provider followed a similar model, which included some residential weekends. Although there was thus a requirement for some limited attendance, these courses were never regarded as in-attendance courses that would attract grants or maintenance loans. They were distance learning courses.

11. By contrast, students properly enrolled on in-attendance courses are entitled to maintenance loans. Maintenance loans are provided to the student. The maximum maintenance loan for the year 2025/26 was £13,762 for courses in London, and £10,544 for courses outside London. The amount paid is substantially less if the student is living with a parent. Various grants are also available to certain students with a disability or a dependent. Eligible students on full-time undergraduate degree courses, whether in-attendance or distance learning, are also entitled to tuition fee loans which are paid direct to the provider.

12. Ms Godsmark provides an explanation for restricting the availability of grants and maintenance loans to students who regularly attend courses during the week, rather than those undertaking weekend-only courses. She says that maintenance support is intended to be targeted at students whose studies restrict their ability to participate in standard full-time weekday employment, that the legislation has always treated weekend-only attendance as distance learning, and that this distinction represents a rational means of directing finite public funds to those considered most in need. She says that approximately 84% of full-time employees work weekday-only patterns.

13. The evidence suggests that until relatively recently there was a stark divide between in-attendance degree courses offered by the majority of universities, and the distance learning model that had been pioneered by the University of London and the Open University. The distinction was obvious and it was straightforward to tell them apart.

14. Since 2018, the claimant universities started to offer weekend-only courses. They are full-time undergraduate degree courses that require, during term-time (at least 24 weeks a year), 21 hours study per week, including regular in-person attendance for at least six

hours each week, but where that attendance takes place only at weekends. The amount of study and in-person attendance required is the same as equivalent full-time degree courses where tuition takes place on weekdays.

15. Among the claimants, Buckinghamshire New University was the first to introduce weekend-only courses. It did so in 2018. Leeds Trinity University introduced such courses at some point after 2019. Bath Spa and Southampton Solent Universities introduced such courses in 2021, and London Metropolitan University did so in 2024.

16. The claimants' witnesses explain that weekend-only courses were introduced in response to demand. They enable students who would otherwise be excluded from higher education (for example, because of childcare or family responsibilities, or work commitments) to achieve a degree. The courses are often aimed at mature students or those with caring or employment responsibilities. They promote social mobility and inclusion. At least some of these courses resulted in higher engagement and a lower dropout rate. The claimants say that they believed that these were in-attendance courses and that they were right not to register them as distance learning courses. For example, Mr Newman says that Bath Spa University relied on longstanding guidance which it understood to indicate that courses requiring regular attendance are not distance learning courses.

17. The claimants registered these courses on the Courses Management Service. When they did so, they did not specify that they were distance learning courses. They were therefore treated as in-attendance courses. The Student Loans Company did not take steps to validate the accuracy of the registrations. It says that it had no way of knowing, from the registrations, that they were weekend-only courses. Students undertaking the courses were paid grants and maintenance loans which are only available to those undertaking in-attendance courses.

18. In 2020, there was email correspondence between Southampton Solent University and the Student Loans Company about the use of the Courses Management Service. The emails from Southampton Solent University made it clear that there was some weekend provision but did not make it clear that they were weekend-only courses. One of the courses that was run by Buckinghamshire New University had "weekend" in the title of the course: "Business Management with Foundation Year – Weekend – High Wycombe June intake". There is no evidence that the Student Loans Company appreciated that this was a weekend-only course.

19. The Department for Education estimates that 22,000 students were undertaking weekend-only courses in the 2025-26 academic year. They received around £330m in grants and maintenance payments that are only available to those undertaking in-attendance courses. If the courses are distance learning courses, then these payments were wrongly made. If students are required to repay these sums, then, allowing for payments made in previous academic years, some students would owe as much as £74,000.

20. By this time, the National Audit Office and the Public Accounts Committee had each raised concerns about the oversight of student attendance and payment of student grants and loans.

21. On 8 May 2025, the Minister for Skills was shown a presentation by the Open University about the role of maintenance payments in student choice. It was said that the Open University was being put at a competitive disadvantage by the blurring of the difference between distance learning and in-attendance courses.

22. Following that presentation, the Minister sought information as to the extent to which courses which were treated as "conventional full-time residential courses" were in fact being run in a way which enabled students to spend long periods as "distance learning/[Open University]-style students." The Department for Education undertook a survey of universities to gather information.

23. On 25 November 2025, Departmental officials prepared a submission concerning a strategy for the protection of public money in the higher education sector. The Secretary of State was advised to write to providers setting out the Government's expectations in respect of governance and the protection of public money.

24. On 9 December 2025, the Secretary of State wrote to higher education providers to emphasise the shared responsibility to ensure that public money is well spent. In the course of the letter, which addressed a number of issues, she said:

> "…eligibility for Maintenance Loan support depends on regular in-person attendance. Students whose attendance is limited solely to weekends will not meet the criteria."

25. On 11 December 2025, Buckinghamshire New University queried this with the Student Loans Company and asked whether weekend-only courses are "classed as in attendance rather than distance learning". A response was sent by one of the Student Loans Company's account managers the same day. It said that another University had raised the same query, that there was nothing in the guidance to suggest it should be classed as a distance learning course, but that a definitive answer would be sought from the policy team.

26. On 12 December 2025, the Student Loans Company amended part of the user guide for the Courses Management Service. The amended guide states that courses are distance learning if the students attend "only at weekends", but that a course requiring attendance once a week "excluding weekends" is not distance learning.

27. On 15 December 2025, the Student Loans Company informed Buckinghamshire New University that "regular attendance solely on weekends would mean that the course is a Distance Learning Course." There was correspondence to similar effect with Southampton Solent University and London Metropolitan University. Buckinghamshire New University sought a waiver for the students who had been affected by being wrongly paid loans. This was raised with the Secretary of State as an incident report on 12 January 2026.

28. On 27 January 2026, a higher education provider bulletin published by the Student Loans Company stated that weekend-only courses were classified as distance learning. It asked providers to identify affected courses. It also requested details of students enrolled on weekend-only courses, explaining that the information was needed "to support the Minister's decision making". The claimants supplied the information.

29. On 20 March 2026, the Secretary of State issued a formal instruction to the Student Loans Company. The instruction required it to apply distance learning status to students on weekend-only courses, to stop the payment of any further grants and maintenance loans, and to recover grant and maintenance loan payments that had been wrongly made. The Student Loans Company immediately blocked access to grants and maintenance loans for students on weekend-only courses. This meant that students did not receive the grant or loan payments that would otherwise have been paid in April, at the start of the summer term. Communications were sent explaining that courses had been misclassified and that payments already made were regarded as overpayments. Unsurprisingly, this caused considerable consternation. In a survey undertaken by the National Union of Students, 84% of affected students said that their wellbeing had been extremely affected and a further 10% said that it had been moderately affected. Many sought medical support for anxiety, depression and panic attacks.

30. On 23 March 2026, the Permanent Secretary, on behalf of the Secretary of State, wrote to 15 affected higher education providers, including the claimants. This letter communicated the decision that is primarily under challenge in these proceedings, namely that weekend-only courses are distance learning courses under the 2011 Regulations. It said students on such courses were not, and never had been, eligible for maintenance support, that providers had misclassified those courses and that providers were required to take specified corrective action. It also said that only courses that required regular weekday attendance, normally at least once per week between Monday and Friday, would qualify as in-attendance. Providers were directed to identify affected students and move them onto in-attendance courses (that is, courses requiring attendance on weekdays) if they wished to retain eligibility.

31. The claimant universities sent a pre-action protocol letter to the Secretary of State and the Student Loans Company on 2 April 2026, challenging the interpretation of the 2011 Regulations adopted by the Secretary of State and the proposed recovery of grants and loans.

32. On 20 April 2026, the Parliamentary Under Secretary of State announced that maintenance loan overpayments would be recovered through the normal income contingent repayment system (that is, through the tax system once their earnings reached a certain level) rather than requiring immediate repayment, and recovery of grant payments would be paused until at least September 2026.

33. The Student Loans Company received a further instruction letter the same day directing it to pause recovery action and to ensure that students who had moved onto eligible weekday attendance courses received maintenance support.

34. The Student Loans Company responded to the pre action correspondence on 21 April 2026, and the Secretary of State responded the following day. Both maintained that the Secretary of State's interpretation of the 2011 Regulations was correct.

35. On 5 June 2026, the Permanent Secretary at the Department for Education was informed that a second tranche of providers had indicated that they had misclassified weekend-only courses as in-attendance courses. This involved 5,300 students (the figure was later amended to 5,700). The Secretary of State decided to instruct the Student Loans Company not to make further payments to these students. She has,

however, not yet implemented that decision, in part because she is awaiting the outcome of this claim.

36. On 16 July 2026, the Secretary of State decided not to require repayment of grant payments made to students on weekend-only courses.

37. The claimants have offered affected students the choice to move from weekend attendance to weekday attendance, enabling them both to continue with their courses and also to continue to receive grants and maintenance loans. 80% of students have accepted that offer, but that has involved a timetable change and, in some cases, consequential upheaval to their lives. Those who have been unable to transfer to weekday courses have either remained on the weekend-only courses but without continued access to grants and maintenance loans, or they have dropped out of their courses.

