Neutral Citation Number: **[2026] EWHC 2930 (Admin)**

Case No: AC-2025-CDF-000209

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

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 12 November 2026

Before :

JUDGE BARRY CLARKE

PRESIDENT OF EMPLOYMENT TRIBUNALS (ENGLAND AND WALES)

(sitting as a Judge of the High Court)

- -

Between :

The King (on the application of Andy Mitchell)

Claimant

- and -

Somerset Council

Defendant

- -
- -

Mr Tom Royston, Mr Jack Castle and Ms Alexa Thompson
(instructed by Leigh Day) for the Claimant
Mr Nigel Giffin KC
(instructed by Somerset Council Legal Services) for the Defendant

Hearing dates: 6 and 7 May 2026

- -

JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives at 10.30 am on 12 November 2026 and by release to the National Archives

Judge Barry Clarke:

Introduction

1. This claim for judicial review is about council tax, and about the help that a local council must give to residents who cannot afford to pay it. Most households in England must pay council tax to their local council. Since 2013, however, every council that collects the tax has had to operate its own scheme for reducing the bills of residents in financial need. Such a scheme is called a council tax reduction ("CTR") scheme. For people of working age, each council decides for itself, within limits set by Parliament, who is helped and by how much. The question in this case is whether two rules of the scheme operated by Somerset Council ("the defendant"), and the way in which the defendant applied them to Mr Mitchell ("the claimant"), are lawful. I describe those two rules in a moment.

2. The claimant lives alone in the defendant's area. He is a disabled man in his fifties, who has not been able to work since about 2013. His income consists of social security benefits. For more than five years before the events with which this claim is concerned, his council tax had been reduced to nil.

3. In July 2025, the claimant had to move from one of those benefits to another: from income-related employment and support allowance ("ESA") to universal credit ("UC"). The move was part of a national programme, and he had no choice about it. His income did not materially change (it moved by only ten pence a week). But the way in which the defendant's scheme treated that income changed completely. Two rules of the defendant's scheme treated the same income very differently, according to the benefit through which it was paid. The first gave a full reduction to anyone receiving income-related ESA, by disregarding the whole of their income. The second counted an award of UC as income, apart from the element paid for housing costs; it therefore counted the additional amount that UC pays to a person whose capability for work is limited by illness or disability. The claimant was within the first rule until the move, and within the second after it. By letter dated 10 September 2025, the defendant told the claimant that his reduction had fallen from 100% to 10%, with effect from the date of the move, and sent him a bill for £785.98 for the rest of the year.

4. The claimant says that the defendant has acted unlawfully. His case is directed at those two rules, and he puts it in three ways. First, he says that the rules discriminate against him, contrary to the Equality Act 2010 and contrary to Article 14 of the European Convention on Human Rights, to which the Human Rights Act 1998 gives effect. He compares himself with two people: a person in the same position as him who remains on income-related ESA; and a person on UC who is not disabled. Secondly, he says that the defendant, when it adopted the scheme, did not comply with the public sector equality duty, which required it to have due regard to the needs of disabled people. Thirdly, he says that the rules are irrational, in the sense in which public law uses that word.

5. The claimant challenges two decisions of the defendant. The first is the decision of its full council on 18 December 2024, which adopted the scheme for the year beginning 1 April 2025. The second is the decision of 10 September 2025, which determined how much council tax he must pay for that year and which he received in the form of the letter and bill that I have described. I take the decisions in that order, which is the order in which they were made. The claimant asks the court to quash the second decision, but not

the scheme itself. He also seeks declarations that the defendant acted unlawfully, and damages for injury to his feelings.

6. The defendant resists the claim on numerous grounds. It says that the claim comes too late, so far as it attacks the adoption of the scheme. The defendant also defends the scheme overall, and the decision made thereunder on 10 September 2025, on their merits.

7. That is an overview only. The issues in the claim are many, and some are technical. I describe them in detail at paragraphs 91 to 104 below, after setting out the background and the facts.

8. The hearing required two full days of legal argument. Mr Royston (supported by Mr Castle and Ms Thompson) appeared for the claimant and Mr Giffin KC appeared for the defendant. The two hearing bundles ran to almost 1,500 pages; I refer to them as "CHB" (the core hearing bundle) and "SHB" (the supplementary hearing bundle), followed by the page number. I was also referred to some 40 authorities and to many statutory provisions. The law in this field is dense, and it is not easy to follow without explanation. The parties, and the many other people whose council tax depends on schemes of this kind, should be able to follow the reasoning without being specialists. I have therefore tried my best to explain the law in plain terms before applying it. That has produced a regrettably lengthy judgment.

9. The judgment is arranged as follows. I begin with the background and context to these proceedings. I then set out the facts in detail, followed by the issues requiring determination. The relevant statutory provisions and the authorities come next, followed by a summary of the parties' submissions. The discussion and analysis then take each issue in turn, ending with delay and relief. A short conclusion follows.

Background and context

10. The background and context is provided in three parts: first, a description of the social security benefits that feature in the claim; secondly, a description of the "migration" of individuals from older, legacy benefits to UC; and thirdly, the general framework by which local authorities may reduce the amount of council tax owed by individuals resident in their area.

11. Social security law moves at pace. Changes, tweaks if not wholesale reform, are frequent, while the amounts of benefits paid usually change each April. I describe the legislation as it stood on 18 December 2024 and 10 September 2025, the dates of the two decisions under challenge. I will identify any differences as between those two dates only where it is necessary to do so; unless I say otherwise, the legislation was the same on both dates. I give the benefit figures for each date only where they matter.

Social security benefits

12. Some social security benefits are paid only to people whose income and savings are low. Such benefits are means tested. For people of working age, the main benefit of this kind is now UC. It was created by Part 1 of the Welfare Reform Act 2012 ("WRA"). It is administered by the Department for Work and Pensions ("DWP"). It can be paid to people who are in work as well as to those who are not.

13. UC replaced six legacy benefits, namely: income-based jobseeker's allowance ("JSA"); ESA; income support; housing benefit; child tax credit; and working tax credit. Section 33(1) WRA provided for the abolition of each of them, and of council tax benefit, to which I return later. Holgate J identified the aims of this reform package in *R (TP) v Secretary of State for Work and Pensions* [2022] EWHC 123 (Admin), [2022] PTSR 1092 at [2]. They included: simplifying the benefits system and its administration; encouraging people into work where possible; improving the targeting of financial support to meet needs; removing overlapping benefits; reducing the scope for error and fraud; and achieving a fairer overall financial burden on taxpayers.

14. UC is payable for each "assessment period" (section 7(1) WRA). It is paid as a single monthly payment in arrears. It can be awarded to a single person or to members of a couple jointly (section 1(2) WRA). Section 8 WRA governs the amount and provides:

> **(1) The amount of an award of universal credit is to be the balance of—**
>
> **(a) the maximum amount (see subsection (2)), less**
> **(b) the amounts to be deducted (see subsection (3)).**
>
> **(2) The maximum amount is the total of—**
>
> **(a) any amount included under section 9 (standard allowance),**
> **(b) any amount included under section 10 (responsibility for children and young persons),**
> **(c) any amount included under section 11 (housing costs), and**
> **(d) any amount included under section 12 (other particular needs or circumstances).**
>
> **(3) The amounts to be deducted are—**
>
> **(a) an amount in respect of earned income calculated in the prescribed manner (which may include multiplying some or all earned income by a prescribed percentage), and**
> **(b) an amount in respect of unearned income calculated in the prescribed manner (which may include multiplying some or all unearned income by a prescribed percentage).**
>
> **(4) In subsection (3)(a) and (b) the references to income are—**
>
> **(a) in the case of a single claimant, to income of the claimant, and**
> **(b) in the case of joint claimants, to combined income of the claimants.**

15. In simple terms, the law first adds together amounts for the person's needs. Every claimant receives a standard allowance (section 9). Further amounts, which are called "elements", may be added for children, for housing costs, and for other particular needs or circumstances (sections 10 to 12; regulation 23(1) of the Universal Credit Regulations 2013 (SI 2013/376) ("the UC Regulations")). The total is the "maximum amount". An amount for the person's income, calculated as the regulations prescribe, is then deducted. The deduction may be limited to a percentage of the income. What remains is the award. Leaving aside matters that do not arise in this case, a person with no other income receives the maximum amount.

16. One element, given by way of example, is an amount for housing costs. Section 11(1) WRA requires the calculation of an award to include "*an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home*". The UC Regulations call this the housing costs element (regulation 25).

17. Many people who claim UC have an illness or disability that affects their ability to work. The WRA deals with this through two concepts, which section 37 defines in this way:

> **(1) For the purposes of this Part a claimant has limited capability for work if—**
>
> **(a) the claimant's capability for work is limited by their physical or mental condition, and**
> **(b) the limitation is such that it is not reasonable to require the claimant to work.**
>
> **(2) For the purposes of this Part a claimant has limited capability for work-related activity if—**
>
> **(a) the claimant's capability for work-related activity is limited by their physical or mental condition, and**
> **(b) the limitation is such that it is not reasonable to require the claimant to undertake work-related activity.**

I will call the first "LCW" (limited capability for work) and, where a person has both, "LCWRA" (limited capability for work and work-related activity). LCWRA, which is at the heart of this case, pays extra money and removes all work-related requirements, while a claimant with LCW alone may still be required to engage in activity that helps them prepare for future work (section 21(1)(a) and (2) WRA). LCWRA recipients can therefore properly be seen as members of a more vulnerable cohort. Whether a person has LCW or LCWRA is determined under regulations, on the basis of an assessment (section 37(3) and (4)). The assessment, which is known as the work capability assessment, looks at a person's ability to carry out a range of physical and mental activities, and not just the condition itself.

18. The criteria for LCWRA are in regulation 40 of the UC Regulations. A person has LCWRA if it has been determined, following an assessment, that they have it, or if they are treated as having it (regulation 40(1)). The test on an assessment is described in regulation 40(2) as follows:

> **(2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, by reason of the claimant's physical or mental condition,—**
>
> **(a) at least one of the descriptors set out in Schedule 7 applies to the claimant;**
> **(b) the claimant's capability for work and work-related activity is limited; and**
> **(c) the limitation is such that it is not reasonable to require that claimant to undertake such activity.**

19. Schedule 7 lists 16 activities, with descriptors, covering both physical and mental functions. Two examples illustrate the thresholds that apply. A person meets the descriptor for the first activity, mobilising, if they cannot "*mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion*", or cannot repeatedly mobilise 50 metres within a reasonable timescale for the same reason. A person meets the descriptor for the ninth activity, learning tasks, if they cannot "*learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder*". A descriptor applies if it applies for the majority of the time, or on the majority of occasions (regulation 40(4)). The incapability must arise from a specific illness, disease or disablement, or directly from treatment for one (regulation 40(3)). A person is also treated as having LCWRA in the circumstances set out in Schedule 9 to the UC Regulations, which include terminal illness and certain cancer treatment (regulation 40(5)).

20. A finding of LCWRA has two main consequences in UC. First, the award includes an additional amount, called the LCWRA element (section 12(1) and (2)(b) WRA; regulation 27(1) UC Regulations). Secondly, the person is free of work-related requirements: "*[t]he Secretary of State may not impose any work-related requirement on a claimant falling within this section*", and a claimant with LCWRA falls within it (section 19(1) and (2)(a)). Work-related requirements are requirements to attend interviews about work, to prepare for work, to search for work and to be available for work (section 13(2)). People with LCWRA are therefore considered further away from the labour market, and for a longer period.

21. The amounts of the standard allowance and the LCWRA element are fixed by regulation 36 of the UC Regulations, and are usually increased each April. For a single claimant aged 25 or over, they were as follows:

Amount for each assessment period	**2024/25 (in force on 18 December 2024)**	**2025/26 (in force on 10 September 2025)**
Standard allowance	£393.45	£400.14
LCWRA element	£416.19	£423.27

22. As it will feature extensively in the comparisons drawn in the case, I must next discuss ESA. ESA is a benefit for people whose capability for work is limited by illness or disability. The work capability assessment was introduced for ESA in 2008, and now also applies to UC. ESA takes two forms. There is a contributory form, now called "new style" ESA, which depends on national insurance contributions and is not means tested. Income-related ESA, however, is means tested; it is one of the legacy benefits that UC is replacing, and new claims for it can no longer be made (section 33(1)(b) and (2)(b) WRA). While I describe it as a legacy benefit, that has the potential to mislead: many people still receive it.

23. Income-related ESA is made up of a personal allowance, premiums for particular needs (including disability premiums) and, for a person found under the Employment and Support Allowance Regulations 2008 (SI 2008/794) ("the ESA Regulations") to have limited capability for work-related activity, an additional amount called the support component. A person who receives the support component is often described as being in

the "support group". The same assessment applies to both benefits. A determination for ESA that a person has limited capability for work-related activity counts as a determination of LCWRA for UC (regulation 40(1)(a)(ii) UC Regulations).

24. I will briefly mention the benefit known as personal independence payment ("PIP"). This is a different kind of benefit, payable under Part 4 WRA. It has two components: a daily living component and a mobility component (section 77(2)). Each is payable at a standard rate if the person's ability to carry out the relevant activities is "*limited by the person's physical or mental condition*", and at an enhanced rate if it is "*severely limited*" (sections 78 and 79). The person must also meet a "required period condition": broadly, the limitation must be likely to have existed throughout the previous three months and to continue throughout the next nine (section 81(1)). These questions are decided on an assessment under regulations (section 80). The conditions of entitlement concern, in the main, the person's condition, residence and age. None concerns their income or savings, or whether they work.

Migration from legacy benefits to UC

25. Section 36 WRA gives effect to Schedule 6, which provides for the replacement of legacy benefits by UC. Since December 2018, UC has been available throughout the United Kingdom to people who make a new claim, to people who must claim because their circumstances change (known as "natural migration"), and to people who choose to move (known as "voluntary migration"). The remaining claimants of legacy benefits are moved by the DWP, which tells them that they must claim UC to continue to receive support (known as "managed migration").

26. In managed migration, the DWP sends a "migration notice". It tells the person that their legacy benefits will end, and that they must claim UC by a deadline at least three months later, which may be extended for good reason. Entitlement to the legacy benefits ends when the person claims UC or, if they do not claim, on the day before the deadline. Income-related ESA continues to be paid for two weeks after entitlement ends.

27. A person who moves by managed migration may receive transitional protection. Part 4 of the Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230) ("the Transitional Regulations") deals with managed migration. Regulation 52(1) provides that a "*transitional element is to be included in the calculation of an award*" where the total amount of the person's legacy benefits ("the total legacy amount") is greater than the amount of UC calculated under regulation 54 ("the indicative UC amount"). In other words, the person receives a top-up so that they do not lose out in cash terms upon making the move from one system to the other. The top-up reduces over time as other amounts in the award increase, and may stop if the household's circumstances change.

28. Regulation 19 of the Transitional Regulations applies where a person who was entitled to "old style ESA" is awarded UC. It applies only if it had already been determined that the person had limited capability for work or for work-related activity (regulation 19(1)). Where it had been determined that they had limited capability for work-related activity, they are "*to be treated as having limited capability for work and work-related activity*" for UC purposes (regulation 19(4)(b)). Unless the ESA assessment phase applied and had not ended, the waiting period in regulation 28 of the UC Regulations does not apply, and the LCWRA element is included "*with effect from the beginning of the first assessment*

period" (regulation 19(5)). The Secretary of State may make a fresh determination at any time (regulation 19(7)). In short, and subject to that exception, a person in the support group of ESA who moves to UC receives the LCWRA element from the start of the award, without first being assessed again.

29. The move to UC has taken many years. Section 1 WRA, which creates UC, came into force for specified purposes on 29 April 2013. Managed migration on a full scale began in April 2023. The timetable for completing the move has been revised several times. The managed migration of about 800,000 claimants of income-related ESA had initially been deferred to 2028/29, but was brought forward: the DWP began to send them migration notices in September 2024. The DWP's stated aim, in March 2025, was to send migration notices to all by September 2025 and to close all legacy benefits by the end of March 2026.

30. In any event, nothing in this claim turns on the pace of that change. Its relevance is this. On the dates of both decisions, some people whose capability for work had been assessed in the same way were receiving income-related ESA, while others had moved to UC and were receiving the LCWRA element. As I explain below, the first set of issues for determination in this claim involves a comparison of those two groups.

31. For completeness, I should say that further changes to UC were made by the Universal Credit Act 2025 ("UCA"). This received Royal Assent on 3 September 2025. Many changes did not take effect until 6 April 2026. One of these is section 2 UCA, which provides that, for assessment periods beginning on or after 6 April 2026, most people found to have LCWRA from that date receive a lower LCWRA element of £217.26 a month. Three groups keep the higher amount: a "pre-2026 claimant", a claimant who meets the "severe conditions criteria", and a claimant who is terminally ill (section 2(1) and (3)). Section 1 UCA requires the standard allowance for the tax years 2026/27 to 2029/30 to rise by inflation and by a further percentage, so that by 2029/30 it is 4.8% higher than inflation alone would have made it (section 1(1), (2) and (4)). Sections 3 and 4 UCA freeze the LCWRA and LCW elements over the same period, while requiring that, for the protected groups, the standard allowance and the LCWRA element together rise at least in line with inflation. Section 5 makes corresponding provision for income-related ESA. In its Green Paper of March 2025, the Government announced plans to abolish the work capability assessment from 2028/29, and to link the additional amount for health in UC to the daily living component of PIP.

Council tax reduction schemes

32. The third area for background and context concerns council tax and the schemes in place by which it may be reduced.

33. Council tax is payable on homes (in the legislation, "dwellings") that are not exempt. The person liable is usually the resident. The amount depends on the valuation band of the home and on the amounts set by the authorities entitled to raise council tax in the area. Discounts apply in some cases: a person who lives alone, for example, receives a discount of 25%. The local authority, known for these purposes as the "billing authority", sends the bills and collects the tax. Other authorities, such as county councils, police and fire authorities and parishes, set their own amounts but rely on the billing authority to collect them. Liability is calculated day by day.

34. Until 1 April 2013, help with council tax for people on low incomes came from council tax benefit ("CTB"). CTB was a national benefit, set by central government. Local authorities applied it to residents in their area, usually by reducing their bills, and central government reimbursed them pound for pound for what they gave. CTB used the same kind of means test as other income-related benefits. It compared a person's income with an "applicable amount". In its response of December 2011 to a consultation process concerning changes to council tax support ("the Government's response"), the Government included an annex entitled "How council tax benefit works". That annex described the applicable amount as "*the amount that the Government says that the claimant and their family need to live on each week*" (Annex C, para 7). The applicable amount was made up of personal allowances and, where the person's circumstances called for them, premiums, for example for disability or caring responsibilities (Annex C, paras 5-6). A person whose income was at or below the applicable amount received maximum CTB: this meant relief from the whole of their council tax, less any deduction for other adults living with them. Above that level, CTB was reduced by 20 pence for every pound of income over the applicable amount.

35. People who received certain income-related benefits were entitled to maximum CTB without a further means test. They were said to be "passported": "*Claimants receiving Income Support, Job Seekers Allowance (income based) or Employment Support Allowance (income related) are entitled to receive full council tax benefit subject to any non-dependant deductions which may apply*" (Annex C, para 2). The parties provided a helpful House of Commons Library Note from 2013 ("2013 Library note"), which noted at p 6 that in May 2012, about two thirds of the 5.9 million people receiving CTB were passported, about 0.5 million of them because they received ESA. Some benefits were disregarded in full as income, including disability living allowance and attendance allowance (Annex C, para 12).

36. In its Spending Review of 2010, the Government announced that support for council tax would be localised from 2013/14, and that spending on it would be reduced by 10% (Localising Support for Council Tax in England: Consultation, August 2011 ("the 2011 consultation"), para 1.1). Section 33(1)(e) WRA abolished CTB with effect from 1 April 2013. In its place, section 13A of the Local Government Finance Act 1992 ("LGFA") required every billing authority in England to make its own CTR scheme. Section 13A was substituted with effect from 31 October 2012 by section 10(1) of the Local Government Finance Act 2012.

