Decision No. [2021] NZSAAA 1

Reference No. SAA 9/20

IN THE MATTER of the Education Act 1989 and the Student Allowances Regulations 1998

AND

IN THE MATTER of an appeal against a decision of the chief executive, Ministry of Social Development

BEFORE THE STUDENT ALLOWANCE APPEAL AUTHORITY

Neil Cameron

HEARING on the papers

DECISION

The appeal is upheld

REASONS

Overview

[1] This is an appeal against the decision of the Secretary on review to uphold StudyLink's decision to decline the appellant's application for a Student Allowance for her study in 2020.

The issues on appeal

[2] This appeal raises two issues:

- The main issue is whether the appellant, who is enrolled simultaneously for part-time study in two separate degree programmes at two different tertiary providers but who is undertaking an academic workload that is in excess of that required for full-time study had she been enrolled in a single programme, is *"enrolled in a full-time course at a tertiary provider"* so as to be eligible for a Student Allowance under reg 12(1)(c)(i) of the Student Allowances Regulations 1998.

  Secondly, if it is found that the appellant is not eligible for an allowance under this provision, whether a lack of subject options necessitating her part-time study in two separate programmes at two different providers in order to achieve her overall chosen course of study is *"a sufficient cause outside* [her] *control"* so as to trigger the exercise of the chief executive's discretion to approve a course of study that is less than a full-time course under reg 12A(1)(a)(ii).

Factual background

[3] The facts in this case are straightforward and are not in dispute. Initially the appellant intended to enrol for a conjoint LLB/BTheol at the University of Otago in 2020. Unfortunately she was declined entry to the LLB programme at Otago and was obliged to enrol instead for the LLB component of her preferred choice of study at the University of Auckland. However as the University of Auckland only offers a limited range of Theology papers at the undergraduate level — and has not offered a Bachelors degree in the subject since 2014 — she also enrolled with the University of Otago for a BTheol, undertaking the course by distance learning from Auckland. She is accordingly enrolled in two different degree programmes at two different providers. It is worth noting at this stage that even if she had gained entry to the LLB programme at Otago she would still have had to undertake a course of study similar to the one she is currently enrolled for - albeit at a single provider. From the list of conjoint degrees currently approved as *"recognised programmes"* by the New Zealand Vice-Chancellor's Committee (NZVCC now "Universities NZ")) the University of Otago does not offer a conjoint degree as such in Law and Theology. She would have had to enrol for both degrees separately anyway (ie thereby technically undertaking a "double" or "combined" as opposed to a "conjoint" degree — see generally below [8]).

[4] In order to manage her workload the appellant enrolled part-time in both programmes with a workload of 0.5834 EFTS (Equivalent Full Time Student) for the LLB and 0.6 EFTS for the BTheol over the 38 week study period. In order to be considered full-time for Allowance purposes a student undertaking a period of study of this duration needs to be undertaking a minimum of 0.8 EFTS. Her overall workload in the two part-time courses is clearly well in excess of this.

[5] The appellant's application for an allowance to cover her studies was declined by StudyLink on the ground that she was not *"enrolled in a full-time course at a tertiary provider"* — rather she was enrolled in two part-time courses at two different tertiary providers. StudyLink also declined to accept her application to have her enrolment at the University of Auckland approved for limited full-time study (LFT) under reg 12A(1)(a)(ii) on the ground that she had been forced to organise her study in the way she had due to circumstances beyond her control — namely the fact that the University of Auckland did not offer the courses that she needed to properly pursue her studies in theology.

Relevant legislation and policy

Allowance eligibility

[6] Regulation 12(1)(c)(i) provides that a student must ordinarily be enrolled for a *"full-time course at a tertiary provider"* in order to be eligible for a Student Allowance. A *"full-time course"* is defined in reg 2 as *"any recognised course of study approved by the chief executive as a full-time course forming part of a recognised programme".* A recognised course of study means any *"course of study leading to the completion of a recognised programme",* and a recognised programme is any programme approved by the Tertiary Education Commission (TEC) and NZVCC (ie Universities NZ). A *"programme"* is defined in reg 2A(1)(b) as any *"aggregate of courses, classes, and work required for the completion of a* [properly approved] *degree, diploma certificate or other qualification ...".* Whether the study being undertaken is *"full-time"* depends on the duration of the course and the EFTS value of the courses being studied. For the 38 week study programme undertaken by the appellant the minimum full-time workload mandated by the chief executive is 0.8 EFTS.

