



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 97

P383/26

OPINION OF LADY HALDANE

in Petition of

Q

Petitioner

for

JUDICIAL REVIEW

Petitioner: Party

Respondent: Dewart; Office of the Advocate General

8 October 2026

Introduction

[1] The petitioner, known as “Q” for the purposes of these proceedings, has presented a petition for Judicial Review of certain actions taken by the respondent, arising during the course of a review of the petitioner’s claim for Universal Credit benefit payments. She seeks a number of different declarators, reduction of a decision of the respondent dated 12 March 2026 and payment of sums in just satisfaction of alleged breaches of her rights under the European Convention on Human Rights and Data Protection legislation.

[2] The respondent is the Secretary of State for Work and Pensions. He has entered these proceedings and lodged answers to the petition. The pleadings for both parties were

detailed, and supplemented by notes of argument. In addition, further to a case management order made at an earlier hearing, both parties lodged written speaking notes. The Lord Ordinary who presided over that hearing directed that parties should read their speaking notes in lieu of more “ad hoc” oral submissions. The particular purpose of this procedure was to assist the petitioner, who is disabled within the meaning of the Equality Act 2010, to follow the structure of submissions being made by the respondent. For the avoidance of doubt, although the respondent did not formally admit the petitioner’s disabled status, nor did he, for the purposes of these proceedings, seriously dispute that status.

[3] In addition to the material already referred to, parties respectively lodged a considerable number of productions. Separately, and regrettably, the petitioner was taken unwell at the close of her opening submissions and was unable to participate in the hearing on the afternoon of the first day of the hearing. She suggested providing her oral speaking note in lieu of further detailed oral submissions, although happily she was well enough on the second day to make some further, commendably focussed, oral submissions, and respond to the submissions made by the respondent. I offer that context in order to explain that there was, in the result, a voluminous amount of written material submitted in this case, which was supplemented by oral argument on both sides. That observation is not made critically, but simply to explain that although I have taken into account all that was submitted, and all that was said in oral submission, in the interests of brevity what follows is of necessity a summary of parties written and oral arguments. It should not be assumed that if a particular document or submission is not specifically referred to, that due regard has not been paid to it.

[4] Although there were a number of satellite issues which flowed from the primary issue, at its heart this petition emerges from a review carried out of the petitioner's entitlement to Universal Credit ("UC"). The review was not directed solely at the petitioner, but rather her case formed part of a wider targeted case review, which I will revert to in more detail below. As part of that review, she was requested to supply to the respondent various pieces of information. She complied with much that was requested of her. However, the respondent requested that the petitioner also supply 4 months' worth of unredacted bank statements. The petitioner declined to do so, querying the relevance of, and legal requirement for, unredacted statements showing amongst other things, her personal expenditure. The respondent founded upon a statutory entitlement to request such information, which asserted legal entitlement the petitioner disputed. Thus the core question for resolution in this process is whether the purported exercise of a statutory power to request information was, or was not, ultra vires of the respondent's powers, and whether, in any event such a request gives rise to a breach of Data Protection, Human Rights, and Equality legislation.

Background

[5] The petitioner has been in receipt of UC since 2020. She has supplied, from time to time and as requested, material relevant to receipt of that benefit. In addition some information is supplied directly to the respondent from HMRC, for example. The provision of such information, and indeed dialogue with the respondent's case workers is and has been largely carried out through an online portal. In 2022, the respondent announced his plans for tackling fraud and error in the welfare system. Part of the plan was to introduce a Targeted Case Review (TCR) scheme, which would review inter alia entitlement in UC cases

(UCR) which had been identified as being at higher risk of being incorrect, as well as a number of cases which had been randomly selected. All decisions taken in considering any error – both over and under payments - in a case are taken by the respondent's case handlers. The criteria for being subject to UCR is that the claim is currently in payment and that the claimant has been awarded UC for at least 6 months.

[6] On 25 February 2026, the UCR team opened a routine review and required the petitioner, who had been randomly selected, to provide, amongst other information, 4 months of unredacted bank statements that were required to show all incoming and outgoing transactions, as well as housing evidence, and evidence of "other income". The petitioner complied with the requests made of her by, for example, uploading screenshots of documents relating to her housing and other income. However she did not provide the 4 months unredacted bank statements, and, using the online portal, she queried the statutory entitlement to make this request. The respondent directed her to an online information page, but the petitioner considered that this page did not reflect any primary or secondary legislation, or policy documentation, underpinning the request made. Whilst continuing proactively to report other changes in her income, the petitioner did not provide the unredacted bank statements, continuing to dispute the legal basis for the request and contacted her MP to elicit his support. He wrote to the respondent on the petitioner's behalf.

[7] The petitioner and the respondent continued to have dialogue via the online portal, with the respondent continuing to assert the need for the requested information in order to complete its review, and the petitioner continuing to dispute his entitlement to do so. Ultimately, on 13 March 2026, the respondent suspended UC payments to the petitioner on the basis that she had failed to provide all of the documents necessary to complete the review. The petitioner submitted a formal complaint to the respondent but the respondent,

through his officials, did not communicate further with the petitioner via the online portal after a message on 13 March explaining that the respondent had duly followed all relevant policies, and explaining the basis for suspension of UC, as well as the entitlement to process her personal data in the particular circumstances. The respondent's officials did later respond, separately, to the petitioner's request for a review, and on 8 April 2026 revisited the decision to suspend UC payments, which were then restored and paid as usual on 9 April 2026. It is worth noting at this juncture that the respondent offered an undertaking to the court that no further steps would be taken to suspend the petitioner's UC payments, pending the decision of this court on the petition at first instance.