37. The 2011 consultation gave five reasons for the change (para 2.1). In abridged form, these reasons were: it would give local authorities a greater stake in the economic future of their areas; it would let them reform support for claimants of working age, and bring it closer to the system of council tax discounts and exemptions; it would reinforce local control over council tax; it would give them a significant degree of control over how the reduction of 10% was achieved, as part of the Government's programme of deficit reduction; and it would give them a financial stake in providing support and thereby stronger incentives to help people back into work, in support of the incentives that UC was intended to create.

38. Central government's funding for the new schemes in 2013/14 was fixed at about 90% of what it would otherwise have paid for CTB (*R (Moseley) v Haringey LBC* [2014]

UKSC 56, [2014] 1 WLR 3947 at [6]). The Government's impact assessment recognised that, if more people became eligible for support, authorities would bear more of the risk of a shortfall in funds (2013 Library note, pp 10-11). The cost of any further reduction under the discretionary power in section 13A(1)(c) LGFA, which I describe below, is borne by the billing authority.

39. The Government decided that pensioners should be protected. Their support was to be set by national rules, broadly as under CTB, so that they would neither lose nor gain from the reform (the Government's response, paras 2.3-2.5). Regulation 14(1) of the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (SI 2012/2885) ("the Requirements Regulations") provides that "*[a] scheme must make provision in respect of pensioners*". Schedules 1 to 6 to the Requirements Regulations prescribe that provision (regulation 14(2)). But the Government did not prescribe support for any other group. Local authorities were therefore free to design schemes for claimants of working age as they wished (see the Government's response to the 2011 consultation at para 3.9). The Government nonetheless expected them to consider support for other vulnerable groups, and reminded them of their existing duties to such groups, including the public sector equality duty ("the PSED") in section 149 of the Equality Act 2010 ("the EqA") (the 2011 consultation, para 5.2; the Government's response, paras 2.8-2.12).

40. The scheme that each authority must make is governed by section 13A LGFA. This provides, insofar as material:

> **(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13)—**
>
> **(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority's council tax reduction scheme (see subsection (2));**
> **...**
> **(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.**
>
> **(2) Each billing authority in England must make a scheme specifying the reductions which are to apply to amounts of council tax payable, in respect of dwellings situated in its area, by—**
>
> **(a) persons whom the authority considers to be in financial need, or**
> **(b) persons in classes consisting of persons whom the authority considers to be, in general, in financial need.**

The power in section 13A(1)(c) includes power to reduce an amount to nil, and may be exercised in particular cases or by determining a class of case (section 13A(6) and (7)).

41. Schedule 1A to the LGFA governs the content and making of schemes. A scheme must state the classes of person entitled to a reduction, and the reduction for each class. Different classes may have different reductions (paragraph 2(1) and (3)). The classes may be determined by reference, in particular, to the income and capital of the person liable and of others living in the home, the number of their dependants, and whether an

application has been made (paragraph 2(2)). A reduction may be a percentage discount, a discount of a set or calculated amount, a lower amount of tax to be paid, or the whole of the tax (paragraph 2(4)). A scheme must state how to apply for a reduction, how to appeal, and how to apply for a further reduction under section 13A(1)(c) (paragraph 2(5) to (7)). The Secretary of State is empowered to prescribe further requirements by regulations (paragraph 2(8) and (9)).

42. Before making a scheme, the authority must consult any major precepting authority, publish a draft, and consult others likely to have an interest in its operation (paragraph 3(1)). It must then publish the scheme (paragraph 3(3)). For each financial year, the authority must consider whether to revise or replace its scheme, and any revision or replacement must be made by 11 March in the preceding financial year (paragraph 5(1) and (2)). A revision that reduces or removes a reduction to which a class of persons is entitled must include such transitional provision as the authority thinks fit (paragraph 5(4)). In exercising any function relating to schemes, the authority must have regard to guidance issued by the Secretary of State (paragraph 8).

43. The power to make a scheme is tied to financial need. In *R (Winder) v Sandwell MBC* [2014] EWHC 2617 (Admin), [2015] PTSR 34, Hickinbottom J held that, under section 13A(2)(b) LGFA, the class itself must be defined by reference to financial need. An authority has "*considerable discretion*" as to the criteria by which it identifies financial need, but criteria "*which do not identify those who are at least more likely to be in financial need fall outside the powers granted to an authority by Parliament*" (at [53]). He described the purpose of section 13A LGFA in these terms (at [58]):

> **The statutory purpose behind the provisions of section 13A of the 1992 Act (and, in particular, CTR Schemes that are required under those provisions) is to relieve those in financial need of the full burden of council tax. The purpose of section 13A(2) is to identify those who are in such need.**

In that case, a residence requirement fell outside the statutory words, and was in any event imposed for an unauthorised purpose (at [53]-[55] and [58]).

44. The position in Wales is different: CTR schemes are made there under regulations made by the Welsh Ministers (section 13A(1)(b), (4) and (9)). Scotland also has its own arrangements. This judgment is concerned only with England.

45. Paragraph 4 of Schedule 1A required the Secretary of State to prescribe a "default scheme", which would take effect in the area of any billing authority that had not made its own scheme by 31 January 2013 (paragraph 4(1) and (6)). The default scheme is set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886) ("the Default Regulations") (regulation 2). It largely recreated the rules of CTB; consequently, where it applied, relief continued at the same level as under CTB. Like CTB, it compares a person's income with their applicable amount. It sets out classes of pensioners and of people who are not pensioners, according to whether their income is below or above that amount (paragraphs 13 to 18). Where income exceeds the applicable amount, the reduction is tapered away by 2 6/7 per cent of the weekly excess for each day: in effect, by 20 pence for every pound of excess income (paragraphs 14(f) and 17(f)).

46. The default scheme was adjusted to take account of UC. For an applicant who is not a pensioner and has an award of UC, the applicable amount is the "*calculation or estimate of the maximum amount*" of their UC, as calculated by the Secretary of State under section 8(2) WRA, converted to a weekly figure (paragraph 28(1), (3) and (4)). Their income is the Secretary of State's calculation or estimate of their income for UC, which may be adjusted only for limited purposes, one of which is to take into account the amount of the UC award itself (paragraph 37(1) to (4)). The Government's default scheme note (authorities bundle, tab 39) explains that using the maximum award as the applicable amount "*ensures consistency of treatment between the amount that Universal Credit determines a person needs to live on and the amount that council tax reduction schemes assume a person needs to live on*" (para 8). As a result, housing and childcare costs are taken into account in both income and the applicable amount, and cancel each other out (para 9). The maximum amount includes the other elements of UC too, among them the LCWRA element (section 8(2)(d) WRA; the default scheme note, Annex A).

47. Many authorities have since departed from the default scheme. The House of Commons Library reported that, by 2018/19, only 36 of the 326 authorities in England still gave the levels of support available under CTB. The most common change was to introduce a "minimum payment", which requires everyone to pay at least some council tax, whatever their income. Apart from pensioners, the groups most commonly protected were veterans and disabled people: 88% of authorities protected disabled people in 2018/19 (House of Commons Library Briefing Paper no 6672, August 2020, p 3). Some authorities use income bands. A scheme of that kind gives a percentage reduction according to the band into which the person's income falls. In 2020/21, 63 of 314 authorities ran such schemes, up from 33 in the previous year (Briefing Paper no 6672, p 17). The defendant's scheme is of that kind, as I explain below.

48. A person applies to the billing authority for a reduction. The authority must send a decision letter, separate from the demand notice, which explains how to appeal (paragraph 2(5) and (6) of Schedule 1A; Department for Communities and Local Government, Localising council tax support: administrative matters: guidance note, March 2013 ("2013 guidance note"), paras 10 and 21). A person aggrieved by a decision that affects their entitlement to a reduction, or its amount, may appeal under section 16 LGFA. They must first write to the authority setting out their grounds. If the authority does not resolve the grievance to their satisfaction, or does not respond within two months, they may appeal to the Valuation Tribunal (2013 guidance note, paras 27-28).

The facts

49. I explained above that, since the abolition of CTB, every billing authority in England has had to make its own CTR scheme, and that, save in respect of pensioners, it has a wide discretion as to the form that the scheme takes. In this part, I describe the scheme that the defendant made, how that scheme came to apply to the claimant, and, very shortly, how this claim came to be issued.

50. This is a claim for judicial review. The evidence is in writing, and no witness was cross-examined. The court does not ordinarily resolve disputes of fact in such a claim, and I have not tried to do so in this part. Much of what follows is either not in dispute or shown by documents written at the time. Where a matter rests on the account of one witness, I

say so. Where the witnesses differ, I record the difference; I return to it later only so far as an issue requires.

51. There are five witness statements. The claimant made two, dated 25 November 2025 (CHB86-96) and 24 February 2026 (CHB97-105). His solicitor, Ms Carolin Ott, made one dated 25 November 2025 (CHB106-113), which deals with the pre-action correspondence and exhibits documents that the defendant has published. For the defendant, Mr Warren made a statement dated 10 February 2026 (CHB131-148). He has worked in the revenues and benefits service of the defendant, and before that of a predecessor council, since November 2005. He has been the defendant's Head of Revenue and Benefits since July 2024, initially on an interim basis (SW, para 1). Caroline Ellis, a councillor of the defendant since May 2022, ("Cllr Ellis") made a statement for the claimant dated 1 March 2026 (CHB114-130). I refer to the statements as M1, M2, CO, SW and CE, with their paragraph numbers.

The defendant's scheme

52. The defendant came into being in 2023 as a single unitary authority. It replaced a county council and four district councils, each of which had been a billing authority with its own CTR scheme (SW, paras 7-8). The four schemes differed markedly. Two were means tested in the traditional way. The other two used income bands. The maximum support available to people of working age was 80% in two districts, 85% in the third and 100% in the fourth (report to the Executive of 11 July 2022 (SHB14-33), section 1, Table 1). In three of the four districts, therefore, every applicant of working age had to pay something.

53. The county council, acting in anticipation of reorganisation, had to design a single scheme to take effect from 1 April 2023. It took advice from a consultancy that specialised in such schemes, whose "options report" it received on 14 March 2022 (SHB119 onwards). The report observed that many authorities had moved away from traditional means tested schemes, primarily because UC brings frequent changes in entitlement and higher costs of administration (paras 39-42). It also recorded a strong view in many authorities that support for the poorest households should increase, because amounts demanded from them had often proved uncollectable (paras 52-53). Mr Warren says that the report was considered at the time (SW, para 42). Cllr Ellis does not recall seeing it, and cannot find it among the papers that were before councillors (CE, para 17). It is of little relevance either way.

54. On 11 July 2022, the Executive received a report recommending consultation on a banded scheme. The approach was designed, it said, to "*[m]aximise the level of support available to the poorest households*", to minimise the problems that came with the full roll-out of UC, and to minimise the cost of administering the frequent changes in awards of UC (section 1, SHB18). The highest band would give a discount of 100%, and every applicant receiving a "passported benefit" (income support, JSA or income-related ESA) would receive the maximum discount. Disability living allowance and PIP would continue to be disregarded as income. A further £30 a week would be disregarded where an applicant, partner or child was disabled. Carer's allowance and the support component of ESA would be disregarded, as would "*[a]n amount in respect of the housing element*" of UC. Data about an award of UC received from the DWP would be treated as a claim (SHB19-20). Recognising that any change of scheme produces "*winners and losers*", the report

proposed an exceptional hardship scheme ("EH scheme") for those who would lose out (SHB21).

55. Under the heading "Equalities Implications", the same report said that the most vulnerable passported claimants, including those on income-related ESA, would all receive additional support, and that anyone who received less support could look to the EH scheme (section 8, SHB25). An equality impact assessment dated 23 June 2022 was appended to the report. It assessed the effect of the proposals on disabled people as neutral, saying (Appendix A, SHB29):

> **Proposed changes recognise disabled people have limited ability to work and have higher disability related living expenses. The scheme will include a £30 income disregard where the qualifying conditions for the disability premium is met.**

56. Consultation followed. A report to the Scrutiny Committee in September 2022 stated that there was "*no evidence that any protected group is adversely affected by the proposed change*" (SHB41-52, para 8.3). The final proposals went to the full council of the county council on 23 November 2022 as Paper B (SHB99-114). Paper B repeated the three aims (para 3.1, SHB103). Its authors said that they had "*quite consciously built in proposals to protect the most financially vulnerable*", by paying 100% to those whose income fell within Band 1 or who received a passported benefit (para 3.5). The groups expected to lose out were people with savings over £6,000, larger families, and those with high childcare costs; for them, there would be the EH scheme (paras 3.9-3.12). On "Equalities Implications", Paper B said that the disregards of £30 a week, of PIP and of disability living allowance had been built in "*to recognise the additional costs for households containing people with a disability*" (para 10.2, SHB112). The full council adopted the scheme that day (SHB116).

57. Notably, none of the reports put before members in 2022 mentions the LCWRA element of UC, or what would happen to a person who moved from income-related ESA to UC. Cllr Ellis, who attended the meeting of 23 November 2022, recalls no discussion of either matter (CE, paras 7-8).

58. During 2023, the defendant reviewed its new scheme. In May 2023, Citizens Advice offices in the area raised several concerns with the defendant's officers. Presciently, one such concern was that the scheme disregarded the support component of ESA, but counted in full the LCWRA element of UC. Mr Warren, then one of the defendant's benefits leads, asked the consultant for advice. The consultant said that some authorities disregarded the LCWRA element and others did not, and that UC and ESA were not "like for like". A disregard would be simple to introduce, but would add to the cost of the scheme, because the element was worth a substantial sum. Where the element was not disregarded, help under an EH scheme should be available. Mr Warren replied to Citizens Advice on similar lines, relying in part on the EH scheme (SW, para 43; correspondence at SHB942-952).

59. A briefing note for an informal meeting of the Executive on 14 August 2023 recorded the request from Citizens Advice and the officers' view, after specialist advice, that the two were "*not like-for-like benefits*". It added that this reflected the approach "*previously taken by the legacy districts and by the majority of councils currently running income banded schemes*" (as quoted at CE, para 15). Cllr Ellis does not recall any of these

materials being shown to the councillor body (CE, paras 11-16). When the scheme for 2024/25 went to the full council, the report described the scheme as working well. It noted that a request from Citizens Advice to extend one element of the disregards had been considered, and advice taken, but that no change was recommended (SW, para 43). On 20 December 2023, the full council adopted the scheme for 2024/25, raised the income bands by 6.7%, and resolved to carry out a full review of the scheme during 2024/25 (minutes, SHB353-403).

60. That review took place against what the defendant had declared in 2023 to be a financial emergency (report to the full council for its meeting of 18 December 2024 ("the December 2024 report"), para 4; within CHB149-202). On 15 July 2024, the Executive agreed to consult on four changes (para 6). The consultation ran from 24 July to 1 October 2024. Its web page explained that the defendant faced a projected budget gap of £103.9 million for 2025/26, and that the four proposals, if all adopted, could save £6.4 million a year. It also said that the defendant would continue its EH scheme, and continue to disregard "*the first £30 a week of income where someone in the home is disabled*" (as quoted at CE, para 20). There were 1,720 responses through the online portal, with some letters, emails and comments on social media. Of those who answered the survey, 62% were receiving CTR (the December 2024 report, paras 36 and 38, CHB159-160). The Scrutiny Committee for Corporate and Resources did not support a reduction in the discount bands, but supported the other proposals (para 33, CHB159).

61. The decision to adopt the scheme for 2025/26 was taken by the full council on 18 December 2024 (CHB203-209). This is the first decision under challenge. The full council acted on the December 2024 report, which the Executive had endorsed on 2 December 2024. Mr Warren was its author (CHB150). It recommended these changes: the discounts in Bands 2, 3 and 4 would fall to 50%, 25% and 10%; a deduction of £10 a week would be made for each non-dependant; support would be limited to the charge for a Band D property; backdating would be limited to three months; and the income bands would rise by 1.7%, in line with benefits. The discounts for care leavers, foster carers and special guardians would move into the EH scheme. Band 1 would stay at 100%. The consultation had asked whether it should fall to 75%, but that proposal was dropped "*to protect the most vulnerable taxpayers*" (para 12). The changes were expected to reduce the cost of the scheme for people of working age by £5.2 million a year, of which £3.9 million would fall to the defendant. About 69% of the 18,314 claimants of working age could be affected, paying on average £415.48 a year more (paras 12, 39 and 40).

62. The report summarised the main elements of the scheme (para 10, CHB152-154). Among the disregards, it listed the further £30 a week "*[w]here any applicant, their partner or dependant child(ren) are disabled*"; disability living allowance and PIP; carer's allowance and "*the Support Component of Employment and Support Allowance*"; and "*[a]n amount of the housing element, within Universal Credit*". It noted that about half of all claimants received UC. On "Equalities Implications", it said that, although precise data was not held, a large number of claimants received disability benefits. There would be cases where disabled people received less CTR, and the impact on them was likely to be proportionately greater because of their higher living costs (para 54, CHB164). Mitigation would rely largely on "*greater use of the EH scheme*" (para 55, CHB165). The report also recorded that a response from Citizens Advice had arrived after the consultation closed, and had been placed in Appendix 3. That response, the report said,

addressed the paper put to the Executive on 15 July 2024, rather than the questions on which the public was consulted (para 37, CHB160).

63. The December 2024 report does not mention the LCWRA element, people moving from income-related ESA to UC, or any treatment of UC other than the disregard of the housing costs element.

64. The appendices to the December 2024 report included an equality impact assessment (Appendix 1) and the consultation responses (Appendix 3). Cllr Ellis describes the assessment as concerned with the four proposed changes, and as recording that 45% of claimants of working age (8,194) were disabled or lived with someone who was (CE, para 25). She describes the response from Citizens Advice as pointing specifically to people being penalised on migrating to UC with the LCWRA element (CE, para 24). Mr Warren, too, says that local Citizens Advice offices raised the present issue in their response, which went before the Scrutiny Committee, the Executive and the full council (SW, para 45). It is therefore common ground that the point was in the papers before members.

65. The minutes of the meeting of 18 December 2024 record that members raised concerns about claimants in deprived areas, about reliance on other funds to soften the changes, and about claimants with disabilities, who "*would feel the impacts of the scheme the most*" (minute 54; CHB206-209). An amendment, accepted by the proposer and seconder, committed the defendant, if funding allowed, to increase support through the EH scheme for those affected "*by those changes*", and to signpost further support in council tax bills and by contacting every affected household. On a recorded vote of 56 to 32, with one abstention, the full council approved the increase in the income bands, the scheme and the EH scheme for 2025/26, and the amended commitment. The minutes otherwise contain no reference to UC, to the LCWRA element or to migration.

66. Cllr Ellis attended the meeting. Her evidence is that the debate concentrated on the four proposed changes, and that nobody mentioned people migrating from income-related ESA to UC. The point made by Citizens Advice was not picked up, so that "*we all 'missed a trick'*". She says that she did not appreciate, and does not believe that other members appreciated, the effect of the scheme on disabled people receiving UC (CE, paras 5-6, 22-24, 27-28 and 30). The defendant's case is that, in taking all its relevant decisions, it considered equality issues generally and the position of disabled people in particular (Detailed Grounds of Resistance, para 22, CHB73), and that the point raised by Citizens Advice was before members, who attached considerable weight to the EH scheme (SW, para 45). What members understood on 18 December 2024 is therefore in dispute. I return to it, so far as it matters, when I come to the PSED.

67. The CTR scheme for 2025/26 is published as a single document (CHB210-292). For people of working age, it creates one class, Class D, which corresponds to para 16 of the default scheme accompanying the Default Regulations. A member of that class is entitled to a reduction if, among other conditions, their capital does not exceed £6,000 and their weekly income falls within the ranges in Schedule 1 (section 1.7, CHB216). Schedule 1 sets out the bands (para 1, CHB269). For a single person with no children, they are as follows:

Band	**Discount**	**Weekly income**

1	100%	£0 to £104.00
2	50%	£104.01 to £169.00
3	25%	£169.01 to £207.00
4	10%	£207.01 to £256.00
None	0%	over £256.00

The thresholds are higher for couples and for households with children, though no more than two children are counted (Schedule 1, paras 1 and 4). A deduction of £10 a week is made for each non-dependant aged 18 or over (paras 8 and 9, CHB269).

