THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or of any member of his family in connection with these proceedings.

Michaelmas Term
[2019] UKSC 52
On appeal from: [2018] UKUT 355 (AAC)

JUDGMENT

RR (Appellant) *v* Secretary of State for Work and Pensions (Respondent)

before

Lady Hale, President
Lord Reed, Deputy President
Lady Black
Lord Briggs
Lady Arden

JUDGMENT GIVEN ON

13 November 2019

Heard on 3 July 2019

Appellant
Richard Drabble QC
Matthew Fraser
(Instructed by Leigh Day)

Respondent
Sir James Eadie QC
Edward Brown
(Instructed by The Government Legal Department)

Intervener (1)
Dan Squires QC
Chris Buttler
(Instructed by Equality and Human Rights Commission (Manchester))

Interveners (2)
Martin Chamberlain QC
Tom Royston
Jennifer MacLeod
(Instructed by Herbert Smith Freehills LLP)

Interveners:

(1) Equality and Human Rights Commission

(2) Liberty, Child Poverty Action Group and Public Law Project

LADY HALE: (with whom Lord Reed, Lady Black, Lord Briggs and Lady Arden agree)

1. On 9 November 2016, this Court handed down judgment in the series of cases collectively reported as *R (Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58; [2016] 1 WLR 4550 ("*Carmichael (SC)*"). This was a judicial review of the regulations governing the removal of the spare room subsidy, otherwise known as the "bedroom tax". Regulation B13 of the Housing Benefit Regulations 2006 (first introduced in 2013) required a percentage reduction in the eligible rent for social sector housing if the number of bedrooms in the property exceeded the number defined by regulation B13(5) and (6) as appropriate for the size of the household living there. This Court held that where there was "a transparent medical need for an additional bedroom" not catered for in regulation B13(5) and (6) there was unjustified discrimination on the ground of disability and thus a violation of the claimant's rights under article 14 read with article 8 of the European Convention on Human Rights. Mrs Carmichael could not share a bedroom with her husband because of her disabilities, but whereas the regulation catered for children who could not share a bedroom for that reason, it did not cater for a couple who could not do so. Mr and Mrs Rutherford cared for their grandson who needed an overnight carer because of his disabilities, but whereas the regulation catered for adults who needed an overnight carer, it did not cater for children who did so. In both cases, the relief granted was a declaration that the claimant had suffered discrimination contrary to article 14 of the Convention: see *Carmichael (SC)* above and *R (Rutherford) v Secretary of State for Work and Pensions* [2016] EWCA Civ 29; [2016] HLR 8.

2. On 2 March 2017, the Secretary of State for Work and Pensions laid before Parliament the Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017 (SI 2017/213) which were intended to cater for the two instances in which this Court had held that the previous version of regulation B13(5) and (6) led to violations of a Convention right. They came into effect on 1 April 2017 and were not retrospective.

3. The principal issue in this case is the effect of this Court's decision in *Carmichael (SC)* upon the decision-makers in the housing benefit system - the local authorities, responsible for the payment of housing benefit, and the First-tier Tribunal ("FTT") and the Upper Tribunal ("UT") hearing appeals from local authority decisions - in claims relating to periods before the regulations were amended. Do they have to carry on applying the regulation in its original form? Or do they have to calculate housing benefit without making the percentage deduction in cases where to do so will breach the Convention rights of the claimants in the way

determined in the *Carmichael* and *Rutherford* cases? This is an important constitutional question.

4. A secondary issue is whether, if the housing benefit is to be calculated without the percentage deduction in such cases, account should be taken of any discretionary housing payments ("DHPs") received by the claimant during the period in question.