The Ministry Guidelines — "conjoint" and "concurrent" study

[7] The Ministry Guidelines on full-time tertiary study state that *"two normally unrelated periods of part-time study cannot be combined together as full-time study'.* The rationale for this appears to be the Ministry's view that *"a full-time course"* under reg 12(1)(c)(i) requires enrolment in a full-time workload in a single recognised programme at a single provider (see [17]-[18] below). There are two so-called *"exceptions"* to this. *"Conjoint'* study and *"concurrent"* study.

[8] Conjoint study is rather confusingly described in the Guidelines as occurring *"where a student undertakes two qualifications at the same time"* which *"can include situations where the two qualifications are combined under one programme code".* Two *"examples"* of *"conjoint study programmes"* are given. The first appears to be a true "exception" to the single programme requirement. The second is not.

- First, where *"there are special concessions (such as exemptions or cross credits)"* that permit students to *"pursue two qualifications at the same time"* and thereby obtain both qualifications in a reduced timeframe the study undertaken will be treated as taking place within a single recognised programme. This appears to be referring to what some providers describe simply as "double" or "combined degrees". The attraction of enrolling in two distinct areas of study and gaining two qualifications in this way is obvious and most, if not all, tertiary providers, permit/encourage their students to combine any of their degree offerings that they want, with the number of cross credits available (and hence the amount of time saved) varying depending on the content and structure of the two degrees being undertaken. "Double degrees" in this sense, however, are not single programmes in their own right and are not individually approved as *"recognised programmes" by* TEC/Universities NZ. They are simply two separate *"recognised programmes"* that are being undertaken together within a cross-crediting structure that is loosely mediated by TEC/Universities NZ. Nevertheless under the Guidelines an Allowance will be approved in such cases so long as the provider submits a Verification of Study (VoS) to StudyLink *"with a unique code which signifies that the study being undertaken is conjoint study" so* that it can be treated as *"being combined under one programme for Student Allowance purposes".* From the information provided by the Ministry in response to a number of requests by the Authority for clarification of the process involved in such cases, it appears that in the case of double degrees this *"unique code"* will be generated and entered into the system by the provider itself rather than being the product of the formal programme approval process as it is with individual recognised programmes. Given that the Ministry's view appears to be that reg 12(1)(c)(i) requires students to be enrolled in a single programme, it is entirely unclear where the power to dispense with this requirement by creating an *"exception"* where students are enrolled for a double degree comes from. Furthermore it is unclear how the VoS process outlined in the Guidelines fits with StudyLink's own instructions to providers for the completion of VoS responses which require that a *"separate VoS response should be provided for each programme of study (PC Code)"* so that, for example, *"if a student is studying a Bachelor of Arts and a Diploma in Sport (and this is not an approved conjoint programme) then the education provider must send back a VoS response with two separate lines, one for each programme code".* (See *https://www.providers.studylink.govt.nz/training--resources/vos-documents/vos-rulesand-processes/vos-responses.html#ContentsofaVoSresponse2.)*

Secondly, where two *"study programmes are combined, such as BA and LLB, with a special relationship or relevance to each other"* this will also be treated as a single recognised programme for Student Allowance purposes. This appears to refer to what might be called "true" conjoint programmes that have been approved as single recognised programmes in their own right byTEC/Universities NZ and allocated their own unique PC code as part of that process. As such, study undertaken as part of a recognised conjoint programme is clearly not in fact an exception to the single recognised programme requirement. Conjoint programmes that have been duly approved in this way will generally involve an accelerated course of study aimed at high-achieving students, requiring the maintenance of a high level of in-course performance and, by virtue of the usual cross-crediting together with a reduction in the number of points required for each qualification, enabling completion of the two designated degrees in as little as four years. As such they clearly raise distinct academic and assurance issues which is why they generally require specific TEC/Universities NZ approval. (See generally Committee on University Academic Programmes (CUAP), Handbook 2019 (s 5.3 *Terms used for enrolment in more than one qualification)* at *https://www.universitiesnz.ac.nz/sites/default/files/uni-nz/documents/CUAP Handbook 2019 final Sept.pdf)* The number and range of programmes approved as conjoint by TEC/Universities NZ varies considerably between providers. Some offer a wide range, some only three or four and others prefer to stick with the double degree option described above which obviates the need to seek TEC/Universities NZ approval.