68. Two provisions protect people who receive the legacy benefits that were formerly passported. Schedule 1, para 7 provides that, where an applicant or partner receives income support, income-related ESA or JSA, "*discount will be awarded at Band 1 level*" (CHB269). Schedule 2, which lists the sums disregarded in calculating income other than earnings, provides at para 6 (CHB272):

> **6. Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance the whole of his income.**

Among the other disregards are PIP and disability living allowance (para 9, CHB272), carer's allowance, and "*[t]he support component of Employment and Support Allowance*" (paras 67 and 68, CHB281). For an applicant who receives UC, Schedule 2 disregards one element only (para 39, CHB278):

> **39. An amount of Universal Credit determined by the authority as the housing element.**

Every other element of UC therefore counts as income, including the standard allowance, the LCWRA element and the transitional element. That is common ground (SW, paras 12-13 and 20).

69. Schedule 2, para 72 then provides (CHB281, *sic*):

> **72. Where, but for this scheme, the applicant would be entitled to either a Disability Premium, Enhanced Disability Premium, Severe Disability Premium or a Disabled Child Premium, a further disregard of £30 shall be a made from their income.**

The parties disagree about whom this provision reaches, which is a question of construction for later. Mr Warren says that the defendant intended it to apply to people in the claimant's position, and that it was applied to the claimant, though by adding £30 to each band threshold rather than by deducting £30 from his income, because of a limitation in the defendant's software (SW, paras 28-30). The two methods have the same effect, and it is agreed that the disregard made no difference to the claimant's band (SW, para 31).

70. Where an applicant has an award of UC, the defendant may use the DWP's calculation of the applicant's income, converting a monthly amount to a weekly one by multiplying it by 12 and dividing by 52 (section 12, CHB232). A notification of an award of UC from

the DWP may be treated as a claim (section 52.2(d), CHB254). A change of circumstances takes effect from the date on which it occurs (section 50.1, CHB253). A notice of decision must tell the person affected how to appeal (section 60.4, CHB260). The appeal lies first to the defendant and then to the Valuation Tribunal (section 73, CHB264).

71. The scheme provides that the defendant may give additional help under its EH scheme, and that such payments are deemed to be made under section 13A(1)(a) LGFA (section 75, CHB265). The EH scheme for 2025/26 (CHB293-298) says the same (para 1.2, CHB294). The claimant pleaded it as the defendant's policy for exercising the discretion in section 13A(1)(c) (Statement of Facts and Grounds, para 36, CHB31). Nothing in this part turns on that difference. The EH scheme aims to support people who are struggling to pay their council tax "*by providing short term financial assistance*" (para 2.1). It does not define exceptional hardship, but refers to the dictionary meanings of "exceptional" ("*unusual, extraordinary, not typical*") and "hardship" (para 3.8). Each application is decided on its own merits, by reference to a list of factors that is not exhaustive (paras 3.8, 4.1 and 4.2). The factors include the applicant's income and expenditure, the steps taken to reduce spending, their medical circumstances, and "*any negative impact on the applicant following a change to the CTR scheme made by the Council that has resulted in a significant loss of CTR*" (para 4.1). An award gives no assurance of a further award, and applicants are expected to try to increase their income or reduce their expenditure (para 4.3). An application must be made in writing, on the defendant's form, with evidence of income and expenditure (paras 5.1 and 5.2). The defendant aims to decide applications within a month, and ordinarily suspends recovery in the meantime (para 6.7). A dissatisfied applicant may ask for a review, and "*certain appeals*" may be made to the Valuation Tribunal (paras 7.1 and 7.5).

72. Mr Warren explains and defends the scheme. In summary, he says this. UC does not simply replace the legacy benefits like for like. Unlike them, it is designed to work alongside earnings, so that its receipt cannot sensibly be a passport to a reduction of 100%. A scheme must strike a fair balance between applicants and other council taxpayers within a limited budget, and any further disregard would require savings elsewhere. The scheme recognises the costs of disability through the disregards of PIP and of £30 a week. The EH scheme exists because no set of rules can foresee every case (SW, paras 14-27 and 32-33). He accepts that some people receiving the LCWRA element may face genuine difficulty with their council tax, and that migration may cause an unexpected increase in liability (para 32).

73. Much of this evidence explains, after the event, decisions taken in 2022, 2023 and 2024. Some of it Mr Warren gives from his own knowledge: he took part in the correspondence of 2023, and he wrote the December 2024 report. In some respects, however, it is not supported by the documents written at the time, and in one respect it is not accurate. I note these points now, because they affect the weight that his evidence can bear:

    73.1 He says that the scheme does not disregard the LCWRA element because, in 2022, members wanted to maximise support for those on the lowest incomes, and that officers would probably have recommended reducing Band 1 to 75% had the element been disregarded (paras 24 and 42). The reports of 2022 confirm the aim of maximising support for the poorest households. But they do not mention the LCWRA element, still less a choice between disregarding it and keeping Band 1

at 100%. Mr Warren was not head of the service in 2022, and his evidence about what officers would have recommended is, on its own terms, conjecture ("*I imagine*").

73.2 He says that the defendant's treatment of UC was the same as that of all four district councils (paras 36 and 42). At the hearing, counsel for the defendant accepted that this was not accurate. The report of 11 July 2022 shows that two of those districts ran schemes that were means tested (SHB16).

73.3 He says that the EH scheme has always been significant in the defendant's thinking about the design of the scheme (para 33). The documents of 2022 and 2024 support reliance on the EH scheme to soften losses caused by changes to the scheme. None of the documents written before 2025 to which I was taken links the EH scheme to the treatment of UC or to migration, save for the officers' correspondence of 2023, which on Cllr Ellis's evidence was not shown to members.

73.4 He says that, in the run-up to decisions on the 2025/26 scheme "*in November and December 2025*", officers estimated the annual cost of disregarding the LCWRA element in all cases at about £4 million, because a councillor had raised the issue (para 41). The decisions on the 2025/26 scheme were taken in 2024, and Cllr Ellis's evidence places her raising of the issue between October and December 2025 (CE, paras 39-58). No such estimate appears in the December 2024 report. If the modelling was done in 2025, it post-dates both decisions under challenge. I make no finding about when it was done.

73.5 He says that, in 2024/25, the defendant made 931 awards under the EH scheme, costing a little under £850,000, and refused 371 applications (para 39). The December 2024 report recorded spending of £0.148 million in 2024/25 up to 31 October 2024 (para 41). A later report recorded spending of £116,566, on 264 awards from 474 applications, in the first half of 2024/25 (report to the full council for its meeting of 17 December 2025 ("the December 2025 report"), para 22; within SHB804-910). The figures may relate to different periods, but I have not been able to reconcile them.

74. Cllr Ellis's evidence is of a different kind. She is not a decision-maker explaining the reasons for a decision. She is one member among many, recalling meetings that she attended and events that followed. Her account of the meetings of 2022, 2023 and 2024 is consistent with the minutes. Her evidence about what other members understood, and about how they would have voted had they understood more (CE, paras 27, 28 and 64), is opinion. Much of her statement concerns events after both decisions, to which I now turn.

75. In February 2025, the defendant wrote to every recipient of CTR of working age about the changes for 2025/26 (SHB953-954; SW, para 38; the December 2025 report, para 13, SHB808). As Cllr Ellis quotes it, the letter told recipients that they would have to pay more unless, among other things, they already received the 100% discount and their income stayed the same (CE, para 32). It directed them to the defendant's website, where they would find advice on how to claim extra help through the EH scheme (SW, para 38). It said nothing about migration to UC (CE, para 33). Mr Warren infers that the letter

should have reached the claimant (SW, para 38). The claimant does not recall receiving any correspondence about the changes (M1, para 32). I make no finding on the point.

76. During 2025, the effect of migration on people who had been passported became apparent. Citizens Advice raised it with officers early in the year (the December 2025 report, para 15, SHB808-809). A report to the Scrutiny Committee on 30 July 2025 explained the effect of the Government's changes on people moving from income-related ESA to UC; the committee made no recommendation (the December 2025 report, para 14; CE, paras 34-35). A briefing by Citizens Advice dated August 2025 (SHB1077-1084) estimated that 4,481 residents receiving income-related ESA would have received migration notices by that month (M1, para 37). The briefing reached all councillors on 1 October 2025. That was when Cllr Ellis first appreciated the effect of the scheme (CE, paras 39-40).

77. A report prepared for the Executive on 3 December 2025 accepted that there had been an indirect impact following the move from ESA to UC (SHB776). A separate note recorded that, in a sample of 125 such cases, 52% now received a discount of 50% and a quarter a discount of 10% (SHB795). Seven of the 125 had applied to the EH scheme, and four had received an award (CE, para 59). Mr Warren's impression was that applications to the EH scheme arising from migration were not numerous, although the defendant's statistics could not identify them (SW, para 36). Spending under the EH scheme in the first half of 2025/26 rose to £350,613, on 623 awards from 839 applications, and was projected to reach about £0.701 million for the year, against £0.8 million allocated from the Household Support Fund (the December 2025 report, paras 21-24, SHB809-810). The parties do not agree about the scale of the effect of migration, or about how far the EH scheme has met it. Those matters will be relevant to justification and rationality.

78. On 17 December 2025, the full council adopted the scheme for 2026/27. The only change to the scheme itself was to raise the income bands by 3.8%. The EH scheme was amended to refer expressly to people migrating to UC, and a task and finish group was to review both schemes during 2026/27 (the December 2025 report, executive summary and paras 55-57; SW, para 34). The report said (para 55, SHB819):

> **Following the introduction of the CTR scheme for 2025/26, an indirect impact has been identified through the migration of Income Related Employment and Support Allowance (ESA(IR)) recipients to Universal Credit. Whilst the level of income may not have changed, the loss of 'passported' status offered under ESA(IR) has resulted in this cohort of customer receiving a reduced level of CTR. This is as a result of having to be means-tested for the first time.**

The full council also asked officers to investigate special transitional protection, within the EH scheme for 2026/27, for disabled people of working age who had moved to UC with the LCWRA element after previously receiving a reduction of 100% (CE, para 61). These events post-date both decisions under challenge. I mention them for completeness, and because they are relevant to the issue of relief.

The claimant's experience

79. The claimant is in his fifties. He lives alone in the defendant's area, in a home that he has occupied since 1996 (M1, paras 4 and 13). He worked for many years, latterly as a self-employed video editor, but his health has prevented him from working since about 2013

(M1, para 5). He has several physical conditions, which cause him pain and limit his mobility, and mental health conditions (M1, paras 6-7). It is not necessary to describe them further. His account of them is not challenged.

80. Before he moved to UC, the claimant received PIP at the standard rate of both components, totalling £103.10 a week, and income-related ESA of £244.55 a week: £347.65 a week in all. Housing benefit of £108.08 a week was paid direct to his landlord (M1, paras 9-10). Because he received income-related ESA, the scheme placed him in Band 1. His council tax bill for 2025/26, dated 13 March 2025, showed an annual charge of £1,720.70. The single person discount of 25% reduced it to £1,290.52 (£24.75 a week), and a reduction of 100% reduced that to nil (SHB1040). He had received a full reduction for more than five years (M1, para 13).

81. On 18 June 2025, the DWP told the claimant that he was being moved to UC and must claim it by 21 July 2025 (M1, para 11). He made his claim. His income-related ESA ended on 27 July 2025, and his award of UC began on 28 July 2025. He received his first payment, including arrears, on 3 September 2025 (M1, para 11; Statement of Facts and Grounds, para 33, CHB30). The LCWRA element was included from the start, together with a transitional element. His UC, with weekly figures calculated as the scheme requires (section 12.4, CHB232), was as follows (M1, paras 9 and 11):

Amount	**Per month**	**Per week**
Standard allowance	£400.14	£92.34
Housing costs element	£468.35	£108.08
LCWRA element	£423.27	£97.68
Transitional element	£236.74	£54.63
Total UC	£1,528.50	£352.73
Less housing costs element paid to landlord	(£468.35)	(£108.08)
UC available to the claimant	£1,060.15	£244.65
PIP	£446.77	£103.10
Total available income	£1,506.92	£347.75

His available income was therefore the same, to within ten pence a week, as before. The DWP also deducted £35.01 a month for water charges and arrears, so that he actually received £1,025.14 a month in UC (M1, para 11).

82. Under the scheme, PIP and the housing costs element were disregarded. The standard allowance, the LCWRA element and the transitional element were counted in full, giving a weekly income of £244.65. That placed the claimant in Band 4, with a discount of 10% (Statement of Facts and Grounds, paras 33-34, CHB30; SW, para 20). Had the LCWRA element and the transitional element both been disregarded, his income would have been £92.34 a week, within Band 1 (Statement of Facts and Grounds, para 35, CHB30). It is not suggested that the defendant misapplied the scheme (Detailed Grounds of Resistance, para 24, CHB73; SW, para 47).

83. By a letter dated 10 September 2025, headed "Change to your benefit", the defendant told the claimant that, because of a change to his award of UC, his CTR would change from 28 July 2025. His CTR was now £2.47 a week (10%), in place of £24.75 a week

(100%) (CHB299-301; M1, para 15). A revised bill required him to pay £785.98 for 2025/26 (CHB302). That figure results from a calculation by days. For the 118 days from 1 April to 27 July 2025, his liability was reduced in full, by £417.21. For the remaining 247 days, his liability of £873.31 was reduced by 10%, to £785.98, payable in instalments of about £157 a month (M2, para 14). Over a full year, liability at the new rate would be about £1,161 (Statement of Facts and Grounds, para 5, CHB22). The letter invited him to make contact within one month if he wanted more information or thought the decision wrong, and said that he could seek advice from a solicitor. It did not mention the EH scheme (M1, paras 18 and 31; SW, para 38). This letter records the second decision under challenge.

84. I will just briefly note that, although the letter bears the date 10 September 2025, there is no evidence of when it was sent. The claimant says that he received it on 18 September 2025 (M1, paras 15 and 18; CO, para 5), and nothing in the evidence contradicts him. The defendant accepts that he did not know, until September 2025, how the move to UC might affect him under the scheme (Detailed Grounds of Resistance, para 29, CHB74). The claimant says that nobody had told him that it might affect his CTR: not the adviser who helped him with his migration, nor his landlord, which had briefed its tenants about migration, nor the DWP, nor the defendant (M1, para 17).

85. The claimant telephoned the defendant on the day the letter arrived. After some time, he spoke to a member of the revenues team, who told him that changes of this kind were common and that a form to apply for extra help would be sent (M1, para 18). He consulted solicitors on 22 September 2025, and was then unwell for about a fortnight in early October (M1, para 20). The form, which covered discretionary housing payments and EH awards, arrived on 7 October 2025 (M1, para 21). He applied online on 20 October 2025, providing details of his income and expenditure, bank statements and medical evidence. He found the process hard, time-consuming and intrusive (M1, paras 27-28; M2, para 27). When he telephoned on 10 November 2025, he was told that there was a backlog (M1, para 30). These matters rest on his own account, but nothing in the defendant's evidence contradicts it.

86. On 16 December 2025, a benefits specialist employed by the defendant refused the application (SHB989-990). He was not satisfied that the claimant was suffering severe financial hardship, principally because the claimant's own figures showed his monthly income exceeding his expenditure by £350.82, and also because he considered that some spending could be reduced (M2, para 5; SW, para 47). The claimant asked about some of the reasons. On 31 December 2025, he received a further explanation (SHB991-992). This commented on his spending on food and on travel (M2, paras 6-7). The claimant found those comments hurtful. He says that the purchases of food were largely groceries, delivered because of his limited mobility (M2, para 9).

87. Through his solicitors, the claimant sought a review on 15 January 2026. He provided a budget, prepared with the help of a debt charity, which showed a monthly surplus of £48.48, and he explained that his application had mistakenly counted his CTR as income (M2, paras 14-17). The final decision on such a review rests with the defendant's chief financial officer, on the recommendation of Mr Warren or another senior officer (SW, para 48). On 9 February 2026, Mr Warren told the claimant that his liability for 2025/26 would be reduced by a further £668.86, leaving £117.12 to pay by the end of March 2026 (M2, para 21). The assessment notice concluded that some expenditure could reasonably

be reduced, but took account of the time that the process had taken and the short time left before the end of the year (M2, para 23; SW, para 48). The email added that EH awards are intended as short term help, on which the claimant should not rely in future (M2, para 21).

88. The claimant's finances were therefore assessed differently at the two stages, and the parties do not agree about them. The EH decisions are not challenged in this claim (SW, para 47), and I make no finding about the claimant's finances. The claimant intends to appeal to the Valuation Tribunal, and to complain about the comments made in the first decision (M2, para 30).

89. The claimant describes the effect on him of the decision of 10 September 2025 and of the process that followed: shock and anxiety; the strain of an application that he found humiliating; uncertainty about future years; and concern that paying the bill would prevent him from buying aids that his disabilities require, including an adjustable bed (M1, paras 16 and 36-43; M2, paras 10-13, 18 and 25-29). That evidence rests on his own account.

The claim

90. The claimant's solicitors sent a pre-action letter on 22 October 2025. After difficulty in identifying the address at which the defendant would accept it by email, they sent it again on 6 November 2025. At the defendant's request, they agreed not to issue proceedings before 17 November 2025. The defendant responded on 18 November 2025. Legal aid was granted on 19 November 2025, and the claim was issued on 25 November 2025 (CO, paras 5-17). On 6 January 2026, HHJ Jarman KC granted permission on all grounds, and directed that the question of delay be argued at the substantive hearing (CHB63-65).

The issues

91. The claimant puts his case by reference to three themes: discrimination, contrary to the EqA and to Article 14 of the European Convention on Human Rights ("ECHR") (ground 1); breach of the PSED (ground 2); and irrationality (ground 3) (Statement of Facts and Grounds, paras 46-84, CHB34-45). Each ground is directed at two rules in the defendant's CTR scheme for 2025/26, which govern the treatment of the claimant's income. The first is the passporting of income-related ESA: where an applicant receives it, the whole of their income is disregarded (Schedule 2, para 6, CHB272). The second is the disregard of only one element of UC, the housing costs element, so that the LCWRA element counts as income (Schedule 2, para 39, CHB278). I will call these two rules "the relevant rules". I have described both of them above.

92. The claimant's case depends on two comparisons. The first is between the claimant, who receives UC with the LCWRA element, and a person otherwise in the same position who remains on income-related ESA ("the comparison with legacy benefit"). The second is between the claimant and a person otherwise in the same position, but without his disability, who receives only the standard allowance and the housing costs element of UC ("the comparison within UC"). The two comparisons raise different questions of law. I have therefore arranged the issues in four sets: one for each comparison, a third for the PSED, and a fourth for delay and relief. I decide them in that order. It differs from the order of the grounds, but each issue is rooted in them.

The first set of issues: the comparison with legacy benefit

93. Issue 1 is whether the relevant rules discriminated against the claimant contrary to Article 14 ECHR, so that the defendant acted unlawfully under section 6(1) of the Human Rights Act 1998 ("HRA"). The ground of discrimination relied on is the claimant's status as a recipient of UC rather than legacy benefit (Statement of Facts and Grounds, paras 58-60, CHB37-38). Issue 1 raises four questions. The first is whether the claim falls within the ambit of Article 1 of Protocol 1 to the ECHR ("A1P1") or of Article 8 (issue 1(a)). The defendant proceeds on the basis that it does, but reserves its position should this case proceed further (the defendant's skeleton argument, para 62). The second is whether the type of benefit a person receives is an "*other status*" (issue 1(b)). The third is whether the claimant was treated differently, on that ground, from a person in an analogous situation (issue 1(c)). If he was, the fourth is whether the defendant has shown an objective and reasonable justification: a legitimate aim, pursued by means that are proportionate and within the margin of appreciation, or discretion, allowed to it (issue 1(d)).

94. Issue 2 arises only if the claimant fails on issue 1 at any stage. It is whether the relevant rules were nonetheless an irrational use of the power in section 13A LGFA (ground 3; Statement of Facts and Grounds, paras 82-84, CHB44-45).