[8] The petitioner's MP received a written response to his communication on behalf of the petitioner, which set out the reasons the respondent required the information requested, and the statutory basis asserted for that entitlement. Her MP explained he could take the matter no further as the respondent had closed the complaint. The petitioner sought to pursue her complaint more broadly through various other public bodies, and at the same time continued to correspond in relation to her UC review, in particular in relation to an issue over the uploading of screenshots of various pieces of documentation rather than uploading PDFs of same. That separate dispute was ultimately resolved, with the respondent accepting documents in different formats to that which it originally requested. The petitioner ultimately considered that she had exhausted all other avenues to ventilate her concerns and proceeded to raise the present petition.

The relevant statutory framework

[9] There was a large measure of agreement as to the relevant statutory framework, however the parties were entirely at odds as to the proper interpretation and application of

the identified provisions. The enabling power founded upon by both parties is to be found in section 5(1A) of the Social Security Administration Act 1992 and is in the following terms:

- “(1A) Regulations may make provision for requiring a person of a prescribed description to supply any information or evidence which is, or could be, relevant to—
- (a) a claim or award relating to a benefit to which this section applies, or
 - (b) potential claims or awards relating to such a benefit.

- (2) This section applies to the following benefits—
universal credit;

(and thereafter a number of other benefits are listed, which are not directly relevant for present purposes)”

[10] In exercise of that enabling power, various regulations have been enacted, including the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (hereinafter “the 2013 Regulations”). The specific power founded upon by the respondent in making its disputed request of the petitioner is found in Regulation 38, and in particular 38(2), which provides:

“38.—(1) This regulation, apart from paragraphs (7) and (9), applies to any person entitled to benefit, other than a jobseeker's allowance, and any other person by whom, or on whose behalf, payments by way of such a benefit are receivable.

- (2) **Subject to regulation 8 of the Personal Independence Payment Regulations, a person to whom this regulation applies must supply in such manner as the Secretary of State may determine and within the period applicable under regulation 45(4)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 such information or evidence as the Secretary of State may require for determining whether a decision on the award of benefit should be revised under section 9 of the Social Security Act 1998 or superseded under section 10 of that Act. (Emphasis added)**
- (3) A person to whom this regulation applies must supply in such manner and at such times as the Secretary of State may determine such information or evidence as the Secretary of State may require in connection with payment of the benefit awarded.

- (4) A person to whom this regulation applies must notify the Secretary of State of any change of circumstances which the person might reasonably be expected to know might affect —
- (a) the continuance of entitlement to benefit;
 - (b) the amount of benefit awarded; or
 - (c) the payment of benefit,
- as soon as reasonably practicable after the change occurs”

[11] The power founded upon by the respondent permitting him to suspend the petitioner’s UC is found in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (“the decisions and appeals regulations”), regulation 45 which states:

“45. — Provision of information or evidence

- (1) This regulation applies where the Secretary of State requires information or evidence from a person mentioned in paragraph (2) ('P') in order to determine whether a decision awarding a benefit should be revised under section 9 of the 1998 Act or superseded under section 10 of that Act.
- (2) The persons are.....
- (c) a person from whom the Secretary of State requires information or evidence under regulation 38(2) (evidence and information in connection with an award) of the Claims and Payments Regulations 2013

.....

- (4) P must either
- (a) supply the information or evidence within —
 - (i) a period of 14 days beginning with the date on which the notification under paragraph (3) was given or sent to P or such longer period as the Secretary of State allows in that notification, or
 - (ii) such longer period as P satisfies the Secretary of State is necessary in order to comply with the requirements, or
 - (b) satisfy the Secretary of State within the period applicable under subparagraph (a)(i) that
 - either —
 - (i) the information or evidence does not exist, or
 - (ii) it is not possible for P to obtain it

.....

- (6) The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4)."

[12] There was a difference of view between the parties as I will come on to discuss, as to the relevance or significance in this context of the reference to "revision" and "supersession" as referred to in regulation 38(2) under reference to sections 9 and 10 of the Social Security Act 1998. Those sections are as follows:

"9 Revision of decisions

- (1) ... Any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State —
 - (a) either within the prescribed period or in prescribed cases or circumstances; and
 - (b) either on an application made for the purpose or on his own initiative; and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised

10 Decisions superseding earlier decisions

- (1) Subject to subsection (3) ... below, the following, namely —
 - (a) any decision of the Secretary of State under section 8 above or this section, whether as originally made or as revised under section 9 above;
 - (aa) any decision under this Chapter of an appeal tribunal or a Commissioner; and
 - (b) any decision under this Chapter of the First-tier Tribunal or any decision of the Upper Tribunal which relates to any such decision, may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.
- (2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.
- (3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section"

[13] The petitioner also advanced arguments that the request for unredacted bank statements made by the respondent was in breach of the general prohibition on the

processing of personal data as enshrined in the UK General Data Protection Regulation, whereas the respondent relied upon the exemption contained in article 6 (1)(e), that is to say

“Processing shall be lawful only if....processing is necessary for the performance of a task of the controller carried out in the public interest or a task carried out in the exercise of official authority vested in the controller”

The petitioner’s submissions

[14] The petitioner’s principal arguments fell under a broad heading of illegality, and were subdivided into the following propositions (employing the numbering and language of the petitioner as set out in her Note of Argument):

- “(a) the requirement (to provide unredacted bank statements) is ultra vires Regulation 38(2) (Ground 1(a));
- (b) *esto* it is intra vires, it breaches data protection law (Ground 1(b));
- (c) the suspension of the petitioner’s UC payments is unlawful (Ground 1(c));
- (d) the decisions to make the Requirement and to suspend were irrational, *esto* procedurally improper (Ground 2);
- (e) they were disproportionate (Ground 3); and
- (f) they were taken in breach of the public sector equality duty (‘PSED’) and of Articles 8 and 1 of Protocol 1 of the Convention (Ground 4).”