38. The Student Loans Company developed a manual process to reinstate funding to those students who transferred to in-attendance courses. The evidence is that at one point 16% of its staff were working on this in order to reinstate funding for approximately 19,000 cases. The claimants say that this has taken too long and that there are still students whose funding has not been reinstated. Their research has identified 27 students whose funding has still not been reinstated, and they say there may be more. The Student Loans Company says that in the vast majority of cases funding has been reinstated. In respect of the small number of cases where this has not happened, there are specific reasons. In respect of the 27 cases identified by the claimants, nine have now had their payments reinstated and the remainder are being reviewed. Of those remaining cases, some students have already received payment, some are not eligible for maintenance support, some had not been processed due to administrative errors, and others were blocked because providers had identified the students as studying on distance-learning versions of courses or because there was a suspicion of fraud. The evidence served by the Student Loans Company is that all such cases are being progressed as far as possible.

The legal framework

Education Act 1962

39. Section 1(1) of the 1962 Act imposed a (qualified) duty on every local education authority to bestow awards on students who are ordinarily resident in its area in respect of their attendance at full-time courses of higher education. There was no statutory definition of what qualified as attendance. Distance-learning courses, such as those offered by the Open University which might require some occasional attendance, were not treated as involving "attendance at full-time courses." Awards were not therefore paid under section 1(1) of the 1962 Act to students undertaking such courses.

Education (Student Loans) Act 1990

40. The 1990 Act made provision for eligible students to receive loans towards their maintenance: section 1(1). It permitted the Secretary of State to make regulations for those purposes: section 1(2) and (7) and paragraphs 1-3 of Schedule 2.

Teaching and Higher Education Act 1998

41. The 1998 Act, in the words of its long title, made "new provision with respect to grants and loans to students in higher or further education and fees payable by them". Section 22, as originally enacted, stated:

> "**New arrangements for giving financial support to students.**
>
> (1) Regulations shall make provision authorising or requiring the Secretary of State to make grants or loans, for any prescribed purposes, to eligible students in connection with their attending—
>
> (a) higher education courses…
>
> which are designated for the purposes of this section by or under the regulations.
>
> (2) Regulations under this section may, in particular, make provision—
> …
> (d) prescribing categories of attendance on higher education courses… which are to qualify for any purposes of the regulations;
> …
> …"

42. The 2011 Regulations, and their predecessor regulations, were made under section 22(1). A draft of the first set of regulations made under section 22(1) was required to be (and was) approved by a resolution of each House of Parliament: section 42(4). Subsequent regulations were subject to annulment in pursuance of a resolution of either House of Parliament unless a draft had been laid before and approved by a resolution of each House of Parliament: section 42(2) and (5).

Education (Student Support) Regulations 1998 – 2000

43. Regulations have been made under section 22 of the 1998 Act since 1998. They make provision for the payment of maintenance loans to an "eligible student" attending a "designated course". A student is eligible if, among other conditions, they are attending a full-time course. Regulation 4(2) of the 1998 Regulations defined a full-time course as a course:

> "(a) which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) –
> …
> (ii) in the case of a course of two or more academic years' duration, for a period of at least 24 weeks in each academic year except the final year and of at least eight weeks in the final year; and

> (b) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each academic year to an average of at least 21 hours a week as respect the periods of attendance mentioned in subparagraph (a) above for the year."

44. Students were therefore normally required to attend for at least 24 weeks a year to be eligible for a maintenance loan.

45. The 1999 Regulations were materially to the same effect, save that they also made provision in respect of different forms of grant where certain specific criteria were met (such as grants for the living costs of dependants, or grants for certain travel expenses incurred by those attending a course in medicine or dentistry). It is clear from the 1999 Regulations that maintenance loans are intended to cover living costs: regulation 17, read with the definition of "loan" under regulation 2(1). The maximum amount of the loan depended on whether or not the student resided at a parent's home while attending the course, or, if not, whether their course was in London: regulation 18.

46. The 2000 Regulations were also to the same effect, save that those regulations omitted the statutory definition of "full-time course". That definition was, instead, included in guidance.

Learning and Skills Act 2000

47. In 2000, the word "attending" in section 22(1) of the 1998 Act was replaced by the word "undertaking": section 146(2)(a) of the 2000 Act. This meant that primary legislation no longer required attendance as a pre-condition for the provision of grants or loans, so long as the applicant for support was "undertaking" a course. It therefore permitted regulations to make provision for financial support for students that undertook "open learning courses that do not have attendance requirements": paragraph 208 of the Explanatory Notes to the 2000 Act.

Education (Student Support) Regulations 2001 - 2009

48. The 2001 Regulations provided for support in respect of "attendance at" a course: regulation 4(1). They also made some limited provision for means tested loans and grants for those "undertaking" (rather than necessarily attending) courses: regulation 28. The same approach was taken by the 2002, 2005, 2006 and 2007 Regulations.

49. The 2007 Regulations were amended by the Education (Student Fees, Awards and Support) (Amendment) (No 2) Regulations 2007. As amended, they made provision for support for students undertaking "a designated distance learning course": regulation 109A. This was the first time that the concept of a distance learning course, in those terms, had been introduced in regulations made under the 1998 Act (or, indeed, in any legislation).

50. Regulation 109C(1) provided that it was for the Secretary of State to designate distance learning courses. By regulation 109C(2)(d), the Secretary of State was not permitted to designate a course as a distance learning course if students were required to be in

attendance on it. Regulation 109C(3) then made provision as to certain attendance that the Secretary of State could disregard for this purpose. It stated:

> "For the purposes of determining whether the requirement in paragraph (2)(d) is satisfied the Secretary of State may disregard—
>
> (a) any requirement imposed by the institution or institutions providing the course to attend any institution for the purposes of—
>
> (i) registration or enrolment;
>
> (ii) an examination;
>
> (b) any requirement imposed by the institution or institutions providing the course to attend any institution on a weekend or during any vacation;
>
> (c) any period of attendance at the institution or institutions providing the course which a student may but is not required to complete by that institution or those institutions." [Underlining added]

51. Regulation 109E prescribes the support available for students attending distance learning courses. It comprises a grant in respect of fees (limited to a maximum of £1,150), and a grant not exceeding £250 for books, travel and other expenditure. This is markedly less than the value for a maintenance loan and is broadly a contribution towards incidental expenses associated with a course rather than general living expenditure.

52. The Explanatory Notes to the Amendment Regulations state that they:

> "make provision for the payment of support to students who are undertaking designated distance learning courses in England. A designated distance learning course is a course which has been designated under the new regulation 109C by the Secretary of State…
>
> The support payable to eligible distance learning students is set out in the new regulations 109E (grant in respect of fees and grant in respect of books, travel and other expenditure) and 109H (disabled distance learning students' allowance). Disabled distance learning students' allowance will be paid to students undertaking full-time distance learning courses under the new regulation 109H…"

53. Regulation 117(2) and (3) of the 2008 Regulations and regulation 118(2) and (3) of the 2009 Regulations replicated regulation 109C(2) and (3) of the 2007 Regulations.

54. The position prior to the 2011 Regulations, therefore, was that there was separate provision for grants and loans for in-attendance and distance learning courses. There

was no explicit statutory definition of the former. The latter were courses which were designated by the Secretary of State. The Secretary of State was not permitted to designate a course as distance learning if students were required to attend, but, for this purpose, the Secretary of State was entitled to disregard a requirement to attend "on a weekend".

55. The Independent Review of Higher Education Funding and Student Finance chaired by Lord Browne (2009-10) recommended a new model of higher education funding under which universities could charge higher tuition fees, students would receive greater support for living costs, no undergraduate would have to pay fees upfront, and graduates would repay the costs of higher education through the tax system by making "income-contingent repayments" once earning above a specified threshold. A theme of the Review was that there should be no upfront cost barrier to higher education, regardless of the mode of study. The subsequent reforms were implemented through the Education Act 2011 and associated secondary legislation.

Education (Student Support) Regulations 2011

56. The 2011 Regulations were made on 9 August 2011. They were laid before Parliament on 11 August 2011. They came into force on 1 September 2011.

57. Prior to 2011, iterations of the Student Support Regulations were repeatedly made, with each iteration repealing the previous version. By contrast, the 2011 Regulations have remained in force but have been subject to amendment from time to time.

58. The 2011 Regulations make provision for the payment of loans for tuition fees for those undertaking designated courses, including distance learning courses. They provide that students on distance learning courses are generally not eligible for maintenance loans or grants apart from disabled students' allowance.

59. Regulation 2 provides a definition of distance learning course. It is at the heart of the dispute in this case. It states:

> "distance learning course" means a course on which a student undertaking the course is <u>not required to be in attendance</u> by the institution providing the course, where "<u>required to be in attendance" is not satisfied by a requirement</u> imposed by the institution <u>to attend</u> any institution-
>
> (a) for the purposes of registration or enrolment or any examination;
>
> (b) <u>on a weekend</u> or during any vacation; or
>
> (c) on an occasional basis during the week…"
> [underlining added]

60. The Explanatory Notes signpost the different financial provision that is available for students on in-attendance and distance learning courses. Nothing in the Explanatory Notes suggests that there was an intention to make a fundamental change to the distinction between in-attendance and distance learning courses. Nor did anything in

the Explanatory Memorandum, although it did say that substantial changes had been made to the support available for students.