The second set of issues: the comparison within UC

95. Issue 3 is whether the relevant rules discriminated against the claimant contrary to section 29 of the EqA (Statement of Facts and Grounds, paras 47-53, CHB35-36). The defendant accepts that, in making its scheme, it was exercising a public function that is not the provision of a service to the public or a section of the public, so that section 29(6) and (7)(b) applied to it (Detailed Grounds of Resistance, para 11, CHB70). The claimant relies on three provisions of the EqA; the defendant relies on a fourth.

96. The first is section 15, which concerns discrimination arising from disability (issue 3(a)). The questions are what the unfavourable treatment was; whether it was because of something arising in consequence of the claimant's disability; whether the defendant has shown that it did not know, and could not reasonably have been expected to know, of the disability (section 15(2)); and, if not, whether it has shown that the treatment was a proportionate means of achieving a legitimate aim.

97. The second is section 19, which concerns indirect discrimination (issue 3(b)). The questions are what the provision, criterion or practice ("PCP") was; whether it put disabled persons at a particular disadvantage when compared with persons who are not disabled, and put the claimant at that disadvantage; and, if so, whether the defendant has shown it to be a proportionate means of achieving a legitimate aim. Under both section 15 and section 19, a further question arises: what role cost can play in the analysis.

98. The third is section 20, which, with section 21, concerns the duty to make reasonable adjustments (issue 3(c)). The question is whether the PCP put disabled persons at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. If it did, I must decide whether the defendant took such steps as it was reasonable to have to take to avoid the disadvantage.

99. The fourth provision is Schedule 22 to the EqA, on which the defendant relies (the defendant's skeleton argument, para 51). The question is whether that argument provides a defence to any discrimination found (issue 3(d)).

100. Issue 4 concerns the claimant's case under Article 14 on the same comparison (Statement of Facts and Grounds, paras 54-57, CHB37). The defendant characterises it as a claim that the claimant should be treated more favourably than persons who are not disabled (Detailed Grounds of Resistance, para 18, CHB72). At the hearing, the defendant characterised this as a *Thlimmenos* argument, after *Thlimmenos v Greece* (2000) 31 EHRR 15. In that case, the European Court of Human Rights held that Article 14 may be breached where a State, without an objective and reasonable justification, fails to treat differently persons whose situations are significantly different (at [44]). The questions are whether the claimant's Article 14 case on this comparison adds anything to the analysis under issue 3, so that it needs to be decided, and, if it does, whether it succeeds.

101. Issue 5 arises if the claimant fails on issue 3 or issue 4, or on both. It is whether the relevant rules were nonetheless an irrational use of the power in section 13A LGFA (ground 3).

The third set of issues: the PSED

102. Issue 6 is whether the defendant complied with section 149 EqA when it adopted the scheme for 2025/26 on 18 December 2024 (ground 2; Statement of Facts and Grounds, paras 74-80, CHB42-44). There is the further complaint about the letter of 10 September 2025, which did not mention the EH scheme (para 81, CHB44). The defendant answers that this complaint concerns a distinct matter, and that relief should in any event be refused under section 31(2A) of the Senior Courts Act 1981 (Detailed Grounds of Resistance, paras 25-26, CHB73-74).

The fourth set of issues: delay and relief

103. The defendant takes no point on time so far as the claim challenges the decision of 10 September 2025. It says, however, that the claimant is well out of time to challenge the adoption of the scheme on 18 December 2024, that there is no good reason to extend time, and that relief should be refused (Detailed Grounds of Resistance, paras 27-28, CHB74; the defendant's skeleton argument, paras 70-71). Permission has been granted on all grounds, and HHJ Jarman KC directed that delay be argued at this hearing (observation (1) at CHB64). Issue 7 has two parts. The first is whether the claim is, in substance, a challenge to the decision of 10 September 2025 or to the adoption of the scheme on 18 December 2024. The second is whether the claim was brought promptly in respect of the decision challenged and, if not, whether time should be extended.

104. Issue 8 is what relief is appropriate if the claim succeeds on any issue. The claimant seeks an order quashing the decision of 10 September 2025; declarations of discrimination, irrationality and breach of the PSED; and damages for injury to feelings, with the amount to be agreed or, failing agreement, assessed in the County Court. He no longer seeks to quash the scheme itself (the claimant's skeleton argument, paras 85-88).

The relevant law

105. In this part, I set out the statutory provisions on which issues 1 to 6 turn. Each was in the same terms on 18 December 2024 and 10 September 2025. Issues 2 and 5 concern the power in section 13A LGFA, which I have already set out. I deal with the authorities on these provisions later, so far as the issues require.

The Human Rights Act 1998

106. Section 6(1) of the HRA provides that "*[i]t is unlawful for a public authority to act in a way which is incompatible with a Convention right*". The Articles of the ECHR on which the claimant relies are set out in Schedule 1 to the HRA. Article 14 provides that "*[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*".

107. The claimant says that his complaint falls within the ambit of A1P1 and of Article 8 (Statement of Facts and Grounds, para 54, CHB37). A1P1 provides:

> **Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.**
>
> **The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.**

Article 8(1) provides that "*[e]veryone has the right to respect for his private and family life, his home and his correspondence*".

The Equality Act 2010

108. Section 6(1) of the EqA provides:

> **(1) A person (P) has a disability if—**
>
> **(a) P has a physical or mental impairment, and**
> **(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.**

109. The claim under the EqA arises under Part 3, which concerns services and public functions. Section 29 provides, so far as material:

> **(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.**
>
> **(7) A duty to make reasonable adjustments applies to—**
>
> **...**

> **(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.**

As I have said, the defendant accepts that both subsections applied to it.

110. The claimant relies on three forms of discrimination. The first is discrimination arising from disability. Section 15 provides:

> **(1) A person (A) discriminates against a disabled person (B) if—**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

111. The second is indirect discrimination. Section 19 provides, so far as material:

> **(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
>
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—**
>
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
> **(c) it puts, or would put, B at that disadvantage, and**
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim.**

Disability is one of the relevant protected characteristics (section 19(3)).

112. The third is a failure to make reasonable adjustments. Section 20 provides, so far as material:

> **(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
>
> **(2) The duty comprises the following three requirements.**
>
> **(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.**

The claimant relies only on the first requirement (Statement of Facts and Grounds, para 53, CHB36; Detailed Grounds of Resistance, para 14, CHB71). Section 21 provides, so far as material:

> **(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.**
>
> **(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.**

For Part 3, the applicable Schedule is Schedule 2 (section 20(13)).

113. The defendant relies on paragraph 1 of Schedule 22, which concerns statutory authority (the defendant's skeleton argument, para 51). Paragraph 1(1) provides that "*[a] person (P) does not contravene a provision specified in the first column of the table, so far as relating to the protected characteristic specified in the second column in respect of that provision, if P does anything P must do pursuant to a requirement specified in the third column*". Against "*Disability*", the table specifies "*Parts 3 to 7 and 12*" and the requirements "*A requirement of an enactment*" and "*A relevant requirement or condition imposed by virtue of an enactment*".

114. Issue 6 concerns the PSED. Section 149 provides, so far as material:

> **(1) A public authority must, in the exercise of its functions, have due regard to the need to—**
>
> **(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
> **(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;**
> **(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.**
>
> **...**
>
> **(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—**
>
> **(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
> **(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
> **...**
>
> **(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**

Disability is one of the relevant protected characteristics (section 149(7)).

The authorities

115. I was referred to some 40 authorities. In this part I set out the principles they establish, so far as issues 1 to 6 require. I refer to an authority only where it is needed to explain my decision. I take Article 14 first, because it governs issues 1 and 4. I then take the three provisions of the EqA on which the claimant relies, Schedule 22 and the PSED. Two topics recur under Article 14 and the EqA: the role of cost, and the significance of a discretionary hardship scheme. I deal with those once, after the EqA provisions. I then address irrationality, which arises under issues 2 and 5 only if the discrimination claims fail. I end this section considering the weight to accord evidence that explains a decision after it was made.

Article 14: the approach

116. A claim under Article 14 raises four questions. Do the circumstances fall within the ambit of a Convention right? Has there been a difference in treatment between persons in an analogous situation? Is that difference on a listed ground or "other status"? Is there an objective justification for it? The questions are not rigidly compartmentalised: *In re McLaughlin* [2018] UKSC 48, [2018] 1 WLR 4250 at [15], per Lady Hale. Once the first three are answered in the claimant's favour, the burden of justification passes to the defendant: *R (TP) v Secretary of State for Work and Pensions* at [101], per Holgate J. Lord Nicholls preferred to keep the formulation of the issues "*as simple and non-technical as possible*": *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL 37, [2006] 1 AC 173 at [3]. I will try to do the same.

117. Article 14 confers no right that stands alone. It is trite law that the claim must fall within the ambit of another Article, though that Article need not be breached. The claimant relies on A1P1 and on Article 8. The denial of a contributory social security benefit falls within the ambit of A1P1 (*McLaughlin* at [16]). A positive measure which the state was not obliged to provide may fall within the ambit of Article 8. It does so if it is a modality of the exercise of the rights that Article 8 guarantees, and has more than a tenuous connection with the values that Article 8 protects. The same facts may fall within the ambit of both Articles (*McLaughlin* at [21]-[23]).

118. A CTR scheme operates differently: it reduces a liability to tax rather than paying a benefit. In *R (Winder) v Sandwell MBC*, the claimants submitted that a scheme engages A1P1 because council tax is compulsory taxation (at [86]). Hickinbottom J proceeded on that assumption. In *R (Logan) v Havering LBC* [2015] EWHC 3193 (Admin), Blake J doubted whether eligibility for council tax support is a possession for the purposes of A1P1, but made the same assumption (at [34]). Neither judge decided the point, and no appellate court has considered it. The defendant does not ask me to decide it either. It proceeds on the same assumption, while reserving its position.

119. I take the third question, status, before the second. It is the question that "*rarely troubles the European court*": *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26 at [71], per Lord Reed. A status cannot be defined solely by the difference in treatment of which complaint is made. There must be a ground for the difference that is more than a description of the difference itself. But the status need not exist independently, in the

sense of having legal or social significance for other purposes. The cases in which the Strasbourg Court has found no status are "*few and far between*" (*SC* at [69]-[71]). The words "other status" have a broad meaning. They are not confined to characteristics that are innate or inherent, and a status may be temporary: *DA and RA v United Kingdom* (app no 46692/19, ECtHR, 17 March 2026) at [85] and [95]; *TP* at [103]. The list in Article 14 nonetheless exists for a purpose and cannot be endless. In general it concentrates on personal characteristics that the person did not choose and cannot, or should not be expected to, change: *AL (Serbia) v Secretary of State for the Home Department* [2008] UKHL 42, [2008] 1 WLR 1434 at [26], per Baroness Hale.

120. Status matters for a second reason. The nature of the status is one of the factors that fix the width of the margin allowed to the state at the stage of justification (*DA and RA* at [89], [96] and [103]; *SC* at [71] and [115]). Lord Hoffmann drew the underlying distinction in *Carson* at [15]-[17]. Some grounds, such as race and sex, offend the respect due to the individual. Others require only some rational justification, and differences of treatment on those grounds are usually matters of general public interest for the elected branches of government.

121. The second question, comparability, calls for a judgment rather than the identification of an exact comparator. There may be so obvious a relevant difference between the claimant and those with whom he compares himself that their situations cannot be regarded as analogous. Where the position is less clear, the court's scrutiny may best be directed at justification (*Carson* at [3]). The Strasbourg Court has rarely found situations not to be analogous. Unless there are very obvious relevant differences, it is better to concentrate on the reasons for the difference in treatment and whether they amount to an objective and reasonable justification (*AL (Serbia)* at [25]). Close argument over the precise comparator is "*an arid exercise*" (at [28]). It is wrong, moreover, to rely on a characteristic inherent in the protected status itself as the reason why the situations are not analogous (at [27]).

122. Comparability is always judged in the context of the measure in question and its purpose (*McLaughlin* at [26]; *TP* at [102]). Lady Hale added an observation about means testing which, although made in relation to a different distinction, bears on this case. Where benefits are means tested, "*it is difficult indeed*" to see the justification for paying people less when their needs are the same (*McLaughlin* at [38]).

123. Article 14 has a second facet. It is also breached when the state fails, without objective and reasonable justification, to treat differently persons whose situations are significantly different: *Thlimmenos* at [44]. The questions are then whether the failure pursued a legitimate aim and, if so, whether there was a reasonable relationship of proportionality between the means employed and the aim (at [46]-[47]). The Supreme Court described the discrimination in such a case as lying "*in not introducing an exception to a general rule*" (*SC* at [48]). Some similarities between two groups do not prevent their situations from being significantly different (*DA and RA* at [99]). In *Burnip v Birmingham City Council* [2012] EWCA Civ 629, [2013] PTSR 117, Maurice Kay LJ rejected the suggestion of a legal "no-go area" where a *Thlimmenos* claim would require the allocation of resources. Such a claim calls for caution, but the caution arises at the stage of justification, not when deciding whether discrimination is established (at [18]).

124. The one authority that applies *Thlimmenos* to a CTR scheme is *Logan*. The scheme limited support for people of working age to 85%. Blake J held that it did not fail to treat disabled people differently, because the disregards and premiums in the scheme already acknowledged their different situation (at [37]). Council tax is a general charge on living expenses, which disabled and non-disabled people alike must meet from "*subsistence budgets*". It is therefore not always discriminatory to expect it to be met from benefits provided because of disability (at [39]-[40]). Any indirect difference in treatment was justified, in part because of a discretionary scheme (at [40]).

Article 14: justification

125. The test for justification in cases concerning state benefits is settled. A difference in treatment is discriminatory if it has no objective and reasonable justification: that is, if it does not pursue a legitimate aim, or if there is no reasonable relationship of proportionality between the means employed and the aim. A wide margin is usually allowed to the state in general measures of economic or social strategy. The court will generally respect the policy choice unless it is "manifestly without reasonable foundation". Lady Hale adopted that formulation, taken from the Grand Chamber's judgment in *Stec v United Kingdom*, in *Humphreys v Revenue and Customs Commissioners* [2012] UKSC 18, [2012] PTSR 1024 at [16]-[19]. The less stringent test does not mean that the justifications put forward should escape careful scrutiny; on analysis they may lack a reasonable basis (at [22]). In *R (Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58, [2016] 1 WLR 4550, Lord Toulson affirmed that approach. What Lady Hale said of sex discrimination applies equally to disability discrimination (at [30] and [38]).

126. In *SC*, Lord Reed modified the approach. Review of low intensity remains generally appropriate in cases concerned with judgments of social and economic policy in the field of welfare benefits. The judgment of the executive or legislature will generally be respected unless it is manifestly without reasonable foundation. But the intensity of review can be influenced by a wide range of factors, and a mechanical approach based on the categorisation of the ground is to be avoided (at [158]-[159]). The phrase "manifestly without reasonable foundation" is merely a way of describing a wide margin. In domestic cases, the more fruitful question is whether a wide margin of judgment is appropriate in the circumstances. The ordinary approach to proportionality then gives appropriate weight to the judgment of the primary decision-maker. That weight will normally be substantial in fields such as economic and social policy (at [160]-[161]). Lord Reed identified the factors that bear on the width of the margin at [115]. Among them are the ground of the difference in treatment, and whether the measure is a general measure of economic or social strategy. He also warned that almost any legislation can be challenged under Article 14, because it is so easy to establish differential treatment of some category of persons. The courts must apply the principle of proportionality in a way that respects the boundary between legality and the political process (at [162]).

127. The Strasbourg Court has since confirmed that the "manifestly without reasonable foundation" standard may be applied where the state is not required to show very weighty reasons (*DA and RA* at [103]-[108]). The margin is substantially narrower where a measure applies to a particularly vulnerable group that has suffered considerable discrimination in the past. The court has applied that description to people with disabilities (at [89]).

128. Within the margin, the elements of proportionality are those described by Lady Hale in *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15, [2015] AC 1399 at [28]. Is the objective sufficiently important to justify limiting a fundamental right? Is the measure rationally connected to it? Are the means chosen no more than necessary to accomplish it? And, at the end of the exercise, is the impact on the right disproportionate to the likely benefit of the measure? She was speaking of section 15 EqA, but said that its test of justification and the Convention test have come to be interpreted in the same way (at [27]). The mere existence of a legitimate aim is not enough; there must be a rational connection between the aim and the means (*McLaughlin* at [37]). Holgate J applied those elements, within a wide margin, in *TP* at [194]-[196].

129. Lord Bingham's approach in *AL (Serbia)* at [3] is also relevant. The task of the court is not to view the policy through the eyes of one party or the other, but to make an objective overall judgment. The policy in that case was not disproportionate, because it permitted compelling claims by those outside it to be recognised and accommodated case by case.

130. The authorities in which the wide margin has been described concern primary legislation or regulations made by a minister. None addresses in terms whether a billing authority making a scheme under section 13A LGFA attracts the same latitude. Lord Reed referred to "*the primary decision-maker*" and to "*fields such as economic and social policy*" (*SC* at [161]). That points to the subject matter rather than to the identity of the decision-maker. In *Logan*, Blake J treated the choices made in a council's scheme as justified without articulating a different standard (at [40]-[42]). I return to the point under issue 1(d).

Discrimination under the Equality Act 2010

131. The claim under the EqA arises under Part 3. Equality rights under the EqA prohibit direct and indirect discrimination and the special form of discrimination that arises from disability. All have the same aim, which is to secure equality of treatment by prohibiting inequality of treatment on grounds of a protected characteristic (*Akerman-Livingstone* at [30]). Where justification is available, the test is whether the treatment is a proportionate means of achieving a legitimate aim. I have set out its elements above.

Discrimination arising from disability: section 15

132. Section 15 EqA, as both counsel in this case acknowledged, was enacted after *Lewisham LBC v Malcolm* [2008] UKHL 43, [2008] AC 1399. The House of Lords there held that the comparator under the Disability Discrimination Act 1995 was a person without the disability to whom the same reason for the treatment applied. The disabled tenant in that case had therefore not been treated less favourably (Lord Bingham at [15]-[16]). Section 15 was intended, in very broad terms, to reverse that ruling. But the task is to apply its words, not to reconstruct the earlier law: *Trustees of Swansea University Pension and Assurance Scheme v Williams* [2018] UKSC 65, [2019] 1 WLR 93 at [12], per Lord Carnwath. The most obvious feature of the section is the removal of any element of comparison. It raises two questions of fact: what was the relevant treatment, and was it unfavourable to the claimant? Little is gained by fine distinctions between "unfavourably" and words such as "disadvantage" or "detriment". The threshold of disadvantage that triggers the need to justify is relatively low (at [27]). But the treatment must be identified first. In *Williams* itself the treatment was the award of a pension, which

was not unfavourable. The claimant's argument depended on an artificial separation between the method of calculating the award and the award itself (at [28]).

133. Section 15(1)(a) then requires an investigation of two distinct causative questions. Did the defendant treat the claimant unfavourably because of an identified "something"? And did that "something" arise in consequence of the claimant's disability? The first involves an examination of the defendant's state of mind, to establish whether the treatment occurred by reason of its attitude to the "something". The second is an objective matter: whether there is a causal link between the disability and the "something": *York City Council v Grosset* [2018] EWCA Civ 1105, [2018] ICR 1492 at [36]-[38], per Sales LJ. The defendant need not have known that the "something" arose from the disability. If that were required, the defence in section 15(2) would be redundant (at [39]-[41]).

134. The approach to the section was summarised by Simler J in *Pnaiser v NHS England* [2016] IRLR 170 at [31]. The Court of Appeal upheld it in *Grosset*, and Ellenbogen J applied it in *R (Willott) v Eastbourne BC* [2024] EWHC 113 (Admin) at [118]. The "something" need not be the main or sole reason for the treatment, but it must have at least a significant, which is to say more than trivial, influence on it. Motive is irrelevant. Whether the "something" arises in consequence of the disability is a question of fact, to be assessed "*robustly*". The causal link may include more than one link; but the more links there are in the chain, the harder it is likely to be to establish the connection. The questions may be taken in either order. HHJ Auerbach made a further observation in *Scott v Kenton Schools Academy Trust* UKEAT/0031/19/DA at [44]-[45]: the connection required by the words "in consequence of" can be a relatively loose one. Parliament loosened the causal link rather than eliminating it. That breadth is counterbalanced by the availability of the justification defence.