The constitutional question

[15] However, in the period leading up to the substantive hearing, the petitioner sought leave to amend the petition to introduce arguments directed at the Targeted Case Review itself, which application was refused. In addition, in her Note of Argument at paragraph 19, the petitioner sought to introduce arguments which involved placing reliance on ministerial statements made at the time of the passing of the Public Authorities (Fraud, Error and Recovery) Act 2025, in support of the proposition that such statements should be taken as an

accurate statement of what the respondent could and could not do when administering UC. This gave rise to a satellite argument, ventilated at the outset of proceedings, as to the constitutional propriety of placing reliance on such statements in this context. The respondent contended that the reliance placed by the petitioner on parliamentary remarks amounted to questioning or impeaching proceedings in Parliament, contrary to Article IX of the Bill of Rights, and lodged correspondence from the Office of Speaker's Counsel (a department which provides legal advice on parliamentary issues) in support of their position. The petitioner disputed that contention, stating in her speaking note that she relied on these statements solely as a record of historical fact; that the case advanced is that the requirement to provide bank statements is ultra vires Regulation 38(2) and therefore the case turned on the construction of the relevant regulation and underlying legislation alone; and that she expressly disavowed any case predicated on a requirement to interpret the 2025 Act in a *Pepper v Hart* sense (*Pepper v Hart* [1992] UKHL 3). To employ the petitioner's own words in oral argument, "the words of regulation 38(2) decide the case."

[16] I intend no disrespect to the detail of the arguments advanced on this topic by each party when I say that, ultimately, standing the petitioner's stated position both in writing, and affirmed orally, this issue was not germane to the determination of the question at the heart of this petition, and, therefore a determination of the merits of parties' arguments on this particular aspect of matters is not required, intellectually stimulating though the debate was.

Intensity of review

[17] The petitioner then opened her arguments by examining the appropriate intensity of review in cases such as the present. Her overarching submission was that statutory

construction is a question of law on which the respondent is owed no margin of appreciation and no deference, under reference to, inter alia, *R (on the application of GC) (FC) v The Commissioner of Police of the Metropolis* [2011] UKSC 21, at paragraphs 43, 44; *R (on the application of Reilly and another) v Secretary of State for Work and Pensions* [2013] UKSC 68, at 47; *R (on the application of Palestine Solidarity Campaign Ltd and another) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16 at 1; and *R v Minister of Agriculture and Fisheries ex p. Padfield* [1968] A.C. 997 at pages 1029 and 1030, per Lord Reid.

[18] The examination of the question of the applicable intensity of review carried out in *R (on the application of SC, CB and 8 children) v Secretary of State for Work and Pensions and others* [2021] UKSC 26 at paragraph 151 related only to the width of the margin of appreciation afforded to ministers in this context. The claim on behalf of the respondent that the judgement of the respondent in decisions in the socio-economic sphere is entitled to a wide margin of appreciation from the court (under reference to *R (Pantellerisco) v Secretary of State for Work and Pensions* [2021] EWCA Civ 1454 at paragraphs 57-59) and that as a result the decision making is subject to a low intensity of review depended on the approval of Parliament and was not applicable in the present case. In any event parliamentary approval would not cure matters that were ultra vires the regulations, which is what was asserted in this present petition.

[19] The margin of appreciation in any event narrowed where a decision was arbitrary (*R(SC)* at paragraph 144) and a decision taken at random was the definition of arbitrary. In the present case an arbitrary request for four months unredacted bank statements had been made. Absent any control or restraint the respondent could ask for another four months of statements at any other time. This uncontrolled exercise of claimed powers amounted to a

decimation of the fundamental right to privacy and an interference that would, in any event, have a disproportionate effect on disabled persons, having regard to the disproportionate number of persons in the cohort (those claiming benefits) who were disabled. The admittedly high bar set for the intervention of the courts in matters involving socio economic policy, as explained in cases such as *R (Pantellerisco)* at paragraphs 57-59, and as also discussed in *R(SC)*, did not operate where questions of arbitrariness in decision making were concerned.

Illegality/ultra vires

[20] Turning to the substantive criticisms of the respondent's reliance upon regulation 38(2) to justify its request for information, the petitioner submitted that that regulation applied in a situation where the respondent knows of a change in circumstances that has happened, or which is expected to happen, and thus wished to acquire information needed to evidence that change. It could also apply where the respondent has identified an error or a decision made based on a mistake in a material fact. The information must be required to remedy an error or mistake. However the power conferred by regulation 38(2) was not unfettered and was instead a limited information gathering power. It did not entitle the respondent to ask for whatever information it wanted, whenever it wanted, and was not a power enabling the respondent to ask about all forms of income or capital.

[21] Further it was critical to read all the words of the regulation in their context. That context began with the section 5(1A) enabling power. The breadth of the enabling power set out in that section had been narrowed in the language of regulation 38(2) to determine whether an award should be revised or superseded. Everything turned on what those words meant, and that meaning was defined in the 1998 Act. The review being carried out

under the auspices of the TCR was neither revision, nor supersession as defined in the 1998 Act. Sections 9 and 10 of the 1998 Act permitted revision or supersession of an award of benefit either within a prescribed period or in prescribed cases. A review carried out in terms of the TCR was, in the case of the petitioner, a random review, and that was not a circumstance prescribed in the relevant legislation. It was clear from a reading of the command papers and policy documents relating to the TCR that the main purpose was the detection of fraud and crime more generally. Properly understood, the TCR, with that declared primary purpose, which trawls transaction information for indicators of the undeclared, does not serve an administrative purpose. In short, reliance upon regulation 38(2), in the context of the purpose of the TCR, in order to make the request for unredacted bank statements was completely outwith the applicable statutory provisions.