61. Regulation 14 makes provision for tuition fee loans. It does not distinguish between in-attendance and distance learning students – both can qualify. Regulation 38 makes provision for general qualifying conditions for grants for living and other costs. Regulation 38(2) states that such grants are not available for students on distance learning courses. Regulation 69 makes provision for qualifying conditions for loans for living costs. Regulation 69(3) provides that such loans are not available for students on a distance learning course.

Published guidance

62. The parties relied on two forms of guidance, each of which has been published in a sequence of iterations. They are:

(1) "Assessing Eligibility Guidance" which is published each year to assist in determining eligibility for student grants and loans.

(2) The Student Loans Company's user guide for its Courses Management Service.

63. Assessing Eligibility Guidance: The first iteration of the Assessing Eligibility Guidance that is in evidence was published for the 2009/10 academic year. It does not have any statutory force. It contains a "disclaimer". In the 2017 version (so before the weekend-only courses introduced by the claimants), the disclaimer stated:

> "This guidance is designed to assist with the interpretation of the Student Support Regulations as they stand at the time of publication. It does not cover every aspect of student support nor does it constitute legal advice or a definitive statement of the law. Whilst every endeavour has been made to ensure the information contained is correct at the time of publication, no liability is accepted with regard to the contents and the Regulations remain the legal basis of the student support arrangements for the academic year 2017/18. In the event of anomalies between this guidance and the Regulations, the Regulations prevail. Please note the Regulations are subject to amendment."

64. The first section of the guidance stated that a student was eligible for support in accordance with the 2011 Regulations. Section 4.18.3 made provision in respect of distance learning courses. It stated:

> "**Distance learning courses**
>
> Distance learning, sometimes called flexible or open learning, is a programme of study that allows students to study at home. Distance learning programmes have become increasingly popular over the last few years, as the Internet has developed into a reliable channel of tuition.

> Most colleges and universities offer some distance-learning programmes now… They provide a mode of delivery for students who do not attend traditional on-campus courses, although there may be some short periods of attendance." [Underlining added].

65. This was almost identical to previous iterations of the guidance. Subsequent iterations were also identical; save that in the 2020/21 iteration the statutory definition of distance learning course is inserted between these two paragraphs.

66. Courses Management Service user guide: The Student Loans Company publishes guidance for higher education providers about its Courses Management Service. At the time of the hearing, the first reference to this guidance in the papers before the court was to a version in 2021. On the second day of the hearing, the Student Loans Company produced a version from 2017. Following the hearing, the claimants wrote to the court and provided quotes from, and hyperlinked references to, the 2015, 2016, 2018 and 2019 versions. Each version emphasises that it is the responsibility of providers to ensure that course details entered on the Courses Management Service are correct, and that the information is used to enable the Student Loans Company to assess student funding applications. Each version states that distance learning "is a programme of study that allows students to study at home, away from their provider's campus" and that distance learning courses "provide a mode of delivery for students that do not attend traditional 'on campus courses'."

67. In the 2015, 2016, 2018 and 2019 versions there is no reference to weekends or vacations. A definitions section defined "distance learning" as "a programme of study that allows students to study at home, away from their provider's campus." The guidance states that higher education providers should, where appropriate, apply a "distance learning indicator" or "attribute" to a course.

68. The 2017 version contains the following additional text which is not in the other versions:

> "students undertaking the course in the United Kingdom are not required to be in attendance at the campus of the institution [but that any] requirement to attend the campus (*site*) for registration/enrolment, examination or weekend/vacation attendance should be disregarded."

69. The 2024 version sets out the text of regulation 2(1) and says that if a course meets that definition, then it is a distance learning course, otherwise it is an in-attendance course. It then explains the difference between full-time and part-time courses. It provides a worked example for "Thomas" who is studying for a BA Hons in sports coaching. His course hours include 30 hours online study and 2 days per week physical attendance at a sports academy (the example does not specify whether this was during the week or at a weekend). In respect of whether the course is distance learning or in-attendance the guidance states: "Thomas needs to attend the sports academy on a regular basis, rather than an occasional basis, therefore this is an in-attendance course... If regular attendance is required, meaning the student must be at a specific place to study, the course is not distance learning." The guidance then says:

> "Distance learning is a mode of delivery for students who do not attend traditional on-campus courses.
>
> It is becoming more common to deliver courses which combine different methods of study. These are known as blended learning courses. They combine traditional classroom teaching with online learning and independent study.
>
> There has been some confusion as to whether these courses should be added as distance learning courses.
>
> Courses of any teaching method are distance learning if the students only attend occasionally, for example once a term.
>
> If students attend regularly, for example once a week, and follow a structured timetable, the course is not distance learning and you should not add it to CMS as such."

70. At a webinar in November 2024 a representative from the Student Loans Company said that if a student only attends once a month then that qualifies as distance learning, but "if a student is attending more occasionally, once a week, we will class that as an in-attendance course." A separate Q+A document said "If students attend regularly, for example once a week, and follow a structured timetable, the course is not distance learning…" The document did not distinguish between weekday and weekend attendance.

71. In early 2026, once the issue concerning the weekend-only courses came to light, the Student Loans Company made changes to its user guide. The amended version said "[c]ourses are distance learning if the students only attend in-person part time, for example once a term or only at weekends."

Internal material

72. Some internal documents suggest that officials within the Department for Education considered that the definition of distance learning is unsatisfactory. A slide deck from January 2026 refers to "regulatory ambiguity" and says that clearer rules are required.

Submissions

Ground 1: Interpretation of statutory definition of distance learning course

73. Joanne Clement KC, for the claimants, stresses that the legislative text must be construed purposively in its historical context, rather than by applying a literal reading to the words "on a weekend". The key phrase in the definition is "required to be in attendance". A course requiring regular in-person attendance every weekend is not a distance learning course because students are required to be in attendance. The exceptions in limbs (a) – (c) are merely examples of short or occasional attendance which, for the avoidance of doubt, are confirmed as not amounting to a requirement to be in attendance. The exclusion of attendance "on a weekend", construed in context, refers only to isolated or occasional attendance on a weekend, and not attendance every weekend throughout the course.

74. Ms Clement submits that the defendants' interpretation produces arbitrary consequences because students receiving identical teaching and undertaking identical study would be treated differently solely because attendance occurs on a weekend rather than a weekday. She says that at the time the 2011 Regulations were introduced the Open University model was about the only example of distance learning. That was why the statutory definition excludes attendance "on a weekend" or "any vacation". The purpose of the definition is to capture courses that are akin to those provided by the Open University. It is not intended to include weekend-only courses within the definition of distance learning courses. Those courses had not yet been introduced and were not therefore in contemplation. If it had been intended to exclude from consideration any and all attendance at weekends, then the statutory definition would have made that clear.

75. Ms Clement relies on the various guidance documents which, she says, shows what the Secretary of State was intending to achieve by the statutory definition. The guidance shows that the Secretary of State understood that courses requiring only short and occasional periods of attendance are included, whereas courses requiring regular attendance are excluded. Ms Clement also says that it can be inferred that the 2011 Regulations were not intended to make any change to the basic distinction between in-attendance and distance learning courses that had been well understood for many years. That is because there is no material difference in the guidance that was provided before and after the 2011 Regulations were introduced, and also because there is nothing in the Explanatory Notes or the Explanatory Memorandum to indicate that it was intended to introduce a significant change.

76. Julia Smyth KC, for the Secretary of State, submits that the primary source to determine the meaning of the definition is the statutory language. That is clear and unambiguous. It expressly provides that attendance on a weekend does not satisfy the requirement for attendance. This is not an "avoidance of doubt" provision but an operative deeming provision which must be given effect. The words "on a weekend" construed, if necessary, in accordance with section 6(c) of the Interpretation Act 1978, naturally refer to weekends generally. It is not open to the court to take a "free-wheeling" view of the Secretary of State's intention based on contextual factors and to ignore the plain meaning of the legislative words: *Williams v Central Bank of Nigeria* [2014] UKSC 10; [2014] AC 1189 *per* Lord Neuberger at [72].

77. Ewan West KC, for the Student Loans Company, adopts the submissions advanced by the Secretary of State. He submits that the claimants' approach relies on guidance and asserted industry practice rather than the statutory text, but it is the statutory text that must be applied. Any deficiencies in the published guidance do not alter the legal meaning and effect of the statutory definition. Clíodhna Kelleher advanced supplementary submissions on behalf of the Student Loans Company in relation to the guidance. She accepted that some individual passages in the guidance are not sufficiently qualified so as to align with the statutory definition of distance learning courses. She stressed, however, that individual statements in the guidance should not be read in isolation. The guidance needed to be read in the round and, anyway, if guidance is wrong or misleading the statutory definition that must prevail.