135. The knowledge required by section 15(2) is knowledge of the disability only. It does not extend to knowledge that the "something" is a consequence of the disability (*Pnaiser* at [31](h); *Grosset* at [39]-[40]). The burden of establishing the exception is on the defendant. The subsection applies only "if A shows" the absence of actual and constructive knowledge.

136. In *R (LL) v Trafford MBC* [2025] EWHC 2380 (Admin), a first instance decision of the High Court applying section 15 EqA to a council's CTR scheme, HHJ Pearce held that a CTR scheme amounted to discrimination under section 15 in the case of a disabled claimant. It treated the claimant in that case unfavourably on account of something arising from her disability, namely the receipt of a particular benefit, and there was no scope for a justification defence where the scheme operated irrationally in dealing with that group (at [87]). The judge did not explicitly analyse the two causative questions, and the judgment does not record whether the point was contested. In *Willott*, a High Court case about a local authority's social housing allocation policy, the claimant failed at the first stage because the evidence did not establish that the "something" arose in consequence of her disability (at [119]).

137. Justification under section 15 is governed by the elements I have set out. Lady Hale explained the effect of the section in *Akerman-Livingstone* at [31]-[32]. A person who treats a disabled person unfavourably because of something arising from the disability must show that the treatment is a proportionate means of achieving a legitimate aim. The structured approach asks whether any lesser measure might achieve the aim. It requires a

balance between the seriousness of the impact on the disabled person and the importance of the aim.

138. Accordingly, when a disability discrimination defence was raised to a possession claim, the question was not simply whether the landlord was entitled to recover the property in order to fulfil its public housing functions. It was also whether the landlord had done all that could reasonably be expected of it to accommodate the consequences of the disability, and whether its aims were sufficient to outweigh the effect upon the disabled person. Those were questions which a court is "*well-equipped to address*" (at [32]). That case concerned an individual claim for possession; it did not address a court's competence to assess a general scheme of social and economic policy made by a local authority.

Indirect discrimination: section 19

139. Section 19 EqA requires the identification of a PCP. The defendant must apply it to persons with and without the protected characteristic, and it must put persons who share the characteristic at a particular disadvantage when compared with persons who do not. The defendant accepts that the relevant provisions of its scheme are a PCP; I say more about the nature of the PCP below.

140. On the question of disadvantage, the authorities establish that statistical evidence is not always required. In *Secretary of State for Work and Pensions v Bobezes* [2005] EWCA Civ 111, the Court of Appeal held that a rule was indirectly discriminatory on grounds of nationality because it was intrinsically liable to affect migrant workers more than British nationals. The court reached that conclusion by applying the terms of the provision to its likely effect, using its common sense and understanding of the general position, without statistical proof (Lord Slynn at [24]-[26]; Buxton LJ at [41]-[45]). The decision concerned the free movement of workers under EU law. Hickinbottom J nonetheless applied the same approach to a CTR scheme challenged under section 19 and Article 14 in *Winder* at [87]. Lady Hale treated the "manifestly without reasonable foundation" test as applying to indirect discrimination under Article 14 in a benefits case (*Humphreys* at [19]-[20]).

141. In *Logan*, Blake J accepted that the scheme had a greater impact on disabled people of working age, because more of them were unable to obtain employment at earnings above the applicable amount (at [37]). He nonetheless held that the claim under the EqA failed for the same reasons as the claim under Article 14 (at [45]). He rejected the submission that a council cannot rely on the fact that some benefits are disregarded because they are paid on account of disability. A claimant has a portfolio of benefits, some addressing needs unique to disability and some providing for the ordinary expenses of life. Disregarding certain benefits for disabled claimants is "*to make an adjustment*" as between them and an unemployed person without a disability (at [46]). Those observations were made about a scheme in which the applicable amount included disability premiums, and disability living allowance was disregarded (at [20]-[21]). In *LL*, the judge found it unnecessary to consider indirect discrimination once discrimination under section 15 was established (at [87]).

142. Justification under section 19 requires the defendant to show the PCP to be a proportionate means of achieving a legitimate aim. Where the defendant relies on a real need to live within its means, the legitimacy of the aim is only the first step. The

proportionality exercise then enables the court to examine carefully the nature and extent of the financial pressures, and whether they could have been addressed in a way that did not have the discriminatory effect: *Heskett v Secretary of State for Justice* [2020] EWCA Civ 1487, [2021] ICR 110 at [100], per Underhill LJ. In *R (British Medical Association) v HM Treasury* [2024] EWCA Civ 355, [2024] ICR 922, the Court of Appeal endorsed the judge's statement at first instance that decisions in the sphere of social and economic policy, taken with a view to keeping within financial constraints, attract a broad margin, and that the role of the court in reviewing them is limited (at [124] and [158]). I say more about cost below.

Reasonable adjustments: section 20

143. The first requirement in section 20(3) EqA arises where a PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled; the duty is then to take such steps as it is reasonable to have to take to avoid the disadvantage. A failure to do so is discrimination (section 21). Schedule 2 adapts the duty to Part 3 EqA. None of the authorities before me applies the duty to a scheme of the present kind, or to the exercise of a public function of this kind. Nor have I been shown a decision that explains how the disadvantage is to be assessed under Part 3. The defendant submits that the threshold in section 20(3) raises the same question of differential impact as section 19(2)(b). The claimant takes sections 20 and 21 together with section 19. I therefore decide issue 3(c) on the words of sections 20 and 21. In doing so I bear in mind what Lady Hale said in *Akerman-Livingstone* at [31]-[32] about the lesser measure, and about what can reasonably be expected of a public authority. In *Logan*, the claim under the EqA, however put, failed for the reasons given under Article 14 (at [45]-[47]).

Schedule 22: statutory authority

144. Paragraph 1 of Schedule 22 provides that a person does not contravene Part 3 in relation to disability if the person does anything that it must do pursuant to a requirement of an enactment. The defendant relies on *Willott* at [120]. Ellenbogen J there held that, in the absence of a successful attack on the allocation scheme itself, the housing authority's reliance on Schedule 22 was legitimate. The Housing Act 1996 required it to allocate accommodation in accordance with its scheme. She made clear, however, that Schedule 22 does not enable an authority to avoid its obligations under the EqA by formulating, and then applying, a scheme which is itself discriminatory and susceptible to judicial review. The paragraph therefore protects the application of a lawful scheme. It does not protect the scheme.

Cost as justification

145. Cost arises under both Article 14 and the EqA. Three propositions emerge from the authorities. First, the saving of public expenditure can be a legitimate aim. But it cannot constitute a justification for discriminatory treatment without more, because justification depends also on a reasonable relationship of proportionality between the means and the aim. That was the principle applied by the Court of Appeal in the earlier *TP* litigation, as Holgate J summarised it in *TP* at [144].

146. Secondly, in the law of discrimination under the EqA, the principle that saving or avoiding costs will not, without more, amount to a legitimate aim bites only where the aim is solely to avoid costs. The essential question is whether the aim can fairly be described as no more than a wish to save costs. If not, the aim must be fairly characterised as a whole, looking at the total picture. A real need to reduce expenditure in order to live within a budget can be a legitimate aim (*Heskett* at [83], [88]-[89] and [98]-[99]). The Court of Appeal treated that analysis as binding in the *British Medical Association* case. The fact that costs are relevant, or even central, to a justification does not rule it out (at [158]). Choudhury J had held at first instance that a budgetary constraint, whether imposed by another department or by fiscal policy, means that the body must act within financial parameters. That differs from having the freedom to allocate more funds to a particular need: *R (British Medical Association) v HM Treasury* [2023] EWHC 527 (Admin), [2023] ICR 779 at [192]. Underhill LJ confined his reasoning in *Heskett* to indirect discrimination. He distinguished the Supreme Court's observations about the state in its capacity as an employer in a case of direct discrimination (at [103]). Neither party addressed whether the same analysis applies under section 15.

147. Thirdly, the proportionality of a saving must be assessed in context. In *TP*, Holgate J accepted that £150 million was a substantial sum. He nonetheless held that the Secretary of State had not justified the difference in treatment. There was no evidence of the cost of the protection afforded to others, or of the cost of the programme as a whole, against which the figure could be seen. Nor was there evidence of what other expenditure would be at risk, or why it should be prioritised over the needs of a highly vulnerable group (at [190]-[194]). The question at that stage is whether a fair balance has been struck between the severity of the effects on those affected and the contribution the measure makes to the aim (at [196]).

Discretionary schemes as justification

148. The second recurring question is the significance of a discretionary scheme, such as the EH scheme, when a rule is said to be discriminatory. The authorities seem to point in two directions. The Supreme Court's decision in *Carmichael* contains both directions. On the one hand, the choice between dealing with disability within the precise rules of a scheme and accommodating it through a linked discretionary scheme is a question of economic and social policy, integral to the structure of the scheme. The court applies its normal approach to such a question. Otherwise a skilled lawyer could circumvent the general rule by couching the complaint as an attack on matters of detail (*Carmichael* at [36]). There was a reasonable foundation for the Secretary of State's decision not to create a blanket exception for everyone with a disability, and to regard a discretionary scheme as more appropriate than "*an exhaustive set of bright line rules*" (at [41]). Where the need for benefit depended on individual circumstances, it was not unreasonable to leave it to be considered under the discretionary scheme (at [51]-[55] and [61]).

149. In *R (DA) v Secretary of State for Work and Pensions* [2018] EWCA Civ 504, Sir Patrick Elias said that discretionary payments were no answer to fundamental structural discrimination. They were, however, an appropriate way of dealing with particular hardships that could not readily be identified in advance. It was not unreasonable to adopt a discretionary system targeted where it was needed. The fact that the payments did not mitigate the loss in full was beside the point, because that was not their purpose. He treated the availability of such payments as a factor of only limited importance (at [117]).

The Strasbourg Court took account of discretionary housing payments in the same case (*DA and RA* at [113]).

150. On the other hand, where a disability creates a transparent and readily recognisable need, there was no reasonable justification for applying a rule as if the need did not exist. The availability of discretionary payments intended to provide the same sum did not justify treating the same essential need differently within the same regulation (*Carmichael* at [42]-[48]). In *Burnip*, Henderson J held that discretionary housing payments were not a complete or satisfactory answer. They were purely discretionary, unpredictable in duration, payable from a capped fund and unreliable in amount (at [46]). Housing is a commitment for the long term, for which they give no assurance (at [47]).

151. The distinction between the two lines turns on whether the disadvantage is one that can be identified in advance and met by rule, or one that depends on circumstances varying from household to household. Blake J drew the threads together for a CTR scheme in *Logan*. He accepted that to give one group a right to exemption, while requiring another to apply for the exercise of a discretion, "*may itself constitute*" the discriminatory difference in treatment. But the scheme must be looked at as a whole, and the discretion was an important part of it and a further mitigating measure (at [41]). A discretionary fund is apt as the last stage in an assessment of particular hardship, because neither age nor disability necessarily tells the decision-maker what minimum needs must be met from a subsistence budget (at [42]). Where a severely disabled claimant has no realistic prospect of increasing his resources, a failure to exercise the discretion may be challenged as irrational or discriminatory (at [43]). The use of a discretionary scheme to answer a complaint of irrationality is addressed in *LL*, to which I come below.

The public sector equality duty

152. The principles governing the PSED were summarised by McCombe LJ in *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at [26]. Those that matter here are these. The duty is on the decision-maker personally. What matters is what the decision-maker took into account and knew, and the decision-maker cannot be taken to know what officials know (point (3)). The risk and extent of any adverse impact, and the ways in which it might be eliminated, must be assessed before the policy is adopted, not as a "*rearguard action*" after the decision (point (4)). The duty must be fulfilled before and at the time the policy is considered. It must be exercised in substance, with rigour and with an open mind; it is not a question of ticking boxes; it is non-delegable and continuing; and it is good practice to keep records demonstrating that it has been considered (point (5)). General regard to issues of equality is not the same as specific regard, by way of a conscious approach to the statutory criteria (point (6)). Provided there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives, it is for the decision-maker to decide how much weight to give those matters (point (8)).

153. McCombe LJ added that the EqA imposes a heavy burden on public authorities in discharging the duty, and in ensuring that there is evidence available to demonstrate that discharge. A decision-maker who cannot show a structured attempt to focus on the details of equality issues is likely to be in difficulty (at [60]-[61]). In that case, too much of the Secretary of State's case rested on inference rather than on hard evidence of focused regard (at [62]).

154. Where the decision-maker is a body of councillors, two further questions arise: what was before them, and what they can be taken to have read. A body which takes decisions need not give personal detailed attention to every strand of fact and argument capable of bearing on its decision. But it must have drawn to its attention "*the main lines of relevant debate*": *R (007 Stratford Taxis Ltd) v Stratford-on-Avon DC* [2011] EWCA Civ 160, [2012] RTR 5 at [11]. That observation concerned the general duty of consideration, not the equality duty. The claimant relies on it for the quality of consideration that the PSED requires.

155. In *R (Hunt) v North Somerset Council* [2013] EWCA Civ 1320, the Court of Appeal considered what members can be taken to have read. Members provided with a set of materials for a meeting can, absent positive evidence to the contrary, be taken to have read them. The same applies to any further material to which they were expressly referred and told that they needed to have regard (at [83]). Being told how to access a document is not enough (at [84]). The fact that one councillor read the assessments is no indication of what the others did (at [85]). The receipt of an objector's submission raises no presumption that members went on to read the assessments (at [86]). In *Logan*, the equality impact assessment was adequate to enable members who read it to have due regard. But there was insufficient evidence that the decision-makers had accessed it, or had understood the importance of reading it. Due regard is not to be inferred, and it was not sufficient to assume that members could have read it and therefore would have done so (at [53]). In *LL*, the duty was not discharged where the full council had no regard to the assessment, the executive was not shown it, and the assessment itself failed to identify the flaw in the scheme. A proper regard to the duty should have thrown that flaw up (at [84]-[86]).

156. The court's role is to ensure that there has been a proper and conscientious focus on the statutory criteria. It does not review the weight that the decision-maker gave to equality considerations (*Bracking* at [26], point (8)). In *Secretary of State for Communities and Local Government v West Berkshire DC* [2016] EWCA Civ 441, the Court of Appeal held that an equality statement which demonstrated consideration of the potential for adverse impacts on protected groups satisfied section 149. The duty does not require a precise mathematical exercise in relation to particular affected groups, and the decision-maker may place the impact in the context of other policies (at [83]-[85]). The word "minor" in that statement was the Minister's assessment of the weight to be given to the equality considerations, which was for the Minister in accordance with *Bracking* (at [84]). A judge who adopts a more stringent and searching approach falls into error (at [85]).

Irrationality

157. Issues 2 and 5 ask whether the relevant rules were an irrational use of the power in section 13A LGFA. The starting point is the purpose of that power. In *Winder*, Hickinbottom J held that, under section 13A(2)(b), the class must be defined by reference to financial need. The authority has considerable discretion as to the criteria by which it identifies those in need. But criteria which do not identify those who are at least more likely to be in financial need fall outside the power (at [53]). The statutory purpose is to relieve those in financial need of the full burden of council tax, and the purpose of section 13A(2) is to identify them (at [58]).

158. That holding applies a general principle of public law, associated with *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 (HL) at 1030, per Lord Reid. Parliament confers a discretion intending it to be used to promote the policy and objects of the Act. Those are determined by construing the Act as a whole. A use of the discretion that runs counter to them is unlawful. Hickinbottom J put the principle in this way: powers conferred by Parliament are never open-ended, and their exercise is always limited to the furtherance of the statutory purpose (*Winder* at [57]). The claimant invokes *Padfield* in a different way, by reference to the purpose of a different statute: the provisions of the WRA and the Transitional Regulations that govern migration to UC. I address that argument under issue 2.

159. The relationship between the *Padfield* principle and irrationality was considered in *Secretary of State for Work and Pensions v Johnson* [2020] EWCA Civ 778. The challenge there was to the combined effect of regulations and to their failure to include an exception. Rose LJ held that it was more properly characterised as one of *Wednesbury* unreasonableness than as a breach of the *Padfield* principle. That principle applies more readily where a specific exercise of a statutory power is said not to promote the purpose for which the power was conferred (at [105]). The absence of an exception operated in many cases, and in a way antithetical to one of the underlying principles of the scheme. That was an important factor in assessing rationality (at [106]). The threshold for establishing irrationality "*is very high, but it is not insuperable*". It was met in that case because no reasonable Secretary of State would have struck the balance in that way (at [107]). Underhill LJ regarded the characterisations as aspects of a single question: whether Parliament can have intended the power to make rules to be exercised in a way that produces "*so arbitrary and harmful an impact*" on the claimants and the many others in the same position (at [115]).

160. Two first instance decisions apply those principles to CTR schemes. In *LL*, the scheme counted as income sums that had already reduced the claimant's UC. People whose true income was the same therefore received different reductions. HHJ Pearce accepted that a scheme may contain logical errors without being irrational. But a scheme which inevitably produces a result that is obviously unfair, and not what was intended, is irrational; the flaw was so serious that it undermined the rationality of what was being operated (at [80] and [83]). A discretionary scheme may defeat an argument of irrationality where a person in unusual circumstances is treated unfairly for reasons that were difficult to anticipate (at [81]). It did not do so where a significant number of people were affected by a flaw readily apparent to anyone who read the scheme with a knowledge of how UC is calculated. The discretionary fund there was potentially limited, usually made short term awards, carried no right of appeal and had poor take-up (at [82]).

161. In *Logan*, by contrast, the choice to limit support to 85% for everyone of working age was lawful. The court rejected the submission that disability can be equated with unemployability (at [36]). Lord Toulson's caution in *Carmichael* at [36] applies here as it does under Article 14. A challenge framed as an attack on matters of detail must not be allowed to circumvent the latitude allowed to a public authority on questions of economic and social policy.

162. Finally, the claimant relies on *Samuels v Birmingham City Council* [2019] UKSC 28. Lord Carnwath there said that guidance on affordability could not have been intended to

apply differently to two groups "*simply because of a change in the way their benefits were presented*". To do so would be "*both irrational and discriminatory*" (at [25]). That observation concerned the construction of the Secretary of State's guidance, not the conduct of a council, and Lord Carnwath said that the issue was not critical to the appeal (at [33]-[34]). It is nonetheless a statement by the Supreme Court about distinguishing between two groups on the basis of presentation alone. I return to it.

Explanations given after the decision

163. Much of the defendant's justification is contained in the witness statement of Mr Warren, made after both decisions under challenge. I have already noted, when describing the facts, respects in which it is not supported by the contemporaneous documents. The authorities treat such evidence differently under the three heads of claim.

164. Under Article 14 and the EqA, the question is objective: whether the measure in fact strikes a reasonable balance or has a reasonable justification, not whether the decision-maker considered that question at the time (*SC* at [182]; *Akerman-Livingstone* at [27]-[28]). The court therefore decides justification on the material before it, which may include evidence filed in the proceedings. In *Carmichael*, the reasons for structuring the scheme as it was were explained in the witness statement of a civil servant (at [40]). In *TP*, Holgate J took into account all the material available in the proceedings (at [194]).

165. But what the decision-maker actually considered is not irrelevant. If it can be inferred that the decision-maker formed a judgment that the measure was appropriate despite its potential impact on protected interests, that is a factor in the court's assessment, because of the respect accorded to that judgment. If there is no indication that the issue was considered, that factor is absent. Its absence does not of itself count against the measure (*SC* at [180]-[182]). Lord Reed was speaking of Parliament, and he cautioned against assessing the cogency of parliamentary consideration (at [183]-[184]). The same restraint does not arise with a council.

166. An assertion in a witness statement which has no evidential foundation in the contemporaneous material is unlikely to be persuasive. In *Winder*, the council's witness asserted that financial pressures had compelled the residence requirement. There was no sound evidential basis for the assertion, no evidence of the extent of the problem or of the saving, and no assessment of the adverse effects. The submission on justification sank "*into an evidential void*" (at [89]-[90]).

167. Under the PSED the position is stricter, because the duty is one of process at the time of the decision. The assessment must be made before the policy is adopted, not as a rearguard action afterwards (*Bracking* at [26], points (4) and (5)).