[22] So far as the decision to suspend the petitioner's UC in reliance upon regulation 45(6) of the decisions and appeals regulations was concerned, the petitioner submitted that the suspension was unlawful because the requirement upon which it was based was itself not lawfully based upon a proper reading and construction of regulation 38(2) and the associated legislation. Regulation 45(6) came into play when an identified information requirement existed. No such requirement had been identified by the respondent, there was therefore no information gap and the suspension was as a result unlawful. In any event, under the heading of illegality, the processing of the petitioner's data was not carried out within a lawful context. The public interest justification advanced by the respondent was no more than a bare assertion and did not meet the lawful processing test that the processing must be "necessary." There were no time limits applicable to the request for information and no other safeguards in place. Therefore in any event retention without effective safeguards or any definitive maximum time limit is disproportionate and breached Article 8.

Irrationality

[23] The petitioner further submitted that there were two questions that arose at this point, the first being: what ground or prescribed case had arisen that lawfully triggered the application of regulation 38(2)? The answer she suggested was none. The second question was why four months of transactional information had been requested. She suggested the respondent's position on both those questions vacillated depending on whether one looked at their answers, or note of argument or speaking note. The only documents produced that referenced a need for bank statements specifically, the petitioner suggested, were public guidance relating to the detection of fraud, through mechanisms such as the TCR. There, the suggestion was that the purpose of seeking information was to detect potential fraud for possible prosecution and an assessment period of one month in relation to bank statements was discussed. However the petitioner had been requested to provide four times that length of assessment period in reliance upon regulation 38(2).

[24] Separately, the respondent had failed to explain the basis upon which the respondent has selected the petitioner for this review. The requirement for information made of the petitioner went beyond what was necessary to calculate her UC entitlement and thus went beyond lawful data processing. Whilst data sharing was permissible in terms of section 34 of the Scotland Act 1998 it did not authorise unlawful data processing, which was what the respondent was seeking to do in the present case. The respondent's actions were not lawful within the statutory framework and were in any event irrational. Further the decision to suspend was neither reasoned nor rational. No consideration was given as to whether the information already provided satisfied the respondent's requirements. The suspension was applied, in effect for failing to complete a step in the process in circumstances where the

information requested was in any event unnecessary to complete calculation of the award of benefit.

Article 8 ECHR

[25] In any event the actions of the respondent amounted to a disproportionate interference with the petitioner's Article 8 right to family and private life. There was no end date or delineation of time over which the information requested might be sought. There was an absence of safeguard in the entire process (*Catt v United Kingdom* [2019] ECHR 76). Neither section 5(1A) nor regulation 38(2) expressly authorised an intrusion of this kind. In fact regulation 38(2) was to the opposite effect in that it tied the entitlement to the information requested to a revision or supersession of a claim, in other words it was tied to express circumstances which cannot arise if a claimant is selected at random. The four stage test espoused by Lord Reed in *Bank Mellat v HM Treasury (No2)*(SC(E)) [2013] UKSC 39 at paragraph 74 applied – that is to say (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measures effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. The rationale offered by the respondent for imposing the measure in question did not fit with the purpose and objective of regulation 38(2), properly understood. The respondent had not shown that a lesser measure would not be as effective and, looked at in the round, the inadequate safeguards led to the

conclusion that the measure sought to be imposed did amount to a disproportionate interference with the petitioner's Article 8 rights.

A1P1 of the European Convention on Human Rights – the right to peaceful enjoyment of possessions

[26] The petitioner contended that A1P1 may be engaged in circumstances where, but for the condition sought to be imposed, she would have an enforceable right to receive the benefit in question. That test was met in the present case.

[27] In summary, the petitioner invited the court to grant all of the orders sought by her in her petition. These included, as explained in paragraph 1 above, in addition to reduction of the decision of 12 March 2026 to suspend her UC payments, interdict of the respondent from making the request for unredacted bank statements, various declarators, six in number, in relation to, broadly, the illegality of the respondent's actions or asserted breaches of GDPR and Human Rights legislation, as well as payment of a sum of money in just satisfaction of the breach of the petitioner's Article 8 rights. For completeness, one declarator sought by the petitioner related to an alleged breach of the Public Sector Equality Duty in terms of section 49 of the Equality Act 2010, as summarised below.

Public Sector Equality Duty

[28] The arguments under this heading were largely encapsulated in the petitioner's Note of Argument which she did of course adopt. Her oral submissions touched only briefly on this aspect of matters, no doubt due to the fact that as the discussion developed, the focus came to be on the other aspects of her arguments, most particularly the question of illegality and ultra vires so far as the reliance upon regulation 38(2) was concerned. Thus simply for

the record, it is noted that the petitioner adopted arguments based on an alleged breach of section 149 of the Equality Act 2010, based on the same set of circumstances, and flowing from her status as a disabled person.

The respondent's submissions

[29] Miss Dewart, appearing on behalf of the respondent, adopted her Note of Argument and supplemented that with oral submissions and the reading of her speaking note. She invited the court to refuse to grant the orders sought in the petition. Her overarching submission was that in making the request of the petitioner to supply unredacted bank statements for a four month period the respondent had acted lawfully, and had not infringed any of the rights asserted by the petitioner. The administration of a welfare system is “extraordinarily complex” and requires practical and political assessments of a kind which a court is not well equipped to judge (*R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778 at paragraph 113). The administration of the system may require the application of bright line rules which treat all UC claimants fairly and in a manner which is predictable. The application of those rules may lead to hard outcomes in hard cases (*R (Johnson and others)*).

Intensity of review

[30] There is no general entitlement to welfare benefits at a particular level which is protected by the ECHR. For those reasons, the judgement of the respondent in decisions in the socio-economic sphere is entitled to a wide margin of appreciation from the court (*R (Pantellerisco)* at paragraphs 57-59). The decision making is subject to a low intensity of review. The court should not interfere with the decision making by substituting its own

views on questions which involve both political and practical judgement. That reflects the separation of powers between the executive and the courts (Lord Reed in *R (SC)* at paragraph 144). Where political decisions have been made, and the result is enshrined in a statutory instrument which has been approved by the House of Commons, the widest possible margin of appreciation must be given (*Pantellerisco*). That is the case with the provisions of Regulation 38(2) and Regulation 45(6). A low intensity of review is equally appropriate for common law rationality challenges, as well as proportionality for the purposes of the ECHR (*R(SC); R (Johnson)*). The High Court in England & Wales has recently considered the legality of requiring unredacted bank statements from claimants during TCR, and determined it to be lawful for the purposes of ECHR, the Equality Act and UK GDPR: *R (Diane Webb) v Secretary of State for Work and Pensions* [2026] EWHC 1581 (Admin).