The history

5. The appellant, RR, lives with his severely disabled partner in a two-bedroomed rented social housing property for which he claims housing benefit. The respondent local authority, Sefton Borough Council, applied regulation B13 and decided that, because they were a couple, they were only entitled to one bedroom and so applied the 14% discount required by regulation B13(3)(a) with effect from 1 April 2013. RR appealed to the FTT. On 15 August 2014, the FTT found as a fact that RR and his partner required separate bedrooms because of her disabilities and her need to accommodate medical equipment and supplies. Sefton accepted that, as her primary carer, RR needed to be able to get a night's sleep. The FTT further held that RR had suffered discrimination as between a member of a couple with a disability and a member of a couple without disability which could not be objectively and reasonably justified. To avoid this discrimination, the FTT held, applying the interpretative obligation in section 3(1) of the Human Rights Act 1998 ("the HRA"), that regulation B13(5)(a) should be read so as to apply either to a couple or to one member of a couple who could not share a bedroom because of the disability of one of them.

6. Meanwhile, in parallel to the judicial review proceedings which culminated in this Court's decision in *Carmichael (SC)*, Mr Carmichael had appealed to the FTT against the local authority's decision that his housing benefit entitlement should be reduced by 14%. The FTT allowed his appeal on a similar basis to that on which it had allowed the appeal of RR. The Secretary of State's appeals against both decisions were stayed until the outcome of *Carmichael (SC)* was known. Both stays were lifted in January 2017.

7. Mr Carmichael's appeal was determined by the UT in April 2017: *Secretary of State for Work and Pensions v Carmichael* [2017] UKUT 174 (AAC) ("*Carmichael (UT)*"). The UT held that the FTT's reading of regulation B13(5)(a) was impermissible but nevertheless reached the same result by holding that Mr Carmichael's housing benefit was to be calculated without making the 14% deduction because to make it would be a clear breach of his Convention rights, contrary to section 6(1) of the HRA.

8. The Secretary of State appealed the *Carmichael (UT)* decision to the Court of Appeal and that Court stayed the appeal in *RR* and some 130 other cases (referred to as the "Carmichael/Rutherford lookalike cases") pending the outcome of that appeal. The Court of Appeal gave judgment on 20 March 2018: *Secretary of State for Work and Pensions v Carmichael* [2018] EWCA Civ 548; [2018] 1 WLR 3429 ("*Carmichael (CA)*"). The appeal was allowed. The majority (Sir Brian Leveson PQBD and Flaux LJ) held that the UT did not have power to direct as it did, as this would amount to an impermissible rewording of the regulation: any remedy for the violation of Convention rights was to be found in an action for damages under section 8(2) of the HRA. Leggatt LJ dissented: he would have held that the UT did have power to do what it did. However, he also held that the UT had erred in not taking into account the DHPs that Mr Carmichael had received. So the Court was unanimous in allowing the Secretary of State's appeal. Mr Carmichael has not appealed to this Court. Nevertheless, this case is effectively a challenge to that decision.

9. The stay on the Secretary of State's appeal to the UT in the case of *RR* (and another) was lifted on 4 May 2018. RR accepted that the UT was bound by *Carmichael (CA)* to allow the appeal, which by a decision dated 28 August 2018, it duly did: *Secretary of State for Work and Pensions v RR and Sefton Borough Council* [2018] UKUT 355 (AAC). The UT also commented that it seemed "eminently arguable" the problem of double payment, identified by Leggatt LJ, could be overcome by reason of regulation 8(2)(b) of the Discretionary Financial Assistance Regulations 2001 (SI 2001/1167).

10. The UT granted RR a "leapfrog certificate" under section 14A of the Tribunals, Courts and Enforcement Act 2007, enabling him to appeal directly from the UT to this Court (leapfrogging the Court of Appeal) if given permission to do so. This Court granted permission on 11 February 2019.

The evolution of regulation B13

11. In its original form, introduced by the Housing Benefit (Amendment) Regulations (SI 2012/3040), regulation 5(7), the relevant parts of regulation B13 read as follows:

> "(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).
>
> (2) The relevant authority must determine a limited rent by -

(a) determining the amount that the claimant's eligible rent would be in accordance with regulation 12B(2) …

(b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in accordance with paragraph (5), reducing that amount by the appropriate percentage set out in paragraph (3); …

(3) The appropriate percentage is -

(a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and

(b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.