168. Evidence of what councillors would have decided had they had due regard goes, if anywhere, to relief. In *Logan*, Blake J considered section 31(2A) of the Senior Courts Act 1981, which asks whether the outcome was highly likely to have been substantially the same. Any such consideration should normally be based on material in existence at the time of the decision, and not simply on "*post-decision speculation by an individual decision maker*". Any other course would reduce the importance of compliance and deter claimants from bringing cases (at [55]).

169. Under the head of irrationality, the question is whether no reasonable authority would have struck the balance as the defendant did (*Johnson* at [107]). None of the authorities address whether, under that head, a rationale first articulated in evidence filed for the proceedings can be relied on; at the least, I consider that less weight may be accorded to it for that reason.

The parties' submissions

170. For the claimant, the central theme adopted by Mr Royston was that the defendant's 2025/26 CTR scheme treats a whole class, the most severely disabled people living on means tested benefits, as having income to spare. Nobody who receives UC with the LCWRA element can obtain a reduction close to 100%. The full council never understood that this was what its scheme did. That failure, he submitted, runs through all three grounds. I summarise his submissions below.

    170.1 Means tested benefits measure need. A scheme that must be framed by reference to financial need may depart from that measure, but only on an objective and non-discriminatory basis. The claimant and a person who remains on income-related ESA have the same needs, the same income and the same assessment of their capability for work. To treat them differently because of the way in which their benefits are presented is irrational, and discriminatory on the ground of "*other status*" (Statement of Facts and Grounds, paras 58-60 and 84, CHB37-38 and 44-45; *Samuels* at [25]).

    170.2 The difference cannot be justified. A council attracts a narrower margin than Parliament, the more so where its members never engaged with the point and its justification rests on explanations given after the event. If the concern is that a few recipients of the LCWRA element may have substantial earnings, a disregard of the element would meet it; to refuse passporting altogether is disproportionate. Nor does a need to save money explain why this group should bear the saving. The scheme is irrational for the same reasons, and because the council misunderstood what its scheme would do, the purposes of the LCWRA and transitional elements, and the meaning of financial need. The transitional element exists so that a move to UC causes no sudden fall in income; to count it as income defeats that purpose.

    170.3 On the comparison within UC, a person in the claimant's position but without his disability, who receives the standard allowance and the housing costs element, pays nothing. In substance, the scheme disregards both elements (Statement of Facts and Grounds, paras 46-53, CHB34-36). The LCWRA element, which is no less an assessment of need, counts in full. Under section 15 EqA, the decision of 10 September 2025 treated the claimant unfavourably because of the LCWRA element, which arises in consequence of his disability (relying on *LL* at [87]). Under sections 19 and 20 EqA, counting every element of UC except the housing costs element puts disabled people at a particular disadvantage, since almost everyone with the LCWRA element is disabled (to such an extent that the cohort in receipt of LCWRA is effectively a proxy for a disabled class). Schedule 22 cannot protect a scheme that is itself discriminatory.

170.4 As to justification under the EqA, to give one group a reduction as of right, while another must apply for discretionary help, merely describes the discrimination but does not justify it (paras 61-70, CHB38-41). The EH scheme demands severe hardship, is little publicised and makes awards only for the short term. The £30 disregard applies, on its words, to nobody. *Logan* is distinguishable: there, disabled and non-disabled claimants were treated alike, whereas here one receives a reduction of 10% and the other 100%.

170.5 On the PSED, the council never properly considered the effect of these rules on disabled people (paras 74-80, CHB42-44). The assessments of 2022 found the effect neutral, the concerns of Citizens Advice in 2023 did not reach the full council, and the assessment of 2024 concerned other changes. By 18 December 2024, the managed migration of claimants of income-related ESA had begun. Due regard required the council to confront the effect of its earlier choices then, and not in December 2025, when the effect was finally identified.

170.6 On delay, the claimant's grounds arose on 10 September 2025, when the scheme was applied to him, because it was not inevitable that he would migrate during the life of a scheme that lasts a year (paras 85-86, CHB45-46).

171. Mr Giffin KC, for the defendant, began with three overarching submissions, which underpinned his answer to every ground. He described *Logan* as the most important and most directly relevant authority. More particularly:

171.1 First, benefit levels are not a precise measure of need. Support was localised so that each authority could strike its own balance, and the Secretary of State has prescribed no disregard for UC. Council tax may be met in part from subsistence benefits (*Logan* at [39]-[40]). Secondly, it is rational to design rules for the situation that an authority faces, with the EH scheme for hard cases and a duty to consider revising the scheme each year; the effect of migration would grow only over time. Thirdly, UC is a unitary benefit, from which one element cannot be plucked out for comparison (*Simkova v Secretary of State for Work and Pensions* [2025] UKSC 41, [2025] 1 WLR 5417 at [37]). Nor is the LCWRA element a measure of the costs of disability.

171.2 The claim is in substance an attack on the scheme adopted on 18 December 2024, which the claimant does not say was misapplied (Detailed Grounds of Resistance, paras 5 and 24, CHB69 and 73). Receipt of a particular benefit does not qualify as "*other status*": the ground of the difference is the source of the claimant's income. In any event, the groups are not in an analogous situation, and the difference is justified within a wide margin (paras 19-21, CHB72-73). Legacy benefits secured a minimum income, which justified passporting; UC supports work, and a new benefit may properly be treated in a new way. The claimant in truth argues for a halfway house, but he must make good the like treatment that he claims. A disregard would considerably increase the cost of the scheme at a time of acute financial difficulty, and the EH scheme exists for the hard cases that migration may produce.

171.3 The comparison within UC is a complaint that the defendant failed to treat differently people whose situations differ. Such a claim calls for caution because

it would require resources, and a similar argument failed in *Logan* (at [37]-[40]). Section 15 EqA does not apply. It concerns the treatment of an individual, not the making of a general scheme. The link between the level of the claimant's income and his disability is too remote. And the defendant was bound to apply its scheme, so that Schedule 22 provides a defence unless the scheme itself is unlawful (*Willott* at [120]). Under sections 19 and 20 EqA, the scheme treats income alike whatever its source, and it has not been shown that disabled people are more likely than others to have a higher income (Detailed Grounds of Resistance, paras 12-14, CHB70-71).

171.4 If justification arises, the aim is to focus help on those most in need, at a cost that strikes a fair balance with the interests of other council taxpayers (para 16, CHB71). The scheme is proportionate. It disregards PIP and £30 a week for some disabled people, gives a reduction of 100% in Band 1, and is backed by the EH scheme, at a time when the defendant faced acute financial difficulty. Cost may form part of a justification where an authority must live within its means. The threshold for irrationality is very high, and the Secretary of State's choice of a transitional element did not make it irrational for the defendant to rely on its EH scheme.

171.5 On the PSED, members had the December 2024 report, the equality impact assessment and the response of Citizens Advice, which raised the present issue (para 22, CHB73). Mr Giffin KC accepted that the report and the assessment addressed the changes then proposed. He submitted that the PSED was met in substance, because members knew that a less generous scheme would bear particularly on disabled people, and that the EH scheme was the mitigation. The complaint about the letter of 10 September 2025 concerns a distinct matter, and relief should be refused under section 31(2A) of the Senior Courts Act 1981.

171.6 On delay, the claimant had standing when the scheme was adopted, because every recipient of legacy benefit was bound to migrate; his ignorance goes only to an extension of time (*R (Delve) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, [2021] ICR 236 at [127]). Mr Giffin KC also submitted that delay in any case remains relevant to Schedule 22 and to relief. No individual relief should be granted, because the claimant could apply under the EH scheme.

172. The submissions developed between the pleadings and the hearing, in ways that shape the analysis that follows:

172.1 The claimant no longer seeks to quash the scheme, as his grounds did (Statement of Facts and Grounds, para 87(b), CHB46). Mr Royston said that the claim under Article 14 on the comparison within UC was unnecessary, given the claims under the EqA; that bears on issue 4. He did not develop, in his skeleton argument or at the hearing, the pleaded complaint that the letter of 10 September 2025 breached the PSED (para 81, CHB44). Instead, he relied on the letter's silence about the EH scheme in answer to the defendant's case on justification.

172.2 Mr Royston advanced passporting and a disregard of the LCWRA element as alternatives. Whether a disregard was a less intrusive means goes to proportionality.

172.3 The defendant's case under section 15 EqA changed after its Detailed Grounds of Resistance, and its reliance on Schedule 22 first appeared in its skeleton argument (paras 46-52). Mr Giffin KC accepted that Schedule 22 would not assist if the challenge to the scheme succeeded. He also reframed the question under section 19 EqA as whether disabled people are more likely to have a higher income as the scheme defines it. Mr Royston answered that this assumes the lawfulness of the definition in dispute. Mr Giffin KC no longer pursued the point that the scheme had to be administratively workable (Detailed Grounds of Resistance, para 17, CHB72).

172.4 Mr Giffin KC accepted that the default scheme counts the maximum amount of UC as the measure of need as well as income, and that Mr Warren was wrong to say that all four predecessor districts treated UC in the same way (paragraph 73.2 above).

172.5 As pleaded, the ground of irrationality alleges arbitrariness. At the hearing, it was advanced as three misdirections, and Mr Giffin KC submitted that the court must confine itself to the ground as pleaded. I consider under issues 2 and 5 how far the case as argued falls within that ground.

Discussion and analysis

173. I now turn to deciding the issues identified at paragraphs 91 to 104 above and in the order explained. Issues 2, 4 and 5 arise only if other issues are decided against the claimant, but both parties asked me to decide them so that my conclusions can inform the defendant's future reviews of its scheme, and I do so, more shortly, in the alternative.

174. There are two points worth making about the evidence. First, under Article 14 and the EqA the question is objective: whether the relevant rules in fact have a reasonable justification, not whether the defendant considered that question at the time (paragraph 164 above). The defendant may therefore rely on the witness statement of Mr Warren. I have explained at paragraph 73 the respects in which that statement is not supported by the documents written at the time, and at paragraphs 165 and 166 why such evidence carries less weight when it rests on nothing contemporaneous. Secondly, under the PSED the question is what the full council had regard to on 18 December 2024. The later evidence of Mr Warren and of Cllr Ellis can do no more than explain the documents that were before members (paragraph 167).

The first set of issues: the comparison with legacy benefit

Issue 1(a): ambit

175. Neither *Winder* nor *Logan* decided whether a CTR scheme falls within the ambit of A1P1 or of Article 8 (paragraph 118 above). Mr Giffin KC did not ask me to decide the point; he proceeded, as both judges did in those cases, on the assumption that Article 14 is engaged (while reserving the defendant's position), and I proceed on the same basis.

Issue 1(b): status

176. The claimant relies on his status as a recipient of UC rather than of legacy benefit. I have decided that this is "other status" within Article 14.

177. The defendant's objection is that the ground of the difference is the source and level of the claimant's income, which is a characteristic of the income rather than of the person, and that a status must add something to the difference in treatment of which complaint is made (*SC* at [69]-[70]). I do not accept the objection, for three reasons.

    177.1 First, the ground must be more than a description of the treatment, but it need not have legal or social significance for other purposes (*SC* at [69]-[71]). Being a claimant of UC rather than of income-related ESA is a condition of the person which exists apart from the scheme. It is conferred by the DWP under legislation, it attaches to the person for as long as the award lasts, and it determines the rules by which the defendant assesses his means.

    177.2 Secondly, the claimant did not choose it. He claimed UC because a migration notice required him to do so (paragraph 81 above). The list in Article 14 concentrates on personal characteristics that the person did not choose and cannot, or should not be expected to, change (*AL (Serbia)* at [26]). A status may be temporary (*DA and RA* at [95]), and this one will end when migration is complete.

    177.3 Thirdly, the point rarely troubles the Strasbourg Court, and findings that status is absent are few and far between (*SC* at [71]). In *TP*, Holgate J treated the position of a person who had migrated from legacy benefit to UC by one route rather than another as a status, and rejected the submission that later changes in the legislation had caused it to evaporate (at [149]-[150] and [154]). The present ground is, if anything, more clearly defined.

178. The nature of the status matters at the next stage. It calls for a rational justification, and the defendant is entitled to a correspondingly wider margin.

Issue 1(c): analogous situation

179. The claimant and his comparator are in an analogous situation. The comparator is a person in the support group of income-related ESA with the same degree of disablement, the same assessment of his capability for work and the same income. The claimant was that person until 27 July 2025. The determination that he had limited capability for work-related activity under the ESA Regulations counted as a determination of LCWRA for UC (regulation 40(1)(a)(ii) UC Regulations), and the LCWRA element was included in his award from the first assessment period (regulation 19(5) Transitional Regulations). His available income was the same to within ten pence a week (paragraph 81 above).

180. Mr Giffin KC submitted that the two are not comparable, because UC is a unitary benefit with different objectives from the legacy benefits it replaced, and the LCWRA element cannot be plucked out of it and set beside the support component of ESA (*Simkova* at [37] and [46]; SW, paras 14 to 17, CHB134-135). I do not accept that submission for two reasons.

180.1 First, comparability is judged in the context of the measure and its purpose (*McLaughlin* at [26]; *TP* at [102]). The measure is a scheme whose statutory purpose is to relieve those in financial need of the full burden of council tax (section 13A(2) LGFA; *Winder* at [58]). Judged by that purpose, the claimant and his comparator are indistinguishable. They have the same needs and the same means. *Simkova* decided how UC is to be characterised for the purposes of an EU regulation. It says nothing about whether two people with the same needs and the same income are in an analogous situation for the purposes of a scheme directed at need.

180.2 Secondly, the differences on which the defendant relies concern the treatment of earnings. UC is designed to work alongside earnings; the legacy benefits were not, or not to the same extent (SW, paras 15 and 16). Neither the claimant nor his comparator has any earnings, and a person with LCWRA is free of all work-related requirements (paragraph 20 above). Where the differences between two groups are not obvious, the better course is to concentrate on the reasons for the difference in treatment and whether they amount to an objective and reasonable justification (*Carson* at [3]; *AL (Serbia)* at [25]). That is where the defendant's argument belongs, and where I now consider it.

Issue 1(d): justification

181. The defendant has not shown an objective and reasonable justification for treating the claimant differently from his comparator. I take first the standard of review, then the aim, then the elements of proportionality that are in dispute: rational connection, the availability of a less intrusive measure, cost, and the overall balance, within which the EH scheme and the £30 disregard fall to be weighed.

182. ***The standard of review***. A wide margin is usually allowed to the state in general measures of economic or social strategy, and the court will generally respect the policy choice unless it is manifestly without reasonable foundation (*Humphreys* at [16]-[19]; *SC* at [158]). The ground here is not a suspect one. The subject matter, the distribution of a limited budget for the relief of council tax among people on low incomes, is a matter of social and economic policy. I accept that these factors point to a wide margin, and that a court should be slow to hold that the judgments made by a billing authority in designing its scheme fall outside it. In applying that margin, I bear in mind four further matters.

182.1 First, since *SC* the question in a domestic case is whether a wide margin is appropriate in the circumstances; the ordinary approach to proportionality then gives appropriate weight to the judgment of the primary decision-maker (*SC* at [161]). The margin is a measure of respect for a judgment made. Lord Reed explained that where it can be inferred that the decision-maker formed a judgment that the measure was appropriate despite its impact on protected interests, that is a factor in the court's assessment; where there is no indication that the issue was considered, that factor is absent (*SC* at [182]). Its absence does not count against the measure. But the court must then decide the question of justification on the material before it, without a judgment to which it can defer.

182.2 Secondly, Lord Reed was speaking of Parliament, and his caution against assessing the cogency of Parliament's consideration (at [183]) rests on the

constitutional position of Parliament. It has no application to a billing authority. The weight owed to a council's judgment under section 13A LGFA is the weight owed to an expert and democratically accountable body exercising a statutory discretion. That weight is substantial. But it is not the weight owed to primary legislation (compare *SC* at [208]-[209]), and the court is free to examine what the council in fact decided and why.

182.3 Thirdly, the ground of the difference is benefit status, but the people on whom the difference falls are, almost without exception, severely disabled. The careful scrutiny that applies to sex discrimination applies equally to disability (*Carmichael* at [30] and [38]), and the Strasbourg Court treats people with disabilities as a particularly vulnerable group (*DA and RA* at [89]). Where benefits are means tested, it is difficult to see the justification for paying people less when their needs are the same (*McLaughlin* at [38]).

182.4 Fourthly, the less stringent standard does not exempt the defendant from showing that its justification has a reasonable basis (*Humphreys* at [22]). Even on a review of low intensity, the defendant must produce evidence of a reasonable relationship of proportionality between its aims and the means chosen (*TP* at [194]).

183. ***The aim***. The defendant's aim, as pleaded, is to provide assistance to persons in financial need, to focus that assistance on those most in need, and to do so at a cost which strikes a fair and affordable balance between the different persons eligible for assistance and between their interests and those of other council taxpayers (Detailed Grounds of Resistance, para 16, CHB71). The claimant accepts that this is a legitimate aim. So do I. A real need to live within a budget can be a legitimate aim even where cost is central to it (*Heskett* at [83] and [88]-[89]; the *British Medical Association* case at [158]). The question is whether the relevant rules are a proportionate means of pursuing it.

184. ***Rational connection***. The relevant rules distinguish between two people of identical need and identical means by the name of the benefit through which their means are paid. The person on income-related ESA is passported to a reduction of 100%. The person on UC with the LCWRA element is placed in Band 2, 3 or 4 according to the other elements of his award, and can never be placed in Band 1 (paragraph 82 above). A rule which produces that result is not rationally connected to an aim of focusing help on those most in need. It allocates help by presentation, which Lord Carnwath described, in a different context, as *"both irrational and discriminatory"* (*Samuels* at [25]).

185. Mr Giffin KC's answer is that UC is a new and different benefit, which a billing authority may treat anew; that the legacy benefits secured only a minimum income and so could serve as passports, whereas UC works alongside earnings and cannot (SW, paras 15 to 17); and that the Secretary of State, who could have prescribed a disregard of the LCWRA element, has not done so. I accept that an authority is not bound to carry the rules of one benefit system into the next, and that the Secretary of State's silence leaves the choice to the authority. Neither point is a justification of the choice made. Three features of the rationale call for comment:

185.1 First, there is no contemporaneous document recording the rationale. The reports of 2022 said that the scheme was designed to maximise support for the poorest households and to protect the most financially vulnerable, among whom they

named those on income-related ESA (paragraphs 54 to 56 above). None mentions the LCWRA element, migration, or any reason for treating a person who has migrated differently from a person who has not (paragraph 57). The December 2024 report is silent on all three (paragraph 63). The explanation that the two benefits differ in objective and scope first appears in Mr Warren's correspondence with Citizens Advice in 2023, as an answer to a complaint, and is developed in his witness statement.

185.2 Secondly, the rationale is directed at UC as a whole. Mr Warren explains why *"the mere receipt of UC"* would be an inappropriate passport (SW, para 17, CHB135), and Mr Giffin KC noted that the claimant does not contend otherwise. The claimant's case is confined to the LCWRA element, which is paid only to people who cannot reasonably be required to work or to prepare for work. The defendant's evidence does not address why that cohort, as distinct from UC claimants at large, should be denied the treatment given to the same cohort on income-related ESA. Mr Warren's statement that the legacy benefits were *"aimed largely though not entirely at persons who were unable to take up work"* (para 15, CHB134) does not survive scrutiny: JSA was for people able to take up work, and the same scheme passports them.

185.3 Thirdly, the concern about earnings is answered within the scheme. A person with LCWRA who works has earnings, and the scheme counts them, subject to a disregard of £25 a week (section 20.2, CHB234). The relevant rules do not count earnings. They count the LCWRA element, which is paid regardless of earnings and which, for a person with no earnings, is part of his subsistence income. The possibility that a few recipients of the element may also have earnings explains why passporting might be withheld. It does not explain why the element itself is counted.