Illegality/ultra vires

[31] The respondent acted within the terms of the statutory power conferred by Regulation 38(2) in seeking unredacted bank statements from the petitioner, and accordingly, did not act unlawfully. The terms of Regulation 38(2) do not support the restrictive interpretation which the petitioner seeks to impose. The power conferred upon the respondent to compel information from a claimant is in wide terms. Regulation 38(2) confers a broad discretion on the respondent to request such information as he may require to decide whether to make a determination under sections 9 or 10. Bank statements are information which the respondent requires to determine whether the level of UC being paid to the petitioner is correct. The manner of the evidence to be provided is expressly a matter for the respondent to determine, according to Regulation 38(2). The respondent was entitled

to require unredacted bank statements to make an accurate assessment of the petitioner's income and capital.

[32] Separately and in any event, the respondent acted within the statutory power conferred by Regulation 45(6) of the Decision and Appeals Regulations 2013 in suspending the petitioner's payment when she failed to supply the information which had been requested under Regulation 38(2). Regulation 45(6) entitles the respondent to suspend a payment if a claimant does not provide information which has been requested under Regulation 38(2). There is no requirement for an information gap, as contended for by the petitioner.

Irrationality

[33] The respondent understood the petitioner to challenge both the requirement to provide transaction data, and the consequent suspension of her entitlement to UC. The respondent is entitled to a wide margin of appreciation in exercising his judgement in social and economic matters. The bar of irrationality is a very high one in those circumstances (*R (Johnson)* at paragraph 107). Considerable caution must be shown by this court in attempting to review the rationality of the decisions (*R (Pantellerisco)* at paragraph 58 citing Lord Reed in *R (SC)*). The question which the court requires to answer is whether the decision was within the range of reasonable responses open to the decision maker (*R (Pantellerisco)*) at paragraph 54 citing the formulation set out by the Court of Appeal in *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at paragraph 98).

[34] The decision to require the petitioner to provide unredacted transaction data for the purpose of ascertaining whether her means-tested benefit award was correct was manifestly reasonable, justified and proportionate. In the absence of unredacted transaction data, the

respondent is unable to verify the petitioner's income/capital. In the context of a means tested benefit, it is manifestly reasonable and proportionate to require the petitioner to produce evidence about her self-declared income/capital to ascertain whether the award of UC remains correct. The decision to suspend the petitioner's payment of UC in the circumstances of her refusal to provide the information which had been requested was within the range of reasonable responses which was open to the respondent and was not irrational. The question of whether to suspend is one for the judgement of the individual case handler. It is not a judgement which this court is well placed to make, and this court should not substitute its own views for those of the decision maker. Whether undue hardship would be caused to the petitioner was a factor which the decision maker considered prior to suspension, in accordance with the respondent's policy document.

[35] In any event, the petitioner received her UC payment on 9 March 2026; the suspension was imposed on 13 March 2026; the suspension was lifted on 8 April 2026, and the petitioner received her UC payment as usual on 9 April 2026. The period of suspension occurred "between payments" and did not affect the payments which the petitioner received. The decision to suspend on 13 March 2026 was in effect superseded by the decision of 8 April to reinstate the payment prior to the next payment falling due. The suspension between 13 March and 8 April did not cause the petitioner any actual hardship. The suspension was within the range of reasonable responses open to the respondent and was not irrational.

Article 8 ECHR

[36] The respondent accepted that the requirement to provide unredacted transaction data amounts to an interference with the petitioner's right to respect for her private life

protected by Article 8(1), which requires to be justified under Article 8(2) ECHR (*M. N. and others v San Marino* (application no 28005/12)). The interference requires to be in accordance with the law, necessary in a democratic society, and proportionate. Proportionality is judged by the four-stage exercise described by Lord Reed in *Bank Mellat v Her Majesty's Treasury* (No 2) at paragraph 74. In assessing the necessity and proportionality of the interference with the petitioner's Article 8(1) right, the court requires to give a wide margin of appreciation to the judgement of the respondent (*R(SC)*).

[37] Any interference is necessary in a democratic society in pursuit of the legitimate aim of the economic well-being of the country, in circumstances where the petitioner is in receipt of a means tested benefit and there is a public interest in ensuring that her UC payment is being paid at the correct level. The decision to request bank statements is rationally connected to the legitimate aim of ensuring that the UC payment to the petitioner is being paid at the right level. No less restrictive means is available to the respondent to verify the petitioner's income/outgoings (ie to assess her means) for the purposes of making a section 9 or 10 determination. Redacted bank statements would not allow the respondent to verify the petitioner's means. A fair balance has been struck between the petitioner's right to privacy and the public interest in ensuring welfare benefits are properly and efficiently administered. In an area which involves practical and political questions, the court is not well placed to make an assessment of the overall balancing of the rights of the petitioner to privacy with the public interest in ensuring welfare is properly administered.

A1P1 – the right to peaceful enjoyment of possessions.

[38] Whilst an established right to a means tested benefit may engage an individual's A1P1 rights (*R (RJM) v Secretary of State for Work and Pensions* [2009] 1 AC 311, per

Lord Neuberger at paragraphs 23-34), in circumstances where the petitioner refuses to comply with a condition of eligibility, the petitioner does not have a right to receive the benefit and A1P1 is not engaged. Esto A1P1 is engaged, the respondent is entitled to a wide margin of appreciating in decisions made in the field of social and economic policy (*R (SC)* (ibid)).