Ground 2: Legitimate expectation

78. In their written grounds of claim, the claimants contend that their students acquired a substantive legitimate expectation that courses requiring regular in-person attendance would not be classified as distance learning courses. They relied on the published guidance, webinars, interactions with higher education provider account managers and the history of paying grants and maintenance loans to students on weekend-only courses. They said that the promise that students would receive financial support amounted to a "possession" within the meaning of Article 1 of the First Protocol of the European Convention on Human Rights. It would therefore be unlawful, as a breach of section 6(1) of the Human Rights Act 1998, to deny students their financial support. In her oral submissions, Ms Clement did not develop the written arguments further. Although she did not abandon the ground of claim, she accepted that it added little to grounds 1 and 3.

79. Ms Smyth and Mr West submit that if the Secretary of State's interpretation of the statutory definition is correct then ground 2 is not sustainable. There was no sufficiently clear representation that weekend-only courses would be treated as in-attendance courses. If such a representation had been made then it would not give rise to a legitimate expectation, because the representation would be incompatible with the legislation. It would not be open to the Secretary of State and the Student Loans Company to make payments in accordance with any such expectation, because such payments are not permitted by the statutory scheme.

Ground 3: Irrationality of statutory definition of distance learning course

80. Ms Clement submits that if the regulations are interpreted as the defendants contend, the resulting distinction between weekend and weekday attendance is irrational. It would mean that two identical courses would be treated differently merely because one required attendance on a Monday and the other on a Saturday. The rationale for the distinction that is advanced in the Secretary of State's evidence (that is, that weekend-only courses are compatible with traditional working patterns) amounts to a retrospective justification which should not be given any weight. It could not have been the contemporaneous justification for the introduction of the statutory definition because weekend-only courses did not exist when the statutory definition was introduced. Further, students attending weekend-only courses face similar or greater employment constraints than those attending weekday courses. Ms Clement relies on evidence that students typically undertake flexible employment with no fixed hours and are sometimes on zero-hour contracts. Although bright line rules can sometimes be justified, that is not the case here where thousands of students fall on the wrong side of the line. Ms Clement contends that the devastating economic impact on a large number of students means that the court should apply a test of "anxious scrutiny" when assessing whether the statutory definition can be justified.

81. Ms Smyth responds that this ground of claim is out of time because the distinction between in-attendance and distance learning courses impacted on the claimants from the time that they introduced weekend-only courses from 2018. In any event, she says the distinction is rational because maintenance support is targeted at students whose studies constrain ordinary employment and reflects broader decisions made by Parliament and the Executive in respect of the allocation of limited public funds. Maintenance support is intended to target finite public resources towards students

whose pattern of study most restricts their capacity to undertake paid employment. Weekend-only attendance is a rational proxy for that objective. Bright-line rules are necessary in a national student finance system dealing with very large numbers of students and applications. Administrative simplicity and certainty are legitimate policy objectives. The court should be slow to interfere with judgements exercised by the Secretary of State who is democratically accountable, and whose department has the institutional competence to make complex policy decisions concerning allocation of public funds.

82. Mr West points out that the Student Loans Company is responsible for implementing the 2011 Regulations but that it was not responsible for making them, and that ground 3 therefore concerns the Secretary of State rather than the Student Loans Company. He did not therefore advance any substantive submissions in respect of this ground of claim.

Ground 4: Reinstatement of funding for students who transfer to weekday courses

83. Ms Clement submits that the statutory scheme imposes a duty to pay support to those who satisfy the eligibility criteria. Students who transfer onto weekday courses are entitled to maintenance support, yet the Student Loans Company has not promptly reinstated their grants and maintenance loans. Many students were left without support for over two months. The consequences for students are severe and ongoing. The Student Loans Company's assertion that it has re-instated funding for all eligible students is demonstrably incorrect, because there is evidence of a number of students whose funding has not been reinstated. A mandatory order, or at least declaratory relief, is necessary because students continue to suffer the consequences of delay and uncertainty.

84. Ms Smyth says that the Secretary of State acted quickly and appropriately by abandoning initial plans to require immediate repayment of grants and loans. The operational aspects of the reinstatement of payments are for the Student Loans Company.

85. Mr West submits that, on the evidence, by the end of May 2026 virtually all eligible transfers had been processed and reinstated, with only a very small number of individual cases remaining. Processing reinstatements was operationally complex, affecting roughly 20,000 students and requiring substantial manual intervention, specialist teams, and system changes. The claimants have not identified any statutory duty that has been breached by the Student Loans Company. It was following the instructions given by the Secretary of State, and it was processing applications as quickly as possible. Any remaining problems concern a very small number of cases in what has been a difficult exercise, and any remaining cases are being appropriately addressed. There is no basis for a mandatory or declaratory order. In any event, the claimants lack standing to pursue this ground of claim. It is students, rather than the universities, who are entitled to the payment of grants and maintenance loans, and it is the students, not the universities, who are affected by any delays or errors.

Is the claim in time?

86. A claim form for judicial review must be filed promptly and, in any event, not later than 3 months after the grounds to make the claim first arose: CPR 54.5(1).

87. To determine when the grounds to make the claim first arose, it is necessary to identify what it is that is sought to be judicially reviewed: *R (Badmus) v Secretary of State for the Home Department* [2020] EWCA Civ 657; [2020] 1 WLR 4609 *per* Sir Terence Etherton MR, Hickinbottom LJ and Simler LJ at [60].

88. Here, there are four grounds of claim. Although they are connected, they challenge different conduct. The question of whether the claim is in time must therefore be considered separately in respect of each ground.

89. In respect of grounds 1 and 2, the claimants challenge the decisions communicated in the letter of 23 March 2026. The claim form was filed on or before 29 May 2026 when the claim was issued. The claim form was therefore filed within 3 months. It was also filed "promptly" in the overall circumstances and context of the case. Ground 4 concerns actions taken by the Student Loans Company since 23 March 2026. The claim in respect of ground 4 is therefore also in time.

90. Ground 3 only arises if the claimants are unsuccessful on grounds 1 and 2. It follows that ground 3 must be approached on the basis that the 2011 Regulations have been correctly interpreted by the Secretary of State and that their application does not involve a breach of a legitimate expectation. On that basis, the claimants challenge the statutory definition in regulation 2(1) of the 2011 Regulations. The 2011 Regulations were made on 9 August 2011. They came into force on 1 September 2011. There has been no material change to the regulations which impacts on this claim since then. The time to bring a claim in respect of ground 3 started to run from the point when each claimant first became affected by the statutory definition of distance learning course. It is not necessary to decide whether the claimants, as Universities who were applying the 2011 Regulations from the moment they came into force for the purpose of registering their courses, were affected by the statutory definition from September 2011. That is because Ms Smyth was prepared to accept that time did not start to run until they first registered a weekend-only course on the Courses Management Service. I accept Ms Smyth's submission that the claimants were affected by the statutory definition, and had standing to challenge it, at least from that point. I do not accept the contrary submission of Ms Clement that time only started to run from the point that the Secretary of State decided that these were distance learning. The correct classification of the courses depends on the objective interpretation of the statutory definition, not the Secretary of State's opinion as to the correct interpretation of that provision. When each claimant registered a weekend-only course, that claimant was affected by the statutory definition because it meant that the claimant was required to register the course as distance learning.

91. Accordingly, from the first introduction of these courses, on the correct interpretation of the 2011 Regulations, which is presumed for this purpose, the claimants should have registered the courses as distance learning courses.

92. The claim by Buckinghamshire New University is therefore some 8 years out of time, because it first offered weekend-only courses in 2018. London Metropolitan University is the claimant that has most recently started to offer weekend-only courses, from 2024. Its claim is therefore almost 2 years out of time. None of the claimants have brought their claim promptly, nor within three months. Ground 3 is therefore out of time.

93. In the event that, as I have found, the claim is out of time, the claimants seek an extension of time. The claim is very substantially out of time. The underlying decision

(that is, properly considered, the decision to make regulation 2(1) of the 2011 Regulations – see paragraph 133 below) was made 15 years ago. This creates practical and evidential difficulties. Further, the claimants are just 6 out of 643 higher and further education providers that are registered with the Student Loans Company. There is no evidence as to whether other providers have decided not to introduce weekend-only courses because, on a correct interpretation of the 2011 Regulations, grants and maintenance loans are not available. It is, however, reasonable to infer that higher education providers may have taken account of the availability of grants and maintenance loans when making decisions about what courses to offer. That being the case there is a real risk of unfairness if the claimants are permitted to advance a claim which would result in them (or their students) being in a better position than those who have acted compatibly with the 2011 Regulations.

94. Nor is there any unfairness to the claimants in refusing an extension of time. They were all aware of the 2011 Regulations and were able to seek legal advice as to their effect. They could each have brought a claim for judicial review from the point when they were affected by the statutory definition of distance learning course.