(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable) -

(a) a couple (within the meaning of Part 7 of the Act);

(b) a person who is not a child;

(c) two children of the same sex;

(d) two children who are less than ten years old;

(e) a child,

> and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where each of them is)."

12. The first amendment (made by SI 2013/665), which came into force on the same day that the regulation came into force, 1 April 2013, repealed the tailpiece to paragraph (5) and incorporated it in a new paragraph (6) as follows:

> "(6) The claimant is entitled to one additional bedroom in any case where -
>
> > (a) the claimant or the claimant's partner is (or each of them is) a person who requires overnight care; or
> >
> > (b) the claimant or the claimant's partner is (or each of them is) a qualifying parent or carer."

A "person who requires overnight care" was defined in regulation 2(1) in terms which had the effect of not including any child. The inclusion of claimants or their partners who required overnight care in the original and amended regulation was as a result of the decision of the Court of Appeal in *Burnip v Birmingham City Council* [2012] EWCA Civ 629; [2013] PTSR 117.

13. The next amendment (made by SI 2013/2828 in December 2013) added to the list in paragraph (5):

> "(ba) a child who cannot share a bedroom;"

This was as a result of the decision of the Court of Appeal in *Gorry v Wiltshire County Council*, decided at the same time as *Burnip* and reported with it. The category of adults whose disabilities might count for the purpose of paragraph (6) was also expanded to include people responsible for the rent and their partners.

14. Thus it will be seen that, by the time of *Carmichael (SC)*, the regulation catered for children who could not share a bedroom but not for members of a couple who could not do so. It also catered for adults who needed overnight care but not for children who needed it. It was in those two respects that the regulation was held discriminatory by this Court and the third amendment (made by SI 2017/213) was designed to cure them. As the effect of those amendments is not in issue in this

appeal, and their wording is by no means crystal clear, there is no need to prolong this judgment by quoting them.

The arguments on the principal issue

15. Mr Richard Drabble QC, who appears for the appellant, does not argue that regulation B13 is ultra vires. Rather, he argues that it is unlawful for the local authority, the FTT and the UT to apply the deduction mandated by regulation B13(2)(b) and (3) in breach of the appellant's Convention rights. Under section 6(1) of the HRA, "It is unlawful for a public authority to act in a way which is incompatible with a Convention right". A local authority is undoubtedly a public authority for this purpose. Further, by virtue of section 6(3)(a), a "public authority" includes a court or tribunal. It is therefore unlawful for a local authority, the FTT, the UT, or indeed the Court of Appeal or this Court, to make or uphold an award which is incompatible with the claimant's Convention rights.

16. This would not be the case if the decision were mandated by primary legislation. Section 6(2)(a) of the HRA provides that subsection (1) does not apply to an act if "as the result of one or more provisions of primary legislation, the authority could not have acted differently". But the regulation is not primary legislation. Nor does primary legislation require that the regulation take the form that it does: it has subsequently been amended with a view to curing the incompatibility found in *Carmichael (SC)*. Thus section 6(2)(b) is also inapplicable. This provides that subsection (1) does not apply to an act if "in the case of one or more provisions of, or made under, primary legislation which cannot be read and given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions". The regulation is not primary legislation and, although made under primary legislation, the enabling Act does not mandate a regulation which, in some respects, was incompatible with a Convention right.

17. Under section 7(1)(b) of the HRA, "A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1), may rely on the Convention right or rights concerned in any legal proceedings". Hence the appellant did not have to bring separate, free-standing proceedings to claim a remedy for a breach of his Convention rights. He could rely on it in the tribunal proceedings. The authority, and the tribunals, should have made an award of housing benefit without the 14% reduction which, in the light of the FTT's findings of fact, was incompatible with the appellant's Convention rights.