GDPR

[39] The respondent did not act unlawfully by infringing the petitioner's rights under the UK GDPR or the Data Protection Act 2018. The processing of the petitioner's personal data contained within her unredacted bank statements is authorised by Article 6(1)(e) of the UK GDPR. The processing is necessary for the exercise of a function of a government department, namely the administration of the welfare benefits system by the respondent (sections 8(c) and (d) of the Data Protection Act 2018). To the extent that the respondent processes any special category data as part of a UCR, the respondent relies upon Article 9(2)(b) as the condition for that processing, together with section 10 of, and Schedule 1 to, the 2018 Act. The respondent does not rely on obtaining the petitioner's consent to process her data in light of those provisions. No automated decision making, or profiling in terms of Article 4(4), takes place. The transaction data is used for the purpose for which it is collected: to understand a claimant's circumstances and to determine if an award should be revised or superseded. There is no breach of purpose limitation, Article 5(1)(b).

PSED

[40] The respondent had due regard to the Public Sector Equality Duty in section 149 of the Equality Act 2010 by promoting a policy which provided for the elimination of differences between those with complex needs and vulnerabilities and those without a protected status. The respondent's guidance demonstrates that he had due regard to the PSED. The petitioner's PSED ground of challenge relates to the suspension decision, which has been revisited and payments restored.

Analysis and decision

[41] Both parties presented skilful arguments in what transpired to be a detailed and wide ranging discussion in a field well understood to be of considerable complexity. The petitioner, in particular, as a party litigant, is to be commended for her eloquent presentation of a wide range of arguments in support of her challenge to the decision at the heart of this dispute. She did so despite her own disabilities and despite being taken unwell during the course of the hearing. As I said at the outset of this opinion, failure to refer to a specific argument or document does not mean that all that was said and presented was not taken into account.

[42] However, all that said, and as parties themselves recognised, the key question for determination is whether the respondent acted intra or ultra vires in requiring the petitioner to produce 4 months' worth of unredacted bank statements in the course of the UCR. Put another way, was that request legal or illegal? The answer to that question will, in effect, determine all of the other issues raised.

[43] A necessary precursor to addressing that question is to understand the appropriate intensity of review applicable in this context. The parties differed on the correct approach to

this question. Two recent cases in the socio economic sphere have examined this issue, one at the level of the Court of Appeal in England (*Pantellerisco*) and one, authoritatively, in the Supreme Court (*R (SC) v Secretary of State for Work and Pensions* [2022] AC 223). The former, while not binding on this court, is nevertheless highly persuasive, but the latter is binding on this court, in a matter of UK wide application. In *R (SC)* the question under consideration was whether or not the government's "two child" cap in respect of certain welfare payments was discriminatory and breached the European Convention on Human Rights. As part of its consideration, the court carried out an examination of the relevant European jurisprudence from which it identified key points of principle emerging. As part of that review it reflected on the appropriate standard of review in the socio economic sphere and concluded that where an impugned measure reflected the choice of the legislature or the executive in a matter of social or economic policy, a low intensity of review was generally appropriate, other things being equal; so that the courts would generally accept the judgment of the legislature or the executive as to whether a difference in treatment was appropriate in that field unless it was manifestly unreasonable; that, nevertheless, the court was to be alive to the wide range of other factors which, depending on the circumstances of the particular case, might lower or raise the intensity of the court's scrutiny, the latter including the need for very weighty reasons before a difference in treatment based on "suspect" grounds such as sex, gender or race could be justified. A key reason for that approach to the appropriate intensity of review was that, according to Lord Reed PSC at paragraph 144:

"domestic courts have to respect the separation of powers between the judiciary and the elected branches of government. They therefore have to accord appropriate respect to the choices made in the field of social and economic policy by the Government and Parliament"

In *Pantellerisco*, a case directly concerned with Universal Credit and caps applied thereto, the court referred explicitly to the decision in *R(SC)* which was issued between the date of the hearing in *Pantellerisco* and the date the court's judgment was issued. At paragraph 57

Underhill LJ observed:

"It is also well-recognised that in the context of governmental decisions in the field of social and economic policy, which covers social security benefits, 'the administrative law test of unreasonableness is generally applied ... with considerable care and caution' and the approach of the courts should 'in general ... [accord] a high level of respect to the judgment of public authorities' in that field. I take those words from para 146 of the judgment of Lord Reed PSC (with which the other members of the court agreed) in *R (SC) v Secretary of State for Work and Pensions* (Equality and Human Rights Commission intervening) [2021] 3 WLR 428 : see para 146. In that case the Supreme Court was concerned, as here, with a challenge to the legislation relating to welfare benefits (sections 13 and 14 of the Welfare Reform and Work Act 2016). The claimants' case was that the impugned provisions contravened article 14 of the Convention , but in the part of the judgment from which I quote Lord Reed PSC is making the point that the Strasbourg jurisprudence is in line with the approach taken by the common law, and it is the latter which he is describing. He explains the reasons for adopting a less intensive standard of review in this area, including the need for the courts 'to respect the separation of powers between the judiciary and the elected branches of government'" (see paragraph 144).

He continued:

"58. Although the decision in SC is very recent (indeed it post-dates the argument before us), Lord Reed PSC emphasises that the approach which he sets out is well-established in domestic law. I should note in particular a statement which he quotes, at para 146, from the speech of Lord Bridge of Harwich in *R v Secretary of State for the Environment, Ex p Hammersmith and Fulham London Borough Council* [1991] 1 AC 521 to the effect that

'[where a] ... statute has conferred a power on the Secretary of State which involves the formulation and the implementation of national economic policy *and which can only take effect with the approval of the House of Commons* [my emphasis], it is not open to challenge on the grounds of irrationality short of the extremes of bad faith, improper motive or manifest absurdity'".