95. For all these reasons, I refuse the application for an extension of time.

Ground 1: Interpretation of statutory definition of distance learning course

Approach to interpretation

96. The general principles of interpretation that apply to primary legislation also apply to secondary legislation. The court must ascertain the single correct objective meaning of the legislative text, read in its particular context. In the case of primary legislation, this involves determining the intention which is reasonably to be attributed to Parliament in respect of the language used: *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255 *per* Lord Hodge at [29] – [31], *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Limited* [2001] 2 AC 349 *per* Lord Nicholls at 396 - 397. In the case of secondary legislation, it is the intention which is reasonably to be imputed to the person who made the legislation that matters. That is so even where, as here, the regulations were laid before Parliament: Bennion, Bailey and Norbury on Statutory Interpretation (9th edition, 2026), paragraph 3.18, *Walksafe Security Services Limited v London Borough of Lewisham* [2024] EWHC 1787 (Admin) *per* Chamberlain J at [38].

97. The correct interpretation of the statutory definition of distance learning course is thus an objective issue for the court. It does not depend on the current Secretary of State's policy intention as to where the line should be drawn between in-attendance and distance-learning courses. Nor does it depend on the subjective intention of the Secretary of State in 2011 when the regulations were made. Rather, it is for the court to discern the intention that is to be attributed to the Secretary of State when making the regulation in 2011, based on the language of the regulation construed against the relevant context and applying established canons of statutory construction. The relevant context includes the statutory, policy, and historical context of the language.

98. The primary issue between the parties is whether the definition requires regular weekend attendance to be left out of account, or only attendance on a single weekend. If the definition requires regular weekend attendance to be left out of account, the

Secretary of State is right to conclude that these were distance learning courses. If it excludes only attendance on a single weekend, she was wrong to do so.

The language

99. The starting point is the language of the critical part of the statutory definition of distance learning course in regulation 2(1): "'required to be in attendance' is not satisfied by a requirement… to attend… on a weekend."

100. There are two possible constructions of these words which support the claimants' case. Each of the two constructions turns on the use of the indefinite article in the words "a requirement" and "a weekend" respectively. The first construction is that the words "a requirement" must be interpreted so that it is only a single requirement of the type specified that must be left out of account. In other words, if there is more than one attendance requirement of a specified type then only one requirement may be left out of account, and the remaining requirements must then be taken into account. That would mean that if the institution imposes more than one requirement to attend at a weekend then it thereby creates an in-attendance course.

101. The second is that the words "a weekend" refer only to a requirement to attend on a single weekend. In other words, if an institution imposes a requirement to attend on two or more weekends, then that requirement must not be left out of account, and the institution thereby creates an in-attendance course.

102. Although each of these constructions is linguistically possible, each depends on an artificial reading of the critical words with a strained emphasis on one or other, or both, of the uses of the indefinite article. The more natural approach to the language is to consider each individual attendance requirement and then determine whether that requirement is to be left out of account. In respect of weekend-only courses there are, each year, 24 requirements to attend on a weekend. Each of those requirements falls within the scope of sub-paragraph (b). Each of those requirements must therefore be left out of account. Once each of those requirements is left out of account there is no remaining attendance requirement. It follows that, on a natural interpretation of the critical words, these were distance-learning and not in-attendance courses. Further, the words "a weekend" are more naturally read as referring, generically, to weekends generally rather than a single weekend, as in a sentence such as "the employer will pay overtime to an employee who works on a weekend."

103. Further, unless the contrary intention appears, words in the singular in a legislative provision include the plural: section 6(c) and section 23(1) of the Interpretation Act 1978. Thus, unless the contrary intention appears, the words "a weekend" include "weekends". Thus, the words "requirement… to attend… on a weekend" are to be read, unless the contrary intention appears, as "requirement… to attend… on a weekend or weekends". There is nothing in the language of the critical words to indicate any contrary intention.

The statutory context

104. The immediate statutory context of the critical words is the test of whether the student is "required to be in attendance". If the definition had stopped there, then the claimants would have a strong argument: the claimants' students are required to be in attendance

for at least 24 weekends a year, comprising the totality of the tuition component of the courses. But that approach would be to ignore the critical words which impose an obligation to leave certain attendance out of account. Moreover, the critical words cannot simply be treated, as the claimants suggest, as a "for the avoidance of doubt" provision to confirm that certain forms of attendance are plainly incapable of converting a distance learning course to an in-attendance course. That argument might have some force in respect of a single requirement to attend for the purpose of enrolment. But the forms of attendance that are to be excluded include both attendance on "an occasional basis during the week" and attendance during vacations. Without the qualification it would not be clear whether such forms of attendance are compatible with a distance learning course. The critical words do real work in the interpretive exercise.

105. The slightly broader statutory context is that the critical words provide part of the definition of distance learning course. That broader statutory context supports the most natural literal interpretation of the critical words when they are read in isolation. The definition identifies six separate attendance requirements that must be left out of account: (1) registration, (2) enrolment, (3) examination, (4) weekend, (5) vacation, (6) occasional basis during the week. Several of these are requirements that may be imposed more than once: there might be a requirement to attend for registration at the start of each term, and/or to enrol at the start of each year, or for multiple examinations, or during different vacations. In each case, the natural reading of the language of the definition is that all such requirements must be left out of account.

106. The use of "any" in respect of "examination" and "vacation" as contrasted with "a" in respect of "weekend" is not significant. It simply reflects the natural use of language and the differing grammatical functions of the indefinite article "a" and the determiner "any". "Any examination" and "any vacation" cover whatever examination or vacation is in question, recognising that different institutions will have different examinations and vacations. Weekends, by contrast, are immutable between institutions such that the word "a" can more naturally be used in a generic sense. In both cases the language naturally covers more than one requirement to attend – it is not limited to attendance on "a [single] weekend" or "any [single] vacation".

107. The language in sub-paragraph (c) ("on an occasional basis during the week") is significant and runs contrary to the claimants' interpretation. It makes express provision in respect of the frequency of weekday attendance that must be disregarded. Thus, if it was intended to address the frequency of weekend attendance, it might naturally be expected that the words "on a single weekend", or "on an occasional weekend" would be used in sub-paragraph (b). The claimants' construction requires the court to identify an unstated limit on the quantity of weekend attendance that is to be disregarded. The claimants contend that attendance on one weekend falls within the exclusion whereas attendance on 24 weekends does not. But the statutory language does not identify quantity, frequency, or regularity as the relevant criterion. By contrast, where the regulation intended frequency to matter it expressly said so, by referring to attendance on an occasional basis during the week. The claimants' interpretation therefore reads into the reference to weekend attendance a qualification ("occasional") that the drafter explicitly included in respect of weekday attendance but omitted from the part of the definition that deals with weekend attendance. That must have been a deliberate legislative choice.

108. The even broader statutory context is that the definition of distance learning course applies for the purpose of the 2011 Regulations, made under section 22 of the 1998 Act. There were previous iterations of Student Support Regulations made under that provision. There is thus a relevant statutory history. That includes regulation 109C(3)(b) of the 2007 Regulations. Instead of the words "a requirement… to attend… on a weekend" the language of that regulation is "any requirement… to attend… on a weekend." The natural reading of that formulation is even more apt to cover attendance on multiple weekends. It is not conceivable that the change from "any" to "a" between the 2007 Regulations and 2011 Regulations was intended to mark a significant change in meaning. Rather, that change was simply a natural reflection of the slightly different structure of the respective provisions.

The policy context

109. The relevant policy context is that the statutory definition defines the boundary between in-attendance and distance-learning courses. Those two categories are mutually exclusive and collectively exhaustive. The legislation does not contemplate a course that is part in-attendance and part distance learning. There is no difficulty in identifying an in-attendance course where a student must attend the institution continuously throughout termtime, or a distance learning course where the student is never required to attend. But what of courses where there is a limited attendance requirement? A line must be drawn somewhere. Where there is a requirement to attend for part of some or many weekends, but no requirement to attend during the week, it is not obvious (absent explicit provision) what side of the line the course should fall. The fact that the regulation is intended to define the boundary between in-attendance and distance learning is not of significant assistance in the interpretation of the critical words.

110. The claimants emphasise that weekend-only courses are full-time courses. They involve the same number of study hours as weekday courses, they are taught by the same tutors, they use the same materials and lead to the same qualifications. This does not, however, answer the question as to where the boundary has been drawn between full-time in-attendance courses and full-time distance learning courses. The issue is not whether the courses are full-time, nor whether they are academically equivalent to courses delivered during the week. The issue is whether they fall within the statutory definition of a distance learning course. The regulations proceed on the basis that a course may satisfy the requirements of a full-time course whilst also falling within the statutory definition of a distance-learning course. The fact that the courses are full-time does not therefore resolve, or materially assist with, the interpretive question.

111. The broader policy context is that the purpose of drawing that boundary is, at least in part, to enable the allocation of public funds in the form of grants and maintenance loans. The Secretary of State is entitled, within the bounds of rational decision-making that furthers the underlying statutory purpose, to prioritise different groups of students when deciding who should benefit from such public support. For the reasons more fully explained below, it is rational to give priority to those who are attending a full-time course during the week (or at least are doing so more than occasionally) compared to those who do so only over one or two days each termtime weekend. The broader policy context does not therefore support the claimants' case.