18. Mr Drabble is able to pray in aid at least two decisions at the level of this Court which support that analysis. Closest to it is *Mathieson v Secretary of State for*

Work and Pensions [2015] UKSC 47; [2015] 1 WLR 3250. The regulations governing entitlement to disability living allowance ("DLA") suspended the entitlement of a child under 16 after the first 84 days of free in-patient treatment in an NHS hospital. This Court held that, in the circumstances of that case, to suspend entitlement was a violation of the child's Convention rights under article 14 read with article 1 of the First Protocol. The Secretary of State was not obliged by any provision of primary legislation to suspend payment; thus he had acted unlawfully under section 6(1) of the HRA in deciding to do so. The FTT should have allowed the child's appeal against that decision and substituted a decision that he was entitled to continued payment of DLA from the date when it was suspended until the date when it was reinstated. This Court allowed the child's appeal and made the order which the FTT should have made.

19. Significantly, the Court declined to make a declaration that the Secretary of State had violated the child's rights. In a statutory appeal such as this, the FTT, UT and Court of Appeal had no power to make a formal declaration: see sections 12(4) and 14(4) of the Tribunals, Courts and Enforcement Act 2007. Even if the powers of this Court were wider, to make a declaration would add nothing to the substantive order made by the Court.

20. The Court also declined to use the interpretative obligation in section 3(1) of the HRA, to read the regulations relating to suspension so as not to apply to children. Section 3(1) requires that "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights". Lord Wilson did not think that possible in that case. But in any event, the 84-day rule would not always or inevitably be in breach of a child's Convention rights: much would depend upon the circumstances of the individual case.

21. The *Mathieson* approach had previously been applied in a number of other benefit cases. In *Francis v Secretary of State for Work and Pensions* [2005] EWCA Civ 1303; [2006] 1 WLR 3202, the regulations governing entitlement to a maternity grant were held incompatible with the Convention rights of a woman who had obtained a residence order giving her parental responsibility for her sister's baby son, because they treated the holder of a residence order less favourably that the holder of an adoption order. The remedy was not to construe the regulations in her favour but to make a declaration that she was entitled to the maternity grant. In *Burnip v Birmingham City Council* [2012] EWCA Civ 629; [2013] PTSR 117, mentioned earlier, the Court of Appeal remitted each case where a violation had been found to the local authority for the decision to be remade in accordance with the Court of Appeal's judgment. Each claimant was entitled to such further sum as was necessary to comply with the judgment and article 14. As Leggatt LJ explained in *Carmichael (CA)*, at para 94, "Thus, the Court of Appeal treated the Housing Benefit Regulations as having no effect in the three individual cases before them

insofar as applying the Regulations in calculating the claimants' entitlement to housing benefit violated their Convention rights by treating them as under-occupying their accommodation."

22. A further example of the application of the same approach, albeit in a rather different context, is the decision of the House of Lords in *In re G (Adoption: Unmarried Couple)* [2008] UKHL 38; [2009] AC 173. Article 14 of the Adoption (Northern Ireland) Order 1987 (SI 1987/2203) provided that an adoption order could only be made in favour of more than one person if they were married to one another. The House of Lords held that this discrimination between married and unmarried couples was irrational and in breach of article 14 read with article 8 of the Convention. The remedy was a declaration that this particular couple were entitled to apply to adopt the child. Had the Order been primary legislation, the courts would have been bound to give effect to it: the most they would have done was to make a declaration of incompatibility under section 4 of the HRA. But, at para 116, it was explained that:

> "The courts are free simply to disregard subordinate legislation which cannot be interpreted or given effect in a way which is compatible with the Convention rights. Indeed, in my view, this cannot be a matter of discretion. Section 6(1) requires the court to act compatibly with the Convention rights if it is free to do so."

23. A more recent example of the same approach is *JT v First-tier Tribunal* [2018] EWCA Civ 1735; [2019] 1 WLR 1313. This concerned a rule in the criminal injuries compensation scheme which barred victims who had suffered injury before 1979 from making a claim if at the time of the injury they were living under the same roof as the perpetrator. The Court of Appeal held that this was incompatible with article 14 read with article 1 of the First Protocol and granted a declaration that the claimant was not prevented by the rule from being paid an award of compensation under the scheme. As Leggatt LJ explained, at para 122:

> "Where, as here, a provision of subordinate legislation cannot be given effect in a way which is compatible with a Convention right and there is no primary legislation which prevents removal of the incompatibility, the court's duty under section 6(1) is to treat the provision as having no effect, as to give effect to it would be unlawful."