[44] With the benefit of the analysis in these two authorities, one of which is binding, and the other highly persuasive, it can safely be concluded that in challenges to decision making in the field of public policy, particularly perhaps where those decisions are taken in the

socio-economic sphere, the courts must accord a high level of respect to the decisions of public authorities in that area. This is reflected in, as a generality, a low intensity of review, recognising always that this is not an invariable rule, and that the intensity of review can and must be higher in certain circumstances, perhaps most obviously where decision making is taken on so called “suspect” grounds. Recognising also that the question of the petitioner’s disabled status must be borne in mind, there was nevertheless no direct challenge on the basis that the decision in question had been taken on overtly “suspect grounds” such as those contemplated in the authorities discussed. The petitioner’s submission to the effect that measures in the realm of UC disproportionately affect disabled persons is noted, but did not form part of a distinct ground of challenge. In consequence, the net effect is that the starting presumption in this sphere is that the level of intensity of review should be low.

[45] I bear in mind also, in this context, the principle enunciated by the Court of Appeal in *R (on the application of Johnson) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778. The court said:

“I start by saying that I recognise, as does Rose LJ, the extraordinary complexity of designing a system such as Universal Credit and that it necessarily involves a range of practical and political assessments of the kind which the Court is not equipped to judge.

I also accept that in order to be workable, any such system may have to incorporate bright-line rules and criteria which do not discriminate fully between the circumstances of different individuals. For those reasons, I fully accept that the Court should avoid the temptation to find that some particular feature of such a system is ‘irrational’, merely because it produces hard, even very hard, results in some individual cases.”

Illegality/ultra vires

[46] Of course, the question of intensity of review must be seen in the context of whether the decision in question is or is not *prima facie* within the decision making power of the body in question. That, as already discussed is the sharp issue between the parties and turns on the language of section 38(2) of the 2013 regulations. As matters came to be focussed, a key aspect of the dispute is whether a request for information under regulation 38(2) requires to be made in the context of a decision to revise or supersede an award of benefit, or whether it may be exercised as a precursor to making one or other of those decisions, or perhaps deciding to do neither.

[47] The petitioner, in a nuanced submission, contended that the requirement for unredacted bank statements made in the broad context of the TCR and, in her case, specifically the UCR did not fall within the circumstances envisaged in either section 9 or 10 of the 1998 Act upon which the power in regulation 38(2) of the 2013 regulations was predicated. Shortly put, the “review” was neither a potential “revision” nor “supersession” of her entitlement to UC. Thus any request purporting to be made in reliance upon regulation 38(2) in the context of the TCR generally, was *ultra vires* of the respondent. The proposition was superficially attractive. However, as the petitioner herself properly accepted, the language of the statute must be looked at as a whole, and words given their plain and ordinary meaning.

[48] Performing that task, the respondent contended, meant that the use of the conjunctive “whether” was significant. Thus ‘a person to whom this regulation applies must supply..... such information or evidence as the Secretary of State may require for determining **whether** a decision on the award of benefit should be revised under section 9 of the Social Security Act 1998 or superseded under section 10 of that Act’ permitted the

requirement to provide information prior to determining whether to revise or supersede. Properly understood, therefore, the exercise of the power in regulation 38(2) is linked not to the characterisation of the benefit related process (review, revision or supersession) but as part of a sequential process to enable the respondent to decide **whether** to revise, supersede or, indeed perhaps retain the status quo so far as the individual claimant's benefit entitlement is concerned. Regulation 38(2) permits the respondent to require such information as is necessary to make a decision whether or not to revise or supersede and thus, *prima facie*, the request made of the petitioner is within the power accorded to the respondent within the regulations.

[49] I am fortified in that conclusion having regard to the terms of regulation 38(1) which apply to "any person entitled to benefit". The petitioner is clearly a person entitled to benefit. Having satisfied that gateway provision, the respondent is then empowered to request information for the purpose set out in regulation 38(2). Of course, the petitioner contends that the power in regulation 38(2) is not unfettered, and that the respondent is not entitled to use or misuse that power in an entirely unrestricted way, for no reason, or for an undeclared reason, such as a criminal investigation. Although the respondent objected to such submissions as not featuring in the petition, they are, as a generality undoubtedly well made. However, despite the invitation to conclude that there was, in effect, some underlying or covert intent behind the particular request in this case, neither the relevant documentation specific to the petitioner's claim, nor the broader policy documentation produced, permitted the inference that the respondent had exercised the power in regulation 38(2) in an illegal or impermissible way.

[50] What then are the safeguards against the use or misuse of the power? The first comes in the language of the regulation itself – the information requested must be required

for the stated purpose – that is to decide whether to revise or supersede an entitlement to benefit. The petitioner disputes that unredacted bank statements assist with or are relevant to that exercise, and in any event that four months’ worth of statements are anything other than excessive. The respondent justifies its request for four months of bank statements through reliance on an affidavit from Harriet Shelley, the head of TCR policy who explains ‘We recognise that requiring claimants to provide bank statements can feel intrusive. However, we consider bank statements are the only effective means of assessing and verifying capital and income under a UCR. We consider that, in the first instance, four months of statements strikes an appropriate balance, providing DWP with enough data to give a reasonably accurate picture of the claimant’s current circumstances while seeking to minimise the impact on the claimant.’

[51] In the context of Judicial Review, it is not for the court to determine, as a matter of fact, whether the 4 month period selected is “right” or “wrong”. The question is whether the policy operated by the respondent is so manifestly arbitrary, unreasonable or irrational such that the court should take the relatively unusual step of intervening. In the context of governmental decisions in the field of social and economic policy, as it was eloquently put by Lord Reed PSC in *R(SC)* at paragraph 146 “the administrative law test of unreasonableness is generally applied ... with considerable care and caution” and the approach of the courts should “in general ... [accord] a high level of respect to the judgment of public authorities”. As he went on to explain that level of respect reflects the constitutional separation of powers between the executive and the judiciary and there is nothing on the face of the material before me which suggests that the high bar described in the authorities that might permit intervention has been reached in this case. The justification offered by the respondent for choosing that period, as well as the justification for such bank

statements to be unredacted, cannot be said to be irrational or unreasonable as those terms are understood in this context. Equally, although the period chosen is not founded in legislative provision, nor is it so arbitrary or illogical that it produces a manifestly unfair result.