The historical context

112. That then leaves the historical context. This is an important part of the claimants' case. At the time of the 2007 and 2011 Regulations, and indeed right up to 2018, there was no established practice of weekend-only courses. Instead, there were, broadly, two very different forms of course delivery: the traditional campus model where students attend a course full-time during the University term, and the Open University model where students undertake the entire course of study remotely, attending only for a residential period during a vacation and/or a small number of weekends.

113. The claimants' case is that given this historical context, the statutory definition of distance-learning must have been intended to capture Open University type provision and cannot have been intended to capture weekend-only courses. I disagree. It might equally be said that the statutory definition of in-attendance courses (that is courses which are not distance learning courses) must have been intended to capture only the traditional campus model and cannot have been intended to capture weekend-only courses. Moreover, if the intention had been simply to capture the Open University model this could have been accommodated in an altogether simpler formulation which focussed on the essential characteristic of such courses, such as: "'distance learning course' means a course which allows students to study at home and which does not require regular attendance at the institution, although occasional attendance may be required". The formulation that was instead used was more expansive and prescriptive. That drafting choice is significant. The more closely the statutory purpose is said to be tied to established provision for distance learning courses, the more surprising it becomes that the drafter did not define the concept by reference to the absence of regular attendance, or by reference to attendance only on an occasional basis. Instead, the statutory definition identifies specific categories of attendance that are to be disregarded. That is a strong indication that the drafter intended the boundary to be drawn by reference to the categories specified in the regulation itself, rather than by reference to the characteristics of distance-learning courses that were then prevalent. That drafting choice must be treated as intentional. The intention reasonably to be imputed was not simply to capture Open University type provision but to provide a future-proofed definition that drew a boundary between in-attendance and distance learning courses. In any event, the claimants' arguments as to the historical context in which the regulations were made is not a sufficient basis to depart from the clear and natural and unambiguous meaning of the critical words in their statutory context.

Guidance

114. Official statements made by the government department responsible for drafting and implementing delegated legislation may help elucidate the meaning of the statutory language, particularly where they are contemporaneous with the making of the legislation: *London Borough of Harrow v Ayiku* [2012] EWHC 1200 (Admin) *per* Sales J at [29]. Here, however, the statements on which the claimants rely (see paragraphs 62 - 70 above) are too generalised and vague to be of any real assistance. Nothing in the guidance specifically addresses the interpretive questions that arise.

115. The claimants place particular reliance on guidance issued before and after 2011 describing distance-learning as study undertaken at home, albeit with short periods of attendance. Such descriptions broadly reflect the paradigm example of distance-learning provision that existed at the time, namely Open University and similar forms

of provision. However, the guidance was descriptive rather than definitional. The statutory definition does not simply describe the general characteristics of distance learning; it specifies with greater precision particular forms of attendance that are not to constitute a requirement to be in attendance. The fact that the guidance describes common examples of distance learning courses does not justify reading limitations into the definition that do not appear in the statutory language. In any event, this type of material can only provide a secondary role in the interpretive exercise: *R (O)* at [30]. The vague statements in the guidance are not sufficient to displace the clear meaning of the words of the statutory definition.

Industry practice

116. The claimants also rely on evidence that higher education providers classified weekend-only courses as in-attendance courses, and on internal communications within government in which references were made to ambiguity or uncertainty in relation to attendance requirements. There is a bootstraps element to this argument. The evidence as to the approach taken by higher education providers is focussed primarily on the approach taken by the claimants. There is no rigorous evidence as to the understanding of higher education providers generally (see paragraph 93 above).

117. In any event, these matters do not materially assist to determine the correct meaning of the statutory definition. That is an objective question of law for the court. The fact that some providers adopted a particular understanding of the regulations does not alter the meaning of the statutory language. Nor do statements by officials, made many years after the regulations were enacted, determine the meaning of the legislative text. Nor do these matters significantly assist to identify the meaning. The most that such material can show is that differing views have been expressed about the application of the regulations in the context of modern forms of course delivery. Where, as here, the meaning of a statutory provision is sufficiently clear from its language and immediate context, subsequent administrative practice and subsequent expressions of opinion cannot displace that meaning.

Absurdity

118. The Secretary of State is unlikely to have intended to create a definition of distance learning course that would produce absurd results. That is relevant to the objective assessment of the Secretary of State's intention and thus the correct interpretation of the definition.

119. The claimants say that it would be absurd if students studying the same course, required to attend campus for the same number of hours, being taught by the same tutors, with the same online teaching requirements and the same self-study requirements, taught using the same materials and sitting the same assessments/examinations, are treated in entirely different ways. Those required to attend campus for 6 hours on a Monday would be "in attendance" and would receive the full range of student support (maintenance loans and grants). Yet those required to attend campus for 6 hours on a Saturday would not be "in attendance" and would not receive grants or maintenance loans.

120. I do not agree that this is an absurd outcome. There are many examples of legislative provisions that draw distinctions between weekends and weekdays in the light of

traditional working patterns. Examples include regulation 4(2)(d) of the Breaks for Carers of Disabled Children Regulations 2011, regulation 2 of the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, and rule 2.8(4)(b)(i) of the Civil Procedure Rules.

121. There is a material difference between a requirement for a student to attend on a weekday and a requirement to attend on a weekend. It has not been shown that in 2011 it was absurd to regard a requirement for attendance during the working week as a proxy for reduced availability for conventional paid employment, even though that will not reflect every student's circumstances. Equally, it has not been shown that it was absurd to consider that weekend attendance requirements would be less likely to interfere with such employment. Whether that distinction remains the optimum policy choice today is irrelevant. The relevant question is whether, at the time the regulations were made in 2011, the natural interpretation of the statutory definition resulted in absurdity. It did not.

122. Conversely, the claimants' interpretation would produce an absurd outcome. It would mean that a course that required attendance for 16 hours over a single weekend (8 hours on the Saturday and 8 hours on a Sunday) but not otherwise would be treated as distance learning, but that a course that required attendance for just 1 hour on two separate Saturdays would be treated as in-attendance. The claimants' answer to this is a development of the "for the avoidance of doubt" point (see paragraph 73 above). In other words, the claimants say that a requirement to attend on just two separate Sundays would not amount to a requirement "to be in attendance". I have, however, already rejected the submission that the qualifying words have only this limited effect. Moreover, this would then lead to uncertainty and arbitrariness as to when requirements to attend at weekends are sufficiently extensive as to amount to a requirement "to be in attendance". For example, what if the requirement were to attend for 1 hour every other Sunday? It would be no answer that what is required is regular or frequent, rather than only occasional, attendance, because that is the approach taken to attendance "during the week." It was clearly intended that weekends should be treated differently. Otherwise, sub-paragraphs (b) and (c) would read "(b) during any vacation; or (c) on an occasional basis."

Conclusion on ground 1

123. In deference to the excellent submissions that were advanced on ground 1 I have dealt with the questions of interpretation in some detail. However, the correct meaning of the statutory definition is clear, and the claimants' case does not have arguable merit. I therefore refuse permission to claim judicial review on ground 1.

Ground 2: Legitimate expectation

124. To establish a substantive legitimate expectation, the claimants must show that the defendants made a representation, by words or conduct, expressly or impliedly, that was clear, unambiguous and devoid of relevant qualification, and that it would be so unfair as to amount to an abuse of power to depart from that representation: *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213 *per* Lord Woolf MR at [57], *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61; [2009] 1 AC 453 *per* Lord Hoffmann at [60], *Paponette v Attorney General of Trinidad and Tobago* [2010] UKPC 32; [2012] 1 AC 1 *per* Lord Dyson at

[37] - [38]. If the claimants establish that the defendants made such a representation, the defendants must show that there is a sufficient justification for frustrating the expectation: *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 *per* Laws LJ at [68]. In that respect, no legitimate expectation can require a public authority to act unlawfully or beyond its statutory powers: *Rowland v Environment Agency* [2002] EWHC 2785 (Ch); [2005] Ch 1 *per* Lightman J at [69].

125. The claimants contend that the Secretary of State and the Student Loans Company created a substantive legitimate expectation that weekend-only courses would be treated as in-attendance rather than distance learning. The claimants formulate the expectation at a relatively high level of generality, namely that a course requiring regular attendance cannot be a distance learning course. It is not sufficient to show that the claimants inferred or assumed that proposition from the guidance. The claimants must show that the defendants actually represented that that was the position. A legitimate expectation must be founded on what the public authority said or did, not on an interpretation which the claimant subsequently places upon the authority's conduct.

126. The difficulty for the claimants is that neither the Secretary of State nor the Student Loans Company made a sufficiently clear promise that could engender a legitimate expectation that their courses would be treated as in-attendance rather than distance learning. The guidance relied upon by the claimants contains statements which they consider are supportive of their position. However, the guidance consistently directed attention to the statutory framework. In the case of the Assessing Eligibility Guidance, it expressly stated that the Regulations remained the legal basis of the scheme and would prevail in the event of inconsistency. The Courses Management Service made it clear that it was the responsibility of providers to enter correct information. Nothing in the guidance amounted to a sufficiently clear and unambiguous promise that weekend-only courses would be treated as in-attendance courses for the purposes of the statutory scheme. The references to the fact that distance learning courses may involve "some short periods of attendance" do not amount to a clear representation that a weekend-only course is an in-attendance course, or that it falls outside the statutory definition of distance learning.