186. I accept the defendant's point that benefit levels are not a precise measure of need, that council tax is a general charge on living expenses which may in principle be met from subsistence benefits (*Logan* at [39]-[40]), and that the LCWRA element is paid at a single rate whatever the individual's costs (SW, para 26, CHB137). But the scheme does not treat the LCWRA element as income available to meet council tax in the way it treats any other subsistence income. The standard allowance is, in substance, disregarded, because Band 1 is set just above it and has been uprated with it (paragraph 67 above; Schedule 1, para 6, CHB269). The housing costs element is disregarded in terms. The child element is accommodated by the higher thresholds for households with children. Every element of UC that the claimant receives is thus given credit on one side of the ledger or the other, except the LCWRA element and the transitional element. The single rate of the LCWRA element is no answer, because the standard allowance is paid at a single rate too.

187. ***A less intrusive measure***. The structured approach asks whether a lesser measure would achieve the aim (*Akerman-Livingstone* at [31]). Here one was obvious, and it was identified to the defendant before the decision under challenge. In May 2023 the defendant's consultant advised Mr Warren that some authorities disregarded the LCWRA element, that a disregard would be an easy change to make, and that its cost would be the reason for not making it (paragraph 58 above; SHB942-943). Citizens Advice asked for the same change in September 2024 (CHB193). A disregard would have met the concern about earnings, since earnings would still count, while removing the difference in

treatment of which the claimant complains. Mr Giffin KC submitted that the claimant, by advancing a disregard as an alternative to passporting, argues for a halfway house, and that discrimination law requires him to justify the like treatment he claims. I do not agree. Article 14 asks whether the difference in treatment is justified. The availability of a measure that would have achieved the defendant's aim with a lesser impact on the claimant's group is part of that inquiry. It counts against, not for, the defendant.

188. ***Cost***. Where a public body relies on a need to live within its means, the proportionality exercise enables the court to examine carefully the nature and extent of the financial pressures and whether they could have been addressed in a way which did not have the discriminatory effect (*Heskett* at [100]). The defendant's financial position in December 2024 was serious. I accept that it faced a projected gap of £103.9 million and the risk of a "section 114 notice", the report which a council's chief financial officer must make if its budget cannot be balanced (paragraph 60 above; SW, para 44, CHB144). But the evidence of what the lesser measure would have cost is slight.

    188.1 The only figure is Mr Warren's estimate that disregarding the LCWRA element in all cases would cost about £4 million a year (SW, para 41, CHB143). The paragraph dates the modelling to November and December 2025, after both decisions under challenge; no estimate appears in the December 2024 report; and the figure is unexplained (paragraph 73.4 above). Mr Royston submitted that it takes no account of the saving the defendant makes as recipients of income-related ESA, all of whom were passported, migrate to UC. Mr Giffin KC answered that what matters is the net cost of the scheme and that any such saving is already built into it. That is right as far as it goes, but there is no evidence of the net position either. In *TP*, Holgate J held that a sum of £150 million, substantial though it was, could not justify the difference in treatment when the court was given no context in which to assess it and no evidence of what other expenditure would be at risk (at [190]-[194]). The same applies here, albeit on a smaller scale. A council witness's assertion that financial pressures compelled a rule, without evidence of the saving or of the adverse effects, does not establish justification (*Winder* at [89]-[90]).

    188.2 Against the cost stands the effect of the relevant rules, which is severe. For the claimant it was the difference between paying nothing and paying 90% of his council tax, about £1,161 in a full year (paragraph 83 above), from an income of about £347 a week, all of it benefit paid at the rates Parliament has prescribed. The effect falls on a class, not on an individual. In the defendant's own sample of 125 people who had migrated, more than three quarters lost at least half of their reduction (paragraph 77 above; SHB795), and Citizens Advice estimated that 4,481 residents receiving income-related ESA had received migration notices by August 2025 (paragraph 76).

189. ***The EH scheme***. The defendant's principal answer to severity is the EH scheme. Whether to deal with the needs of disabled people within the rules of a scheme or through a linked discretionary scheme is a question of economic and social policy on which the court applies its normal approach, and a complaint must not be allowed to circumvent the margin by being couched as an attack on matters of detail (*Carmichael* at [36] and [41]). A discretionary scheme is an appropriate way of dealing with hardships that cannot be identified in advance, because they depend on factors that vary from household to

household (*DA* at [117]). I accept that the EH scheme is a relevant part of the whole (*Logan* at [41]), and that the claimant received an award under it. But it cannot justify the relevant rules, for four reasons.

189.1 First, the disadvantage is not one that varies from household to household. It is produced by the rules themselves, for every person in the class, and it can be identified in advance from the face of the scheme. That is the situation in which discretionary payments are *"no answer to fundamental structural discrimination"* (*DA* at [117]), and in which the Supreme Court held that payments intended to provide the same sum did not justify treating the same essential need differently within the same regulation (*Carmichael* at [42]-[48]). Blake J accepted that to award one group a right to exemption from liability and require another group to apply for the exercise of a discretion *"may itself constitute the discriminatory difference in treatment"* (*Logan* at [41]). In *Logan* the scheme treated disabled and non-disabled claimants alike, and the discretion was asked to top up a shortfall of 15%. Here the scheme treats them differently, and the discretion is asked to make good a shortfall of 90%.

189.2 Secondly, the EH scheme does not restore parity. It requires the applicant to show exceptional hardship, which the defendant's officers have applied as a test of severe financial hardship (paragraph 86 above); it makes awards for the short term and gives no assurance of renewal (EH scheme, para 4.3, CHB296); and an award may be less than the shortfall (para 4.4). An applicant whose reasonable expenditure falls within his benefit income may be refused, as the claimant was at first, on the footing that he has a surplus. The person on income-related ESA need show nothing. Those are the shortcomings that Henderson J identified in *Burnip* (at [46]-[47]) and HHJ Pearce in *LL* (at [82]).

189.3 Thirdly, the EH scheme as it stood in 2025/26 was not directed at this class. It named care leavers, foster carers and special guardians (paras 3.2 to 3.6, CHB294-295), but not people migrating to UC, who were added only in the scheme for 2026/27 (SW, para 34, CHB140; the December 2025 report, executive summary, SHB804). The letter of 10 September 2025 did not mention it (paragraph 83). Citizens Advice had told the defendant in September 2024 that even its experienced advisers found the application form challenging to complete (CHB193). In the defendant's sample of 125 people who had migrated, seven applied and four received an award (SHB795). I accept Mr Warren's evidence that the scheme is used, with 931 awards in 2024/25 (SW, para 39, CHB142), and that the defendant has since taken steps to promote it. The question, however, is whether, at the dates of the decisions under challenge, it mitigated the effect of the relevant rules on this class. The evidence is that it reached very few of them.

189.4 Fourthly, the availability of such payments is a factor of only limited importance even where it counts in the defendant's favour (*DA* at [117]). It cannot bear the whole weight of justification where the defendant has produced no other.

190. ***The £30 disregard***. The defendant relies on the disregard of £30 a week in paragraph 72 of Schedule 2 as recognising the costs of disability (SW, paras 27 to 31, CHB138-139; the defendant's skeleton argument, para 40.2). I set out its words at paragraph 69 above. It applies where, *"but for this scheme"*, the applicant *"would be entitled to"* a disability

premium, an enhanced disability premium, a severe disability premium or a disabled child premium. Those premiums are components of the legacy benefits. A person who receives UC is entitled to none of them, and nothing in the scheme affects entitlement to any of them, so that the words "but for this scheme" have no work to do. Read as written, the provision reaches no one on UC. Mr Warren says that the defendant intended the premiums as a yardstick of disability and has always applied the disregard to people in the claimant's position (para 28). The meaning of a published scheme is what its words convey to those who read it, not what its authors intended, and I must construe it accordingly. The defendant has since recognised the defect and amended the wording for 2026/27 (para 29). The point does not affect the outcome for the claimant: the disregard was applied to him, and it made no difference to his band (para 31). It does affect justification. A disregard which, on its words, applies to nobody in the affected class, and which, when applied, leaves a person almost £68 a week short of the LCWRA element, cannot be said to recognise the needs of that class. Nor has the defendant explained how the figure of £30 was chosen or how it relates to the element it is said to offset.

191. ***The expectation that the problem would be small***. Mr Giffin KC pressed the point that the problem was expected to be small and to grow only over time, so that the defendant could deal with it under the EH scheme and review the scheme each year (SW, para 36, CHB141; Schedule 1A to the LGFA, para 5). That might have been a reasonable view in 2022. It was not a view open to the defendant on 18 December 2024. By then the DWP had begun sending migration notices to the 800,000 claimants of income-related ESA, with the aim of notifying all of them within the year (paragraph 29 above). Citizens Advice had told the defendant that managed migration notices for that group would be rolling out from the autumn of 2024, that the scheme would seriously affect those on UC in the LCWRA group unless steps were taken to treat them similarly to those on income-related ESA, and that *"[t]he proposed policy needs to reflect this and treat the two groups equitably"* (CHB192, 196 and 197). The defendant's own report of December 2025 records that an impact was then identified, not that it was then created (paragraph 78 above). A difference in treatment is not justified by an intention to consider it later.

192. On issue 1, this is my conclusion. The relevant rules pursue a legitimate aim; but they are not rationally connected to it, because they distinguish identical need by the name of a benefit; a lesser measure was available and was identified to the defendant before the decision; the cost of that measure is unquantified in any evidence on which I can rely; the effect on a class of severely disabled people is severe; and the EH scheme neither removes nor substantially mitigates it. Because the full council formed no judgment on the point, there is no assessment to which I can defer. The defendant has not shown that the difference in treatment of the claimant and his comparator was justified. The claimant succeeds on issue 1. In adopting the relevant rules and in applying them to the claimant on 10 September 2025, the defendant acted in a way incompatible with Article 14, read with A1P1 and Article 8, and so unlawfully under section 6(1) HRA.

Issue 2: rationality on the comparison with legacy benefit

193. This issue arises only if the claimant fails on issue 1. If he failed because the difference in treatment was justified, issue 2 would fail with it, as Mr Royston accepted: a measure that is a proportionate means of achieving a legitimate aim is not an irrational one. The issue only needs consideration if the claimant failed at the stage of ambit or status, so that no question of justification arose. I deal with it on that footing, and briefly.

194. The claimant pleads that the relevant rules are arbitrary in three respects (Statement of Facts and Grounds, para 84, CHB44-45). At the hearing the case was put as three misdirections: that the defendant did not understand what its scheme would do; that it misunderstood the purposes of the LCWRA and transitional elements; and that it misunderstood financial need as meaning low income alone. Mr Giffin KC submitted that I must confine myself to the ground as pleaded. I agree. The first and third misdirections fall within paragraph 84(c), which pleads that it is inexplicable for a person's entitlement to change radically on a change of circumstances that involves no change in financial need, and the second falls within paragraph 84(b). The argument based on *Padfield* (the claimant's skeleton argument, para 49) is not pleaded in those terms, and in any event the complaint is better characterised, as Rose LJ characterised a similar complaint in *Johnson*, as one of *Wednesbury* unreasonableness (at [105]).

195. The threshold *"is very high, but it is not insuperable"* (*Johnson* at [107]). The authority has considerable discretion as to the criteria by which it identifies financial need (*Winder* at [53]); a scheme may contain logical errors without being irrational (*LL* at [80]); and the court must not allow a challenge couched as an attack on detail to circumvent the latitude allowed on questions of economic and social policy (*Carmichael* at [36]). The question is whether no reasonable authority, exercising the power in section 13A(2) for the purpose Parliament gave it, would have struck the balance in this way (*Johnson* at [107]).

196. Mindful of the caution with which I must approach this issue, I am nonetheless persuaded that this defendant has acted irrationally. The scheme's stated aims, in 2022 and again in 2024, were to maximise support for the poorest households and to protect the most financially vulnerable, among whom the defendant itself named those on income-related ESA (paragraphs 54 to 56 and 61 above). The relevant rules, read with knowledge of how UC is built, defeat that aim for exactly those people once they migrate: a person whose income and needs do not change moves from a reduction of 100% to one of 50%, 25% or 10%. The flaw is apparent on the face of the scheme to anyone who knows how UC is calculated, and it affects a class of thousands (*LL* at [82]). The defendant did not intend that result and did not understand that its scheme would produce it (paragraphs 57, 63 and 65 above). A discretionary scheme may rescue a rule that treats a person in unusual circumstances unfairly for reasons that were difficult to anticipate (*LL* at [81]). It cannot rescue a rule whose effect on a whole class was foreseeable, and was foreseen by Citizens Advice. The transitional element, which exists so that migration causes no fall in income, is counted as surplus from which a new liability can be met. I do not regard it as irrational in itself for a council to treat a new benefit on new terms, or to decline to passport it. What no reasonable authority would have done is to adopt, as its measure of need, a definition of income that gives credit for every element of a subsistence benefit except those paid for disability, without ever deciding to do so.

197. Had the claimant failed on issue 1 for want of possessing "other status", I would therefore have held the relevant rules to be an irrational exercise of the section 13A LGFA power.

The second set of issues: the comparison within UC

Issue 3(a): section 15 EqA

198. Section 15 is set out at paragraph 110 above and the approach to it at paragraphs 132 to 138. I hold that the defendant discriminated against the claimant within section 15, and that it has not shown the treatment to be a proportionate means of achieving a legitimate aim.

199. ***The unfavourable treatment***. The first task is to identify the unfavourable treatment (*Williams* at [28]). The claimant identifies the decision of 10 September 2025, by which the defendant reduced his council tax reduction from 100% to 10% with effect from 28 July 2025 and demanded £785.98 for the remainder of the year (paragraph 83 above). Mr Giffin KC accepted that there was then unfavourable treatment, though he would describe it as the award of a lesser discount than the claimant would have liked. Nothing turns on the description. The threshold of disadvantage is relatively low (*Williams* at [27]), and a demand for £785.98 from a person who had paid nothing for more than five years is unfavourable on any view. There is no artificial separation here between a method of calculation and a favourable award, as there was in *Williams* (at [28]).

200. ***The "something"…*** The second task is to identify the "something" because of which the defendant treated the claimant in that way (*Grosset* at [36]-[37]). It was the level of his income as the scheme counts it: £244.65 a week, of which the LCWRA element was £97.68 and the transitional element £54.63. The defendant's reason was that income at that level falls in Band 4. The "something" need not be the sole cause of the treatment; it is enough that it had a significant influence (*Pnaiser* at [31]; *Willott* at [118]). The LCWRA element alone takes a single person from £92.34 to £190.02 a week, and so out of Band 1 (paragraph 67 above). It had a significant influence on the treatment. I need not decide whether the transitional element also arose in consequence of the claimant's disability, because the element that undoubtedly did is sufficient.

201. ***… arising in consequence of disability***. The third task is objective: did the "something" arise in consequence of the claimant's disability (*Grosset* at [38])? The LCWRA element is payable only on a determination that the claimant's capability for work-related activity is limited by his physical or mental condition, and that the limitation is such that it is not reasonable to require him to undertake such activity (section 37(2) WRA; regulation 40 of the UC Regulations; paragraphs 17 to 20 above). The claimant's conditions are not in dispute, and the defendant does not suggest that he is not disabled within section 6 EqA. The chain from disability to the counted income has two links: the determination of LCWRA, and the payment of the element that follows from it. The causal link may include more than one link, and it can be relatively loose (*Pnaiser* at [31]; *Scott* at [44]). Mr Giffin KC accepted that there is a link, and submitted only that it is too distant. Two links is not too distant. *Willott* is different on its facts: there the evidence did not establish that the claimant's conduct arose from her disabilities (at [119]).

202. ***Knowledge***. Section 15(2) applies only if the defendant shows that it did not know, and could not reasonably have been expected to know, that the claimant had the disability. It did not try to show that. The DWP's notification of his award identified the LCWRA element; the defendant disregarded his PIP; and it applied the £30 disregard on the footing that he was disabled (SW, para 28, CHB138). Section 15(2) does not apply.

203. ***The defendant's structural objections***. Mr Giffin KC advanced two objections to the application of section 15 at all. The first is that the section concerns the treatment of individuals and not the making of a general scheme, and that section 15(2) shows as

much, because a body making a scheme cannot know of the disability of every person to whom it may apply. I accept the premise but reject the conclusion. The treatment relied on is the individual decision of 10 September 2025, not the adoption of the scheme. Section 15(2) confirms that the section contemplates a person dealing with an individual, which is what the defendant did when it applied its scheme to the claimant and demanded payment. Nothing in section 29(6), which the defendant accepts applied to it, confines section 15 to acts that do not involve the application of a policy. The point was taken, and succeeded, in *LL* (at [87]), though the judge there did not analyse the two causal questions. I derive no assistance either way from the consent order in *R (Bleakley) v Three Rivers DC* (AC-2025-LON-004451, 2 February 2026), relied on by the claimant; the court approved it on the parties' agreed reasons without giving reasons of its own.

204. The second objection is that, unless the scheme was unlawful, the defendant was bound by section 13A(1)(a) LGFA to apply it, so that its duty was the only effective cause of the treatment. That is the Schedule 22 argument in another form, and I deal with it under issue 3(d). It does not touch the causal question under section 15(1)(a), which asks why the defendant treated the claimant as it did. The answer is that his counted income included the LCWRA element.

205. ***Justification***. The defendant must therefore show that the treatment was a proportionate means of achieving a legitimate aim (section 15(1)(b)). The test is that of *Akerman-Livingstone* at [28] and [31]: a sufficiently important aim, a rational connection, means no more than necessary, and a fair balance, with the court asking whether a lesser measure would have achieved the aim. The aim is the same as under issue 1. So are the answers. The treatment is not rationally connected to an aim of focusing help on need, because it treats a person's subsistence income as surplus; a disregard was an available lesser measure; the cost evidence is slight; the effect is severe; and the EH scheme does not mitigate it. Two further points apply under section 15. The section obliges a public authority to be more considerate towards a disabled person than towards a person without the disability (*Akerman-Livingstone* at [31]); the relevant rules do the opposite, by giving the disabled person a reduction of 10% where his non-disabled counterpart on UC receives 100%. Neither party argued whether the analysis of cost in *Heskett*, which concerned indirect discrimination (at [103]), applies under section 15; I have assumed it does, but the defendant fails on that assumption.

206. The claimant therefore succeeds under section 15.

Issue 3(b): section 19 EqA

207. I hold that the defendant also discriminated against the claimant within section 19, and that the same justification fails.

208. ***The PCP***. The PCP pleaded is the practice of taking into account every element of UC other than the housing costs element (Statement of Facts and Grounds, para 51, CHB35). The defendant accepts that the income provisions of its scheme are a PCP (Detailed Grounds of Resistance, para 13, CHB70). Mr Giffin KC reframed it at the hearing as the practice of treating all income alike unless it is disregarded, and asked whether disabled people are more likely than others to have a higher income so defined. Mr Royston answered that this assumes the lawfulness of the very definition under challenge and, in my view, he is right. A claimant is entitled to identify the PCP of which he complains,

provided the defendant applies it, and this one is applied to every applicant who receives UC.

209. ***Particular disadvantage.*** Section 19(2)(b) asks whether the PCP puts disabled persons at a particular disadvantage when compared with persons who are not disabled. It does. Among UC recipients, those with the LCWRA element are assessed at £97.68 a week more than those without it; a single person with the element cannot be in Band 1, while a single person without it, on the standard allowance alone, is (paragraph 67 above). Mr Giffin KC accepted that the overlap between those who receive the LCWRA element and those who are disabled within section 6 EqA is significant, and that nothing turns on the difference (the defendant's skeleton argument, para 56, fn 2). The disadvantage is intrinsic to the rule, and statistical evidence is not required where a provision is, by its terms, liable to affect a protected group more than others (*Bobezes* at [24]-[26] and [41]-[45]; *Winder* at [87]). The claimant was put at that disadvantage: he moved from Band 1 to Band 4 with no change in his income or his needs (section 19(2)(c)).

210. The defendant's answer rests squarely on *Logan*. Blake J held that disability cannot be equated with unemployability (at [36]); that a scheme which reduced support for everyone of working age to 85% did not fail to treat disabled people differently, because its disregards and premiums already acknowledged their situation (at [37]); and that a claimant has a portfolio of benefits, some for the ordinary expenses of life, so that disregarding certain benefits for the disabled is *"to make an adjustment"* as between them and others (at [46]). I accept all of that. It was said of a scheme that treated the non-disabled and the disabled alike, and whose applicable amount included the disability premiums. This scheme treats them differently, and its thresholds include no amount for disability. *Logan* supports the defendant's right to require everyone to contribute from subsistence income. It does not support a scheme in which the non-disabled claimant on UC contributes nothing and the disabled claimant on the same benefit contributes 90%.