[52] There are further safeguards against the misuse of the power in question arising by operation of law. As the respondent properly and explicitly accepts, Regulation 38(2) must be read as authorising such requirements as are compatible with Article 8 ECHR: requirements which are necessary, in accordance with the law and are proportionate and justified interferences under Article 8(2). In this context both parties referred to *Bank Mellat v HM Treasury* (No2) (SC(E)) and in particular the four-stage test described by Lord Reed JSC at paragraph 74 (set out in paragraph 25 above) which he in turn adopted from the judgment of Dickson CJ in *R v Oakes* [1986] 1 SCR 103. Lord Reed described the analysis of Dickson CJ as “the clearest and most influential judicial analysis of proportionality within the common law tradition of legal reasoning.”

[53] The respondent argues that the admitted interference with the petitioner’s Article 8 rights is, in the first instance, in accordance with the law, since the request in question is made on the lawful basis permitted in regulation 38(2). For essentially the same reasons as set out above, I agree that the request is in accordance with the law. Secondly, the respondent contends that any interference is necessary in a democratic society in pursuit of the legitimate aim of the economic well-being of the country, in circumstances where the petitioner is in receipt of a means tested benefit and there is a public interest in ensuring that her UC payment is being paid at the correct level. The petitioner, self-evidently does not accept that contention. Her arguments are linked, understandably, to her primary proposition that the exercise of the power under regulation 38(2) is itself ultra vires. She

also founds on the alleged lack of safeguards as supporting the inference that the intrusion on her Article 8 rights amounts to a disproportionate interference with same. However there are no other less intrusive means of achieving the desired aim. The Eligibility Verification Measure enacted in the 2025 Act, and suggested by the petitioner to be an alternative less intrusive measure is applicable to financial institutions and cannot be applied in cases such as the present.

[54] In any event it is not possible to divorce the application of the *Bank Mellat* test in the present case, from that of the applicable intensity of review as already discussed. In order to conclude that the interference was disproportionate, there would also require to be basis to conclude that the general respect to be afforded to governmental decisions in this sphere did not apply. As the respondent correctly submits, in this context the court cannot substitute its own judgment for that of the respondent and nor is the court well placed to make an assessment of the overall balancing of the rights of the petitioner to privacy with the public interest in ensuring welfare is properly administered in a field with which the respondent has been entrusted by Parliament. I cannot therefore conclude that the admitted interference with the petitioner's Article 8 rights, for all the reasons set out by the respondent, is disproportionate or fails the application of the *Bank Mellat* test.

[55] I have not lost sight in this analysis that the petitioner separately challenges the decision to suspend her UC payment, albeit that in the result she suffered no loss as in fact her payments have continued to be made since April of this year. I address this matter in relatively short compass as for the same reasons as I have found that the power exercised under regulation 38(2) was exercised legally, so was the decision to suspend payment. Perhaps self-evidently the arguments in relation to each are inextricably linked, and I am satisfied having established that the requirement to provide information was lawfully made,

then so too was the decision to suspend payments once that information was not provided within the relevant time scale.

[56] The remaining arguments can be addressed more succinctly. So far as the allegations of unlawful data processing, unlawful profiling and the like are concerned, *prima facie* the respondent falls squarely within the exception to the general prohibition against processing of personal data set out in article 6 UK GDPR. The numerous alleged breaches of UK GDPR and the 2018 Data Protection Act are, in essence, answered by that lawful exception. Insofar as the petitioner alleges that profiling generally, and, in particular, automated profiling has taken place, thus engaging article 22 UK GDPR, this is denied by the respondent and there is no material before me that would permit this court to gainsay that denial. It is thus an allegation, or assertion, but not one upon which a judicial determination can be made.

[57] The arguments in the petition in relation to breach of the PSED and A1P1 were pressed less vigorously than the foregoing arguments in oral submission, but in any event the combination of the affidavits and policy material lodged in process are sufficient to rebut the allegation that the respondent failed to pay due regard to the petitioner's status when processing her claim and thus to discharge his obligations under section 149 of the 2010 Act. Similarly, whilst the respondent properly concedes that a recipient of a benefit can, in theory, engage A1P1 rights see (*R (RJM) v Work and Pensions Secretary* [2009] 1 AC 311, per Lord Neuberger at paragraphs 23-34), I accept the submission that, in the present case, having failed to satisfy a condition of eligibility by failing to supply information legally requested of her, those rights are not, in the present case, engaged.

[58] Finally, parties referred briefly and in passing, to *R(Webb) v Secretary of State for Work and Pensions* [2026] EWHC 1581 (Admin), a decision of Saffman J from May of this year. In that application for judicial review the plaintiff, in common with the present petitioner,

challenged a request for 4 months unredacted bank statements made of her during a review of her entitlement to UC. She did not challenge the fundamental legality of the request being made under regulation 38(2), as in the present case, rather her challenge was focussed on whether it was lawful to request four months unredacted statements, as well as a challenge founded on breach of UK GDPR. I observe that, as here, the court in that case upheld the legality of the respondent's approach to this question, albeit it would seem based on arguments that were much less detailed and broad spectrum than in the present case.

Conclusion and disposal

[59] It follows from the foregoing that the petitioner's challenge fails. It remains the case, however that her submissions and those of Miss Dewart were of great assistance to me. In the result I will sustain the second to seventh pleas in law for the respondent, and refuse the petition. I reserve meantime all questions of expenses.