127. At its highest, the claimants' case establishes no more than that they interpreted the guidance as supporting their understanding of the Regulations and proceeded on that basis. That is insufficient. A claimant cannot establish a substantive legitimate expectation merely by showing that guidance was capable of being read consistently with a particular interpretation of the law. What is required is a representation clearly communicating the outcome that is now asserted. No such representation was made.

128. Even if a sufficiently clear representation had been made, it would not have been legitimate. The definition of a distance learning course was contained in regulation 2 of the 2011 Regulations throughout the relevant period. The guidance did not and could not amend, disapply or override that definition. Leaving aside possible residual questions of application, such as what amounts to "a requirement… to attend… on an occasional basis during the week", neither the Secretary of State nor the Student Loans Company had a residual discretion to treat distance learning courses as in-attendance courses. On its proper construction, the 2011 Regulations classify weekend-only courses as distance learning courses. If that conclusion is correct, it follows that the Secretary of State and the Student Loans Company did not have a power to represent

that such courses fell outside the statutory definition or that students studying on them were entitled to maintenance support contrary to the legislation. The doctrine of legitimate expectation cannot be invoked to give legal effect to an expectation which is inconsistent with the governing statutory scheme.

129. Accordingly, even if a sufficiently clear representation had been made, the Secretary of State and the Student Loans Company were justified in frustrating the resulting expectation. Otherwise, they would be acting beyond their statutory powers. The relief which the claimants seek would require the continued payment of maintenance support and grants to students who are not entitled to receive them under the 2011 Regulations. The claimants acknowledge that, if their interpretation of the 2011 Regulations is wrong, there was no power to make payments in respect of grants and maintenance loans for students on weekend-only courses. Once that concession is made, this ground of claim cannot succeed. A substantive legitimate expectation cannot require a public body to pay public funds in circumstances where it has no power to do so. The doctrine of legitimate expectation is intended to promote fairness in public administration. It is not a mechanism by which statutory restrictions on the expenditure of public money may be circumvented.

130. It is no answer to assert that an ultra vires expectation constitutes a possession for the purpose of Article 1 of the First Protocol of the European Convention on Human Rights. It does not. The claimants rely on the decision in *Stretch v United Kingdom* (2004) 38 EHRR 12 and *Rowland*. In those cases, the courts were concerned with the protection of possessions that had already been acquired, albeit their acquisition had involved a public body exercising beyond its powers. What the claimants here seek is quite different, namely that the Secretary of State and the Student Loans Company pay funds in excess of their statutory powers. That does not concern the protection of existing property rights that have been acquired in excess of legal powers, but a requirement that the Secretary of State and the Student Loans Company make further payments in excess of their statutory powers. It is conceivable that the position might be different if students sought to prevent a public authority from interfering with their peaceful enjoyment of their existing property (monies paid in excess of legal powers) by requiring those monies to be repaid. That is not, however, this case and it is not what underpins ground 2 of the claim.

131. For all of those reasons, I refuse permission to claim judicial review on this ground.

Ground 3: Irrationality of statutory definition of distance learning course

132. Ground 3 does not arise because it is out of time. I have refused an extension of time to bring a claim. For the reasons set out below, I would not, anyway, consider that this ground of claim has arguable merit.

133. The claim is presented as a challenge to the rationality of the 2011 Regulations. A public law challenge on the ground of rationality is a challenge on the basis that a decision-maker took account of an irrelevant factor, or left a relevant factor out of account, or made a decision that no reasonable decision-maker would have made. It may not make much practical difference, but it seems to me that it is therefore more appropriate to assess ground 3 by reference to the decision to adopt the definition of distance learning course in the 2011 Regulations, rather than to ask, in the abstract, whether the 2011 Regulations are irrational.

134. The issue, therefore, is whether the decision to adopt the definition of distance learning course was irrational because it treats students undertaking substantively identical courses differently depending solely upon whether attendance is required during the week or at weekends.

135. It is not for the court to determine where the line between distance learning and in-attendance courses should be drawn. Nor is it for the court to decide whether a different scheme could be devised which would be fairer, more nuanced or better adapted to modern circumstances. Instead, the claimants must show that the decision to adopt the definition that is contained in the regulations was irrational, in that it was so unreasonable that no reasonable decision-maker could have adopted it.

136. That is an exacting standard. It is particularly difficult to satisfy where, as here, the Secretary of State was concerned with making regulations that concern the allocation of finite public resources, economic policy, and the creation of eligibility rules of general application.

137. I do not accept the claimants' submission that a heightened level of scrutiny is required. The case does not concern risks to life or physical safety, deprivation of liberty, or the protection of Convention rights within the meaning of section 1(1) of the Human Rights Act 1998. It concerns eligibility for public financial support under a statutory scheme. The making of broad eligibility criteria in such a scheme is an area in which considerable latitude must be afforded to the democratically accountable decision-maker.

138. In any event, beyond the trite recognition that the context is always relevant, a finely nuanced debate as to the level of scrutiny to be applied does not seem to me to be of practical assistance in the circumstances of the present case. Either there was a rational basis to adopt the statutory definition, in which case this ground of claim must fail, or the decision to do so was logically flawed, in which case the ground is well-founded.

139. The claimants emphasise that the weekend-only courses in question are full-time undergraduate courses. Students undertake the same amount of study, are taught by the same tutors, use the same materials and obtain the same qualifications as students attending during the week. The only relevant difference is the day upon which attendance occurs. They submit that it is irrational for a student required to attend for six hours on a Monday to qualify for maintenance support, whilst a student required to attend for the same six hours on a Saturday does not. They further submit that modern working patterns render any distinction between weekend and weekday attendance arbitrary.

140. They also rely on various internal departmental documents produced in 2025 and 2026 which referred to possible ambiguity in the regulations and to the possibility of future reform. They submit that the rationale now advanced by the Secretary of State is an ex post facto justification unsupported by the material contemporaneous with the making of the 2011 Regulations.

141. I do not accept those submissions.

142. The starting point is that the challenge must be assessed by reference to the statutory distinction that the regulation actually draws. For the reasons given above in respect of

Ground 1, the regulation deliberately distinguishes between attendance required during the week and attendance required at weekends. The claimants' suggestion that the distinction is irrational is closely linked to their argument that the provision ought not to be interpreted as drawing such a distinction at all. I have rejected that interpretation argument. The statutory language demonstrates that the distinction between weekday and weekend attendance was intentional.

143. Nor do I accept that the distinction is absurd. As explained in relation to Ground 1, there is a material difference between attendance required during the conventional working week and attendance required at weekends. Historically, legislation has frequently drawn distinctions between weekdays and weekends. Such distinctions reflect traditional working patterns and are not inherently irrational. The fact that there may be individual cases where the distinction operates imperfectly does not establish irrationality.

144. I do not attach significance to the evidence that students typically undertake employment with flexible working hours, such that there is little if any material difference between requirements to attend a course on a weekday or a weekend. That is because that evidence relates to the student cohort generally, including the very large number of students who attend conventional courses requiring weekday attendance. The cohort of students that is relevant for these purposes is precisely those who do not attend such courses. I was not shown any statistics in relation to the employment pattern of students who attend the Open University or students who attend the claimants' weekend-only courses. However, given that these courses are designed to accommodate those who may otherwise be excluded from higher education, it is reasonable to proceed on the basis that, like the majority of the adult working population, many of them have conventional weekday employment or other weekday obligations.

145. The claimants' argument proceeds as if the relevant question were whether weekend-attendance students face exactly the same practical constraints as weekday-attendance students. That is not the correct question. The Secretary of State was entitled to formulate generally applicable eligibility criteria by reference to reasonable proxies rather than undertaking an individualised assessment of each course's potential to affect each student's employment. The evidence before the court explains that maintenance support is, at least in part, directed towards students whose pattern of study constrains their ability to support themselves through employment. The Secretary of State submits that weekday attendance is a rational proxy for that constraint. I accept that submission.

146. Whether that proxy is perfect is beside the point. Almost every eligibility rule creates over-inclusive and under-inclusive outcomes. A student attending one evening a week may be able to maintain full-time employment. A student with caring responsibilities may find weekend attendance more restrictive than weekday attendance. Another student may be unable to work for reasons wholly unrelated to the timing of classes. No system based on broad legislative rules can capture every individual circumstance. The question is whether the chosen criterion is reasonably capable of advancing the policy objective. In my judgment, it is.

147. It was rational to adopt a distinction between attendance during the working week and during a weekend, precisely because the former is more likely to interfere with conventional full-time employment. It is obvious that there are exceptions, perhaps

much more so now than in 2011. That does not mean that the decision to adopt the test in the statutory definition was unreasonable.

148. I do not place significant weight on the parties' competing submissions as to whether the rationale now articulated in witness evidence can be found in precisely the same form in contemporaneous documents from 2011. This is not a challenge based on an alleged failure to take account of relevant considerations when the regulations were made. It is a challenge to the substantive rationality of the legislative distinction itself. The issue, therefore is whether, viewed at the time of the making of the Regulations, the distinction was capable of rational justification by reasons that withstand logical scrutiny.