211. ***Justification***. Section 19(2)(d) requires the defendant to show the PCP to be a proportionate means of achieving a legitimate aim. For the reasons given under issues 1(d) and 3(a), it has not. Where the aim is to live within a budget, the proportionality exercise examines the financial pressures and whether they could have been addressed without the discriminatory effect (*Heskett* at [100]); the defendant's evidence on both is thin, and the alternative was identified to it in 2023 and again in 2024.

Issue 3(c): sections 20 and 21

212. The claimant relies on the first requirement in section 20(3), as adapted by Schedule 2 to the EqA for the exercise of a public function. Under that Schedule, the reference to a disabled person is to disabled persons generally (paragraph 2(2)); the relevant matter is the exercise of the function (paragraph 2(4)); and being placed at a substantial disadvantage in relation to the exercise of a function means, where a benefit may be conferred, being placed at a substantial disadvantage in relation to its conferment (paragraph 2(5)(a)). Nothing requires A to take a step which A has no power to take (paragraph 2(8)).

213. This head adds nothing to the claim under section 19. The parties treated the two together. I decide it briefly. The PCP puts disabled persons generally at a substantial disadvantage in relation to the conferment of the reduction, for the reasons given under issue 3(b): a

disadvantage worth £97.68 a week of counted income, and in the claimant's case 90% of his liability, is substantial. The step contended for, a disregard of the LCWRA element, was within the defendant's power (Schedule 1A to the LGFA, paragraph 2(2)); its own consultant described a disregard as an easy change (SHB942); and about half of all billing authorities had taken that step (SW, para 21, CHB136). Whether it was reasonable to have to take that step, in the circumstances of this case, turns principally on cost, and the evidence of cost is as slight here as elsewhere. I conclude that the respondent was under a duty to make reasonable adjustments to avoid the disadvantage to which its PCP put the claimant; that a disregard of the LCWRA element was a step the defendant could reasonably have been expected to take in the circumstances; and that its failure to do so was discrimination under section 21(2) in the form of a failure to comply with that duty.

Issue 3(d): Schedule 22 EqA

214. Schedule 22 provides no defence. Paragraph 1(1) protects a person who does *"anything P must do pursuant to a requirement"* of an enactment (paragraph 113 above). Section 13A(1)(a) LGFA requires a person's council tax to be reduced to the extent required by the authority's scheme. The defendant's argument is that, once it had made its scheme, it was bound to apply it, so that the decision of 10 September 2025 was something it had to do.

215. The argument fails for two reasons. First, in *Willott*, Ellenbogen J accepted reliance on Schedule 22 in the absence of a successful attack on the scheme itself, and made clear that the Schedule does not enable an authority to avoid its obligations under the EqA by formulating, and then applying, a scheme which is itself discriminatory and susceptible to judicial review (at [120]). The claimant's attack on the relevant rules has succeeded. Mr Giffin KC accepted that Schedule 22 would not assist in that event. His residual submission, that a scheme which is not quashed remains lawful, does not meet the case: the claimant does not ask me to quash the scheme, but the lawfulness of the relevant rules is the premise on which the decision of 10 September 2025 must be judged, and I have found them unlawful. Secondly, the defendant was not confined, when it determined the claimant's liability, to applying its scheme. It held at the same time the power in section 13A(1)(c) to reduce the amount further, to nil if it thought fit, in a particular case or a class of case (section 13A(6) and (7)). The demand it sent was as much a decision not to exercise that power as it was an application of the scheme. It was not something the defendant must do.

Issue 4: Article 14 on the comparison within UC

216. Mr Royston accepted that this claim adds nothing if the claim under the EqA succeeds. It has succeeded, and I need not decide issue 4. Since the point was argued, I state my conclusion on it briefly in the alternative.

217. The complaint is that the defendant failed, without objective and reasonable justification, to treat differently persons whose situations are significantly different (*Thlimmenos* at [44]; paragraph 123 above). The claimant on UC with the LCWRA element and a non-disabled person on UC with the standard allowance alone are in significantly different situations: the first cannot work and has the needs that the element exists to meet; the second has neither. Some similarities, such as a shared benefit, do not prevent two situations from being significantly different (*DA and RA* at [99]). The scheme treats the

two alike in the only respect that matters to it, by counting every pound of each as income against the same thresholds. It does not, as the scheme in *Logan* did, acknowledge the difference through its disregards and premiums (*Logan* at [37]): the PIP disregard meets different needs, and the £30 disregard, for the reasons given under issue 1(d), reaches no one on UC. Where a *Thlimmenos* claim would require the allocation of resources, the court approaches it with caution, but the caution arises at the stage of justification (*Burnip* at [18]). The defendant claimed an especially wide margin for a decision whether to treat one group more favourably than another (Detailed Grounds of Resistance, para 18, CHB72). I have allowed it a wide margin under issue 1(d), and the justification fails for the same reasons. Had it been necessary, I would have held that the defendant violated Article 14, read with A1P1 and Article 8, in failing to treat the claimant differently from a non-disabled recipient of UC.

Issue 5: rationality on the comparison within UC

218. This issue arises only if the claimant failed on issues 3 and 4. For the reasons given under issue 2, it could not succeed if those claims failed on justification. If they failed at a threshold stage, I would hold the relevant rules irrational on this comparison too, for the reasons given under issue 2 and for one more. The defendant's own assessment in 2022 said that the scheme recognised that disabled people have limited ability to work and higher living costs (paragraph 55 above), and the December 2024 report repeated that the living costs of disabled claimants are higher (para 54, CHB164). A scheme which, on identical cash, assesses the disabled person as having less need than the non-disabled person does the opposite of what its author said it did. On this comparison too, I am persuaded that the defendant acted irrationally.

The third set of issues: the PSED

Issue 6: the adoption of the scheme on 18 December 2024

219. In my judgment, the defendant also did not comply with section 149 EqA when it adopted the scheme for 2025/26. I begin with the function being exercised, then what was before members, then whether that amounted to due regard.

220. The function. The decision-maker was the full council, and the duty was on it (*Bracking* at [26], point (3)). The function it exercised on 18 December 2024 was that in paragraph 5 of Schedule 1A to the LGFA: to consider whether to revise or replace its scheme and, having done so, to adopt the scheme for 2025/26. The scheme adopted was the whole scheme, including the relevant rules carried forward from 2023/24. Mr Giffin KC submitted that the duty naturally concentrated on the revisions then proposed, because that is what the statutory process required members to consider. I accept that the four changes would naturally be the focus of attention. But the duty attached to the exercise of the function, which was to adopt a scheme, and the need to eliminate discrimination and to advance equality of opportunity (section 149(1)(a) and (b)) does not distinguish between the rules a scheme changes and the rules it keeps. Section 149(3)(b) and (4) require due regard, in particular, to the need to take steps to meet the needs of disabled persons that are different from the needs of others, including steps to take account of their disabilities. A rule that counts the benefit paid for those needs as surplus income is a matter to which that duty speaks directly.

221. What was before members. Members had the December 2024 report, its equality impact assessment (Appendix 1) and the consultation responses (Appendix 3), among which was the response of Citizens Advice (CHB192-199). Members provided with those materials can be taken to have read them, absent positive evidence to the contrary (*Hunt* at [83]). I proceed on that footing.

    221.1 The report's section on equalities (paras 52 to 55, CHB164-165) addressed the four proposed changes. It identified that disabled claimants would be disproportionately affected by a reduction in support, because of increased living costs and the likelihood of a non-dependant carer in the household, and said that mitigation would largely rely on greater use of the EH scheme (paras 54 and 55). It said nothing about the treatment of UC, the LCWRA element or migration (paragraph 63 above). Its summary of the scheme listed the disregards, including the support component of ESA and the housing costs element of UC (para 10, CHB152-154), without observing that the counterpart of the support component in UC is counted in full.

    221.2 The equality impact assessment was likewise confined to the four changes, as Mr Giffin KC accepted (paragraph 171.5 above). It recorded that 45% of claimants of working age were disabled or lived with someone who was, and that the changes would disproportionately affect them (CE, para 25). It did not identify the effect of the relevant rules on disabled people migrating to UC, and it proposed no mitigation directed at them (CE, paras 25 to 27).

    221.3 The response of Citizens Advice did identify it. It recommended keeping the policy focused on current welfare changes *"so that disabled people on UC are not disadvantaged by your scheme"*, and noted that managed migration notices for those on income-related ESA would be rolling out from the autumn of 2024 (CHB192). It asked for all elements of UC other than the standard allowance to be disregarded, so that claimants were not penalised with higher bills for receiving additional elements such as the LCWRA element (CHB193). It said that reducing the discount would seriously affect those on UC in the LCWRA group unless steps were taken to treat them similarly to those on income-related ESA, and gave the example of a woman who, on migration, would move from a reduction of 100% to one of 40% under the existing scheme (CHB196). It pointed out that the £30 disregard was not being applied to the LCWRA group (CHB197). It also said that the defendant's application form for the EH scheme was one that even its experienced advisers found challenging to complete (CHB193).

    221.4 The report, however, introduced that response in these terms (para 37, CHB160):

> **Their response is based on the original paper that was presented to the Executive on 15 July 2024 and not the consultation questions that went live on 24 July 2024. As such, their response refers to 2 options for change that were removed from being consulted on.**

    The summary of the consultation responses that followed (para 38) did not mention the point. A member reading the report was thus told that the response

was addressed to a superseded paper. That was true of parts of it. It was not true of the recommendation about migration, which the report did not mention.

221.5 Nothing else before members touched the point. The matters known to the defendant's officers since 2023, namely the request from Citizens Advice, the consultant's advice that a disregard was an easy change, and the briefing to an informal meeting of the Executive, had not been placed before the full council in 2023 (paragraphs 58 and 59 above; CE, paras 11 to 16) and were not placed before it in 2024. The decision-maker cannot be taken to know what its officials know (*Bracking* at [26], point (3)).

222. Was that due regard? Mr Giffin KC submitted that the PSED is a duty of substance, not of form; that members knew that a less generous scheme would bear hardest on disabled people and that the EH scheme was the mitigation; that the duty requires no precise mathematical exercise (*West Berkshire* at [83]-[85]); and that the response of Citizens Advice was there to be read. He asked what a report that had named migration would have added. I accept the first three propositions. But the fourth does not help the defendant, for these reasons.

222.1 General regard to issues of equality is not the same as having specific regard, by way of a conscious approach to the statutory criteria (*Bracking* at [26], point (6)). The regard required was to the effect of this scheme on disabled people, and in particular to the need to take steps to meet their different needs (section 149(3)(b) and (4)). The only document before members that identified the effect of the relevant rules on disabled people was discounted in the report itself. The report and the assessment treated the scheme's existing treatment of disability as a given, and considered only whether the changes would make matters worse. That is having regard to the changes, not to the scheme.

222.2 The point was neither minor nor new. The defendant's own assessments in 2022 had found the effect of the scheme on disabled people neutral, and had described the scheme as recognising their limited ability to work and higher living costs (paragraph 55 above). Those assessments were wrong about the relevant rules, as the defendant now accepts (the December 2025 report, para 55, SHB819), and they were never revisited. By December 2024 the issue had been raised with the defendant twice by Citizens Advice, managed migration of the claimant's cohort had begun, and the defendant's officers had been told that a disregard was an easy change. An assessment that fails to identify a flaw of that kind in the scheme does not discharge the duty; a proper regard to the duty should have shone a bright light on the flaw (*LL* at [84]-[86]). In *Bracking*, too much of the Secretary of State's case rested on inference rather than on hard evidence of focused regard (at [62]). The same is true here.

222.3 The minutes confirm the position (paragraph 65 above). Members debated the four changes, voiced concern for disabled claimants, and resolved to increase support through the EH scheme for those affected *"by those changes"*. No member mentioned UC, the LCWRA element or migration. Cllr Ellis's evidence that the point raised by Citizens Advice was not picked up, and that she and other members did not appreciate the effect of the scheme on disabled people receiving UC (CE, paras 22 to 24 and 27 to 28), is consistent with the minutes and with the

report. Mr Warren's evidence that members attached considerable weight to the EH scheme (SW, para 45, CHB144-145) is also consistent with them. The two accounts do not conflict. Members relied on the EH scheme to mitigate the changes they were making, without knowing of the effect they were leaving in place.

222.4 The duty requires rigour, an open mind and a structured attempt to focus on the details of equality issues (*Bracking* at [61]). It does not require that the full council should have reached a different decision. It requires that the decision should have been taken with its eyes open to the effect of the scheme on disabled people. On this point its eyes were closed. Nothing put before members had opened them.

223. I therefore hold that the defendant failed to comply with section 149 EqA in adopting the scheme for 2025/26. The case differs from *Logan*, where the assessment was adequate but had not reached the decision-makers (at [53]). Here the assessment reached them but did not address the point. The outcome is the same.

The letter of 10 September 2025

224. The claimant pleaded that the defendant breached the PSED when it sent the letter of 10 September 2025 without mentioning the EH scheme (Statement of Facts and Grounds, para 81, CHB44). Mr Royston did not develop that complaint at the hearing, and relied on the letter's silence only in answer to the defendant's case on justification, where I have taken it into account. I record that the complaint was not pursued and I make no finding on it; the defendant's answers to it, including under section 31(2A) of the Senior Courts Act 1981, therefore do not arise.

The fourth set of issues: delay and relief

Issue 7: delay

225. The claim was brought promptly in respect of the decision of 10 September 2025, and the question of extending time does not arise. The grounds for the claim first arose when the defendant applied the relevant rules to the claimant, not when it adopted them.

226. The principles are not in dispute. Time runs from the date when the grounds for the claim first arose (CPR 54.5(1); *Delve* at [121]-[122]). Where a rule is mandatory and is applied without independent consideration of whether it should apply in the particular case, the grounds first arise when the person is affected by its application to him, and *"[p]recisely when a person first becomes affected for this purpose will depend upon the facts and circumstances of each case"* (*R (Badmus) v Secretary of State for the Home Department* [2020] EWCA Civ 657, [2020] 1 WLR 4609 at [77]-[78]). Unlawful legislation is not a continuing unlawful act whose time limit rolls forward for as long as it applies (*Delve* at [124]), which disposes of the claimant's reliance on *R (G) v Secretary of State for Justice* [2010] EWHC 3407 (Admin) at [11]. But where the effect of a measure on a person is inevitable from the moment it is made, that person has standing from that moment, and ignorance of the effect goes only to an extension of time (*Delve* at [127]).

227. Mr Giffin KC accepted that a scheme under section 13A LGFA is analogous to legislation for this purpose, and submitted that the claimant's case falls on the *Delve* side of the line: everyone on legacy benefit was bound to migrate, so that on 18 December 2024 it was known that the scheme would in due course apply to the claimant. I do not accept that. Two features distinguish this case from *Delve*.

    227.1 First, the scheme adopted on 18 December 2024 had a life of one year, from 1 April 2025 to 31 March 2026. In *Delve* the Pensions Acts fixed the date on which each claimant's pension would be deferred: *"[i]t was inevitable once those Acts were passed that the Appellants' entitlement to a state pension would be deferred"* (at [127]). Here it was not inevitable, when the scheme was adopted, that the relevant rules would be applied to the claimant at all during its life. That depended on whether the Secretary of State sent him a migration notice and on when the resulting award of UC began. Migration notices to claimants of income-related ESA had begun only in September 2024, the timetable had been revised more than once, and the defendant's own evidence is that people remain on legacy benefits (SW, para 25, CHB137; paragraphs 29 and 30 above). The claimant's notice came on 18 June 2025 (paragraph 81).

    227.2 Secondly, the rule is of the *Badmus* kind: mandatory, and applied without individual consideration (at [77]). The claimant was not affected by it until it was applied to him. Until then he had a reduction of 100%, confirmed for the whole year by a bill dated 13 March 2025 (paragraph 80), and no liability to challenge.

228. The defendant takes no point on time in respect of the decision of 10 September 2025 (Detailed Grounds of Resistance, para 27, CHB74). The claimant was affected by that decision, which determined his liability (paragraph 84), and whether time ran from its date or from his receipt of it on 18 September 2025 does not matter, because the claim was issued on 25 November 2025, within three months of either. It was also prompt: the claimant consulted solicitors on 22 September 2025, a pre-action letter was sent on 22 October 2025, legal aid was granted on 19 November 2025, and the claim was issued six days later (paragraphs 85 and 90).

229. Had it been necessary, I would have extended time. The claimant did not know until 18 September 2025 that the scheme affected him, as the defendant accepts (Detailed Grounds of Resistance, para 29, CHB74). The relevant rules continue in the scheme for 2026/27, so that the question is of continuing public importance. The claimant no longer seeks to quash the scheme, which removes the prejudice to good administration on which the defendant relied. The defendant identified no other prejudice. Delay would in any event have gone only to relief (*Delve* at [128] and [133]), and I would not have refused relief on that ground.

Issue 8: relief

230. The claim succeeds on issues 1, 3 and 6 and, in the alternative, on issues 2, 4 and 5. I turn to relief.

231. I quash the decision of 10 September 2025. The defendant applied to the claimant rules which discriminated against him contrary to section 29 EqA, read with sections 15, 19 and 21, and contrary to Article 14 ECHR read with A1P1 and Article 8, and so was an

act made unlawful by section 6(1) HRA. The award under the EH scheme does not negate that conclusion. A person required to apply for the exercise of a discretion, where another has a right to exemption, suffers the difference in treatment whatever the outcome of the application (*Logan* at [41]; *Carmichael* at [48]). It will be for the defendant to determine the claimant's liability for 2025/26 afresh, in accordance with this judgment.

232. Where a public body has acted unlawfully and a quashing order is not appropriate, *"it will usually be appropriate to make some form of declaratory order to reflect the court's finding"* (*Hunt v North Somerset Council* [2015] UKSC 51 at [12], per Lord Toulson). The claimant seeks declarations of discrimination, irrationality and breach of the PSED. The defendant resists any relief going beyond the claimant's individual case. I will grant declarations, but in terms confined to the relevant rules as applied to the claimant and to the adoption of the scheme for 2025/26, not condemning the scheme at large. In *Logan*, Blake J declined a declaration because the claimant had received a full reduction under the discretionary scheme and would gain nothing from it (at [61]). That is not this case: the claimant retains a liability for 2025/26, the relevant rules continue in the scheme for 2026/27, and the defendant has said that it will take the court's guidance into account in future decisions (the defendant's skeleton argument, para 71). I invite the parties to agree the precise terms of the declarations for inclusion in the final order.

233. The claimant claims damages for injury to feelings caused by discrimination contrary to the EqA, with the amount to be agreed or, failing agreement, assessed in the County Court. Damages are in principle available for discrimination contrary to Part 3 of the EqA, and I have found such discrimination. Quantum was not argued before me, and I say no more about it than that the claimant's evidence of the effect of the decision and of the process that followed it (paragraph 89 above) rests on his own account, which the defendant did not challenge. I invite the parties to agree the terms of an order providing for the amount to be agreed or, in default of agreement, for the claim to be transferred to the County Court for assessment. In the light of that conclusion, no separate question of damages under section 8 of the HRA arises.

234. For the reasons given under issue 7, delay is no ground for refusing relief. Section 31(2A) of the Senior Courts Act 1981 was raised only in answer to the complaint about the letter of 10 September 2025, which was not pursued. It has no application to the quashing order, which rests on the substantive unlawfulness of the relevant rules, and the defendant did not invoke it in answer to the declaration on the PSED.

Conclusion

235. In summary: the claim was brought promptly; it succeeds on issues 1, 3 and 6; had it been necessary to decide them, it would have succeeded on issues 2, 4 and 5; the decision of 10 September 2025 is quashed; declarations will be made in terms to be approved by the court; and the claimant is entitled in principle to damages for injury to feelings. The defendant must determine the claimant's liability for 2025/26 afresh, in accordance with this judgment.

236. Costs and other consequential matters are addressed in an order, the terms of which the parties have helpfully agreed since the draft of this judgment was circulated.

237. Lastly, I express my thanks to counsel for the exceptional quality of their submissions.