

# Education law—Secretary of State unable to recover tuition fees under the Education (Student Support) Regulations 2011 (SS Education v CCP Graduate School Ltd)

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**Local Government analysis: The High Court dismissed a claim for recovery of tuition fees which the Secretary of State for Education (via the Student Loans Company) had paid to an Alternative Education Provider which enrolled students onto one particular course but registered them to the relevant awarding body for a different type of qualification. The case is of substantive significance as it clarifies the parameters of use of the Education (Student Support) Regulations 2011 (the Regulations) for recovering overpayments of fee loans. The judgment also clarifies the appropriate sanctions for failure to meet the requirements of course designation under DfE issued guidance entitled ‘Alternative Providers: Specific Course Designation. Guidance for Providers: Criteria and Conditions’ (the 2013 Guidance). The Secretary of State has lodged an appeal at the Court of Appeal. Written by Imogen Proud, barrister at Monckton Chambers.**

*Secretary of State for Education v CCP Graduate School Ltd* [\[2021\] EWHC 2432 \(QB\)](#)

## What are the practical implications of this case?

This was the first attempted use of the Regulations, [SI 2011/1986, reg 117](#) to recover tuition fees paid to an Alternative Education Provider.

The judgment is helpful in clarifying the entitlements of students and institutions to maintenance grants and tuition fees respectively under student loans in circumstances where one type of qualification is phased out and replaced by another.

The case provides useful clarification of the proper sanctions under the 2013 Guidance for course designation on failure to meet the requirements of designation (suspension or removal of designation), as well as making clear that certain sanctions would be inappropriate (retroactive removal of designation or recovery of fees from students).

The High Court construed the Regulations, [SI 2011/1986, reg 117](#), clarifying its parameters, and the case will be of substantive significance for education practitioners advising their clients on potential routes to recovery of tuition fees. In particular, regulation 117 was not intended to provide a free-standing right of action to recover overpayments of fee loans, either from students or academic authorities.

## What was the background?

The Secretary of State for Education sought to recover almost £197,000 in tuition fees paid to the defendant company in relation to 93 full-time students which the defendant had enrolled onto one particular course (a Diploma in the Life Long Learning Sector (DTLLS)) but registered those students with the relevant awarding body for a different type of qualification (a Diploma in Education and Training (DET)).

The defendant was a designated provider of DTLLS courses, having been approved in 2011. This designation meant that students of the DTLLS with the defendant could apply for student

loans, under which a maintenance grant is paid to the student and fee support to cover tuition fees is paid to the defendant. The defendant was not approved for designation as a provider of DET courses.

The DTLLS qualification was phased out in 2014 and was replaced by the DET. In the academic year 2013–2014, the defendant enrolled 93 students on its DTLLS courses. However, when the defendant came to register those students with the relevant awarding body (Pearson), it registered them for a DET qualification.

The Secretary of State's position was that the defendant was not entitled to be paid tuition fees in respect of the 93 students enrolled by the defendant onto the DTLLS course but registered by the defendant for a DET qualification (of which it was not a designated provider).

### **What did the court decide?**

Mrs Justice May dismissed the claim on the basis that the students were entitled to continue to receive funding support until their DTLLS course was completed or until they withdrew (at para [61]).

When the DTLLS qualification was phased out in 2014, transitional arrangements ('teaching out') were put in place. The relevant students' entitlement to continued student loan funding (including the maintenance grant paid to the defendant) was protected under those arrangements.

In registering the students for the DET qualification when they were enrolled on the DTLLS qualification, the defendant had acted contrary to the 2013 Guidance for course designation (at para [62]). However, the sanctions provided in the 2013 Guidance did not include the retrospective removal of designation as a provider. The appropriate sanction would be suspension or removal of designation, but in this case the designation had effectively ended on 31 August 2014 when student funding for DTLLS courses ended anyway (at para [63]).

Nor did the appropriate sanction include recovery by the student loans company of tuition fees paid. Students in receipt of loan funding were expected to continue to receive it (save in exceptional circumstances which did not apply on the facts of this case) (at para [62]).

The court gave helpful guidance in relation to recovering overpayments under the Regulations, [SI 2011/1986](#) including:

- [SI 2011/1986, regs 117\(1\)\(b\)](#) and [117\(2\)](#) were not intended to provide a free-standing right of action to recover overpayments from students. The same restriction is true of recovery from an academic institution under [SI 2011/1986, reg 117\(1\)\(b\)](#) (at para [65])
- the power of the Secretary of State under [SI 2011/1986, reg 117\(1\)](#) to take action to recover fees, from students or institutions, in restitution or unjust enrichment did not apply where the students received tuition in the course on which they had enrolled and obtained a qualification of a similar kind (at para [65])
- requiring an institution to repay tuition fees would be to cast the burden for paying for that tuition back onto the student, since although tuition fees were paid direct to an institution, they were a loan repayable by the student (at para [65])
- [SI 2011/1986, reg 113\(3A\)](#), which requires alternative providers to register a student with an awarding body before claiming tuition fees, filled a gap which existed previously (at para [67])

### **Case details**

- Court: Queen's Bench Division, High Court of Justice
- Judge: Mrs Justice May
- Date of judgment: 2 September 2021

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