24. Against that, Sir James Eadie QC, for the Secretary of State, accepts that the regulation was incompatible in the respects identified in *Carmichael (SC)*, and that

it could not be interpreted under section 3(1) of the HRA in a way which avoided that incompatibility. No-one sought to defend the FTT's rewriting of the regulation so as to add words in. It was the size criteria rather than the 14% deduction which gave rise to the incompatibility. Rectifying that would require rewriting the regulation, which could be done in a variety of ways. It was not for the local authority or the tribunals to redesign the legislative scheme so as to render it compatible with the Convention rights. That would be constitutionally inappropriate, usurping the role of the legislator. It was also outside their statutory powers.

25. He did not accept that *Mathieson* represented a consistent line of authority that incompatible provisions in subordinate legislation could simply be ignored. It was a case in which a specific finding was made that could be dealt with as an individual case, not a structural problem as in this case. The court declined to go further and did not address the constitutional problems of what it had done.

26. Further, he argues that to allow the tribunals to disapply the regulation would be to cut across the provisions of the HRA relating to damages. Section 8(1) of the HRA provides that "In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate". Section 8(2) provides that "damages may be awarded only by a court which has power to award damages, or to order payment of compensation, in civil proceedings". Making an award of housing benefit without the deduction would be tantamount to making an award of damages or compensation which the tribunals have no power to do. Thus, if there has been a violation of the Convention rights, the correct remedy is a free-standing application, under section 7(1)(a) of the HRA, to a court which does have power to award damages.

Conclusions on the principal issue

27. Although the majority of the Court of Appeal in *Carmichael (CA)* accepted the arguments of the Secretary of State, in my view Leggatt LJ was entirely right to accept the arguments of the appellant. There is nothing unconstitutional about a public authority, court or tribunal disapplying a provision of subordinate legislation which would otherwise result in their acting incompatibly with a Convention right, where this is necessary in order to comply with the HRA. Subordinate legislation is subordinate to the requirements of an Act of Parliament. The HRA is an Act of Parliament and its requirements are clear.

28. The HRA draws a clear and careful distinction between primary and subordinate legislation. This is shown, not only by the provisions of section 6(1) and

6(2) which have already been referred to, but also by the provisions of section 3(2). This provides that the interpretative obligation in section 3(1):

> "(a) applies to primary and subordinate legislation whenever enacted;
>
> (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
>
> (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents the removal of the incompatibility."

Once again, a clear distinction is drawn between primary and subordinate legislation.

29. The obligation in section 6(1), not to act in a way which is incompatible with a Convention right, is subject to the exception in section 6(2). But this only applies to acts which are required by primary legislation. If it had been intended to disapply the obligation in section 6(1) to acts which are required by subordinate legislation, the HRA would have said so. Again, under section 3(2), primary legislation which cannot be read or given effect compatibly with the Convention rights must still be given effect, as must subordinate legislation if primary legislation prevents removal of the incompatibility. If it had been intended that the section would not affect the validity, continuing operation or enforcement of incurably incompatible subordinate legislation, where there was no primary legislation preventing removal of the incompatibility, the HRA would have said so.

30. Contrary to the Secretary of State's argument, *Mathieson* was not a "one off". As shown by the authorities listed in paras 21 to 23 above, the courts have consistently held that, where it is possible to do so, a provision of subordinate legislation which results in a breach of a Convention right must be disregarded. There may be cases where it is not possible to do so, because it is not clear how the statutory scheme can be applied without the offending provision. But that was not the case in *Francis*, where the maternity grant could be paid to the holder of a residence order who qualified for it in all other respects; nor was it the case in *In re G*, where the unmarried couple could be allowed to apply to adopt (in reaching my Opinion, I satisfied myself that this would not cause problems elsewhere in the statutory scheme); nor was it the case in *Burnip* and *Gorry*, where housing benefit could simply be calculated without making the deduction for under-occupation; nor