149. Even if the precise rationale was not articulated in the same terms in 2011, the question for this ground is whether the legislative distinction was one that no reasonable decision-maker could have adopted. For the reasons I have given, the weekday/weekend distinction was capable of rational justification at the time the Regulations were made.

150. In any event, the claimants' own case presents a difficulty. They emphasise that weekend-only courses did not exist when the relevant legislative provisions were enacted. If that is correct, it becomes correspondingly more difficult to contend that the Secretary of State acted irrationally in 2011 by failing to formulate a more tailored rule to accommodate a mode of course delivery that had not yet emerged. The statutory scheme established a general boundary between in-attendance and distance-learning provision. The fact that new forms of delivery have subsequently developed does not render the original legislative choice irrational.

151. Accordingly, I refuse permission to claim judicial review on ground 3.

Ground 4: Reinstatement of funding for students who transfer to weekday courses

Standing

152. The grants and maintenance loans in question are payable to students, not to the claimants. The alleged unlawfulness consists of a failure to make payments, or a delay in making payments, to individual students. It is the students who are the beneficiaries of any legal rights to receive such payments. The claimants do not have an entitlement to the payments, and they do not have a direct legal entitlement to the payments being made to their students.

153. The indirect consequences for the claimants as a result of any delay in reinstating payments, including difficulties in course delivery, complaints from students and reputational consequences, are not sufficient to give the claimants standing to bring a claim. Nor is this a case in which the claimants are acting in a representative capacity akin to a trade union, membership organisation or public-interest body. There are plainly persons better placed to challenge decisions relating to the payment of maintenance support, namely the students whose entitlement is directly affected. They could have brought a claim themselves and I was told that some students have issued proceedings. The claimants did not make the students interested parties to the claim but did make the National Union of Students an interested party: CPR 54.1(2)(f), 54.6(1)(a), 54.7(b), Administrative Court Judicial Review Guide, paragraphs 3.2.3.3 and 3.3.4.

It would potentially be unfair to the students to determine their entitlement to grants and maintenance loans when they have not been made parties to the claim and have not had an opportunity to make representations, yet they would be directly affected by the outcome.

154. Accordingly, the claimants have not demonstrated a sufficient interest to bring the claim under ground 4.

Has the Student Loans Company acted unlawfully?

155. Even if the claimants had sufficient standing to bring a claim, they have not shown that the Student Loans Company has acted unlawfully in respect of the reinstatement of the payment of grants and maintenance loans.

156. The evidence demonstrates that the reinstatement of payments involves a substantial administrative exercise. By the time these proceedings were issued on 28 May 2026, some 17,617 cases had already been processed. The Student Loans Company established working groups, engaged with providers at senior level, and was implementing the changes required by the Secretary of State's instructions. The evidence indicates that there was no straightforward automatic way to reinstate the funding. A manual process had to be applied individually to each of the many thousands of students who were affected. The claimants have not shown that there was any unreasonable delay by the Student Loans Company, which diverted substantial resource to address this issue and to reinstate payments as quickly as possible. It may not yet have resolved every individual case, and there may have been some individual mistakes, but that is almost inevitable given the scale of the task. The evidence indicates that the Student Loans Company has done, and is continuing to do, everything it reasonably can to reinstate payments where that is required.

157. The evidence further shows that many of the individual cases relied upon by the claimants do not arise from any failure by the Student Loans Company to act. In some cases, the relevant institution had not submitted the necessary change-of-circumstances information. In others, there were errors by franchise partners, missing documentation, or issues associated with fraud prevention checks.

158. The claimants produced a survey shortly before the hearing. That identified 27 cases where it was said that payments had not been reinstated. Mr Ross analysed the examples relied on in the claimants' most recent evidence and concluded that they did not demonstrate any systemic failure in the reinstatement process. Rather, they reflected a collection of individual circumstances involving failures by providers, data errors, fraud-related interventions and unresolved administrative issues. Mr Ross' evidence is that, of the 27 cases identified, nine had already been completed and the remainder were being actively reviewed. Of those remaining cases, some students had already received payment, some were not eligible for maintenance support, some had not been processed due to administrative errors, and others were blocked because providers had identified the students as studying on distance-learning versions of courses.

159. I accept that evidence. It demonstrates active engagement with outstanding cases rather than indifference to them or any systemic failure or public law error. Insofar as there has been a delay, the claimants have not shown that it was unlawful, given the scale

and complexity of the task. The claimants have not identified any requirement for the payments to be reinstated immediately irrespective of the impracticality of doing so.

160. Even if some isolated instances of delay or error could be identified, that does not make it appropriate to grant a mandatory order. A mandatory order is ordinarily reserved for circumstances in which there is a continuing failure by a public body to discharge a legal obligation and where a mandatory order is necessary to secure compliance. The evidence points in precisely the opposite direction. It demonstrates a public body which has devoted substantial resources to resolving the issue, has processed the vast majority of affected cases, continues to investigate outstanding matters, and is taking steps to rectify any remaining problems as they are identified.

161. I therefore refuse permission to claim judicial review on ground 4.

Residual procedural issues

162. There are three outstanding residual procedural issues.

163. First, the Student Loans Company filed its written evidence one minute late. It served the claimants with both its Detailed Grounds for contesting the claim and its written evidence five minutes late. The claimants initially declined to confirm that no issue would arise in respect of these breaches of the court's directions. The Student Loans Company therefore issued an application for relief from sanctions. The application was not opposed. I grant relief from sanctions. The breach of the court's directions was not significant.

164. Second, the claimants seek to rely on additional late witness statements of Mr Newman, and the defendants seek to rely on additional late witness statements from Ms Godsmark and Mr Ross. In some respects, these statements deal with more recent events. In other respects, they are responsive to matters raised in the course of the exchange of statements of case, witness statements and evidence. There was no significant opposition to the statements being adduced, so long as all parties were permitted to adduce their evidence. I grant the necessary permission.

165. Third, in the course of the hearing, the Student Loans Company produced the 2017 guidance (see paragraph 66 above). An explanation for the late production of the document was provided at the hearing. Following the hearing, the Student Loans Company provided a letter to the court, copied to the claimants, in which it gave a new explanation and said that the explanation given at the hearing was inaccurate. It explained how the inaccuracy arose, why the document had not initially been found, and how it was found in the course of the hearing.

166. Ms Clement points out that the claimants had been seeking disclosure of relevant documents since April. She submits that the failure to produce this document earlier amounts to a breach of the duty of candour and that the Student Loans Company should not be permitted to rely on the document and should be required to make a witness statement, supported by a statement of truth, to confirm what had been said in correspondence and to give a fuller explanation.

167. The nature of the claimants' claim, challenging regulations that had been made in 2011, the Secretary of State's interpretation of the regulations in 2026 and relying on guidance

during that timeframe (which came in different iterations), made it particularly difficult for the Secretary of State and the Student Loans Company to identify relevant documentation and to respond to the claim. They had to undertake the work within a compressed timetable, because of the order for an expedited rolled-up hearing, which also required the provision of written evidence within 4 weeks. Both the Secretary of State and the Student Loans Company produced detailed witness statements to explain their decision-making, supported by contemporaneous documents.

168. The 2017 guidance ought to have been identified and disclosed earlier. The court and the claimants were initially given inaccurate information about how it came to light. However, this arose through mistake, misunderstanding and miscommunication, rather than any deliberate attempt to mislead the court or the claimants. The error was voluntarily and swiftly corrected, and a reasonable explanation was given. Having regard to the age of the events in issue, the volume of potentially relevant material, and the compressed timetable on which these proceedings were prepared and heard, I do not regard the late disclosure of this document, in the circumstances I have described, as demonstrating a material breach of the duty of candour requiring any further procedural order. In any event, the document has not affected my determination of the claim. The conclusions I have reached would have been the same whether or not the document had been produced. It is not necessary to make any further directions for evidence.

The students

169. None of this has been the fault of the students. They have borne the brunt of the fallout from the dispute as to the correct classification of weekend-only courses. They each made the significant life choice to embark on a degree course. It is likely that many relied on the apparent availability of grants and/or loans. Those who took out loans thereby took on significant levels of debt and accepted contingent obligations to repay that debt. The evidence indicates that many suffered considerable anxiety that they would be required immediately to repay grants or loans that they were unable to repay. Even now, there remains some continuing uncertainty. Those who were reliant on grants or loans faced the unwelcome choice of having to switch to weekday attendance (and re-arrange their lives accordingly), or to forego the financial support, or to drop out of their courses (but with a retained debt burden).

170. None of the individual students who are affected by what has happened are parties to this claim. The National Union of Students UK is an interested party, and I was told that representatives were present at the hearing, but it has not taken any substantive part in the proceedings. That is understandable given the issues in the case, particularly in respect of grounds 1 to 3, and because there is, I understand, separate litigation in relation to the students. I do not make any findings about any separate claims or complaints the students may have in respect of these matters. The rejection of grounds 1 to 3 should not, however, be treated as an endorsement of the way in which they have been treated.

Outcome

171. I refuse permission to claim judicial review.