was it the case in *Mathieson*, where DLA could simply continue to be paid during the whole period of hospitalisation; nor was it the case in *JT*, where criminal injuries compensation could be paid without regard to the "same roof" rule; and nor is it the case here, where the situation is on all fours with *Burnip* and *Gorry*. There is no legislative choice to be exercised. As Dan Squires QC, for the Equality and Human Rights Commission, put it, where discrimination has been found, a legislator may choose between levelling up and levelling down, but a decision-maker can only level up: if claimant A is entitled to housing benefit of £X and claimant B is only entitled to housing benefit of £X-Y, and the difference in treatment is unjustifiably discriminatory, the decision-maker must find that claimant B is also entitled to benefit of £X.

31. The Secretary of State did suggest that the incompatibility could not be cured in the same way for houses rented in the private sector, because the amount of housing benefit is calculated in a different way under regulation 13D, although the same size criteria are applied. That situation is not before us and we have not heard proper argument upon it, but I would be surprised if an equivalent calculation could not be made, so as to place *Carmichael* and *Rutherford* type claimants in the same position as *Burnip* and *Gorry* type claimants.

32. As that great judge, Lord Bingham of Cornhill, put it in *Attorney General's Reference (No 2 of 2001)* [2003] UKHL 68; [2004] 2 AC 72, 92, "I cannot accept that it can ever be proper for a court, whose purpose is to uphold, vindicate and apply the law, to act in a manner which a statute (here, section 6 of the Human Rights Act 1998) declares to be unlawful".

The secondary issue

33. The question of whether any DHPs received by the appellant should be deducted from the housing benefit to which he is entitled as a result of this decision can be dealt with shortly, as the parties are agreed as to the position. The initial decision which is under appeal to this Court was made by the local authority on 5 March 2013, applying the size criteria which were to come into force on 1 April 2013. At that stage no question of DHPs could have arisen. The appeal against that decision was heard a year later. The task of the FTT was to decide whether the local authority's decision was correct. As a Tribunal of Social Security Commissioners, presided over by His Honour Judge Hickinbottom put it in *R (IB) 2/04* (unreported) 21 January 2004, at para 25:

> "Taking the simple case of an appeal against a decision on an initial claim, in our view the appeal tribunal has power to consider any issue and make any decision on the claim which

> the decision-maker could have considered and made. The appeal tribunal in effect stands in the shoes of the decision-maker for the purpose of making a decision on the claim."

In deciding a housing benefit appeal, the FTT is not permitted to take into account any circumstances not obtaining at the time when the decision appealed against was made: Child Support, Pensions and Social Security Act 2000, Schedule 7, paragraph 6(9). The task of the UT was the same. In remaking the decision having set aside the decision of the FTT, it has power to make any decision which the FTT could make if the FTT were remaking the decision: Tribunals, Courts and Enforcement Act 2007, section 12(4).

34. Thus, neither the initial decision-maker in the local authority, nor the FTT on appeal, nor the UT on appeal, was concerned with anything other than entitlement to housing benefit. They were not concerned with DHPs and had no power to take them into account. Indeed, the Secretary of State relied upon this fact to bolster the argument that an award of damages under section 8 of the HRA was a more appropriate remedy than applying section 6, because such an award could take DHPs into account. But we are concerned with whether the initial decision was correct and in my view it was not. It is for the local authority to consider whether there are any steps which they can take to recover any DHPs and if there are whether they wish to take them.

Final conclusion

35. I would allow this appeal. I would make the same order as the UT made in *Carmichael (UT)* that (1) the appeal against the local authority's decision of 5 March 2013 is allowed; and (2) that RR's housing benefit entitlement is to be recalculated without making the under-occupancy deduction of 14%. The reason for doing so is the same as that which the UT gave: "if the tribunal or the council were to apply this deduction there would be a clear breach of [RR's] Convention rights, contrary to section 6(1) of the Human Rights Act 1998 (*R (Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58; [2016] 1 WLR 4550)."