[9] Concurrent study, as defined in the Guidelines is restricted to situations where, under an arrangement approved by TEC/Universities NZ, *"a student undertakes study at two education providers* [simultaneously] *that will be credited towards a qualification at one of the education providers".* As such, like recognised conjoint programmes, it is not in fact an *"exception"* to the basic position taken by the Ministry at all. While the study involves work in different programmes at different providers, it forms part of a single programme structure.

"Limited Full-Time Study"

[10] Where a student is obliged to enrol in a course of study that is less than full-time by circumstances that are outside their control, the chief executive has a discretion under reg 12A(1)(a)(ii) to approve an allowance for what StudyLink describes as *"Limited Full-Time study'* (LFT). The Ministry Guidelines on LFT study state that, while each case must be considered on its own merits, *"situations outside a student's control that are sufficient to prevent them from undertaking full-time study ... may include, but* [are] *not limited to"* such things as family circumstances or responsibilities, disability, or changes made by the education provider to the study options available to the student. Under reg 12A(1)(a)(iii) LFT can also be approved where a less than full-time course is considered to be in *"the student's academic best interests". "Academic best interests"* is defined by reg 12A(2) as meaning that the student *"would be likely to fail, for academic reasons"* if required to undertake a full-time course.

The Secretary's decision

[11] Under s 305(2) of the Education Act 1989 the Secretary must review StudyLink's original decision if requested to do so. This requires an independent reassessment of the original decision by a staff member unconnected to it, which addresses both the reasoning behind that decision and any arguments advanced by the applicant. The review conducted in this case is, with all due respect, far from adequate in these terms. The Secretary's Report consists of a cut and paste of the entire Review of Decision Submission prepared by the Ministry, including its summary of the applicant's arguments, followed by a brief "findings" section that simply adopts the view taken by the Ministry verbatim and without any discussion or further explanation:

> *To be approved a Student Allowance by studying a full-time course, it must be exactly that, a full-time course forming part of a recognised programme.*
>
> *The Ministry has provided an analysis of the applicant's study at both Auckland and Otago universities. ... From this analysis the Ministry has confirmed that the applicant is not eligible for a Student Allowance based on her current enrolment, as she is not enrolled in a full-time course within the definition of Regulation 2 of the Student Allowances Regulations 1998.*
>
> Accordingly:
>
> *Based on Regulation 2 of the Student Allowances Regulations 1998, the Secretary finds that the decision by StudyLink to decline the applicant's 2020 Student Allowance is correct as she is not eligible for a Student Allowance as she is not enrolled in a full-time course.*

[12] At no stage in his findings does the Secretary mention any of the arguments advanced by the appellant in her submissions, either as regards her full-time status or in relation to the exercise of the reg 12A(1)(a)(ii) discretion. Indeed the findings make no mention of this second ground of review at all. Accordingly, no attempt whatsoever is made to assess the validity of the Ministry's interpretation of the Regulations — which was directly challenged by the applicant in her written submissions to the Review — or of its assessment of the appellant's claim to have been obliged to apportion her study in the way she has by *"circumstances beyond her control'.*

The basis for this appeal

[13] Both before the Secretary and on this appeal the appellant makes two arguments. First, she says that although she is enrolled for a part-time workload at both the University of Auckland and the University of Otago (by distance) she is in fact undertaking a full-time workload and that this arrangement has been approved by both of the universities involved. Although she accepts that reg 12 does not *"make specific reference to persons studying full-time at two universities"* she says that the provision does not *"appear to be designed to exclude someone in my situation from receiving a Student Allowance".* On this appeal her father, acting as her agent, makes it clear that in his view *"the intent of the Regulations is to prevent a student from being paid an allowance if they are only*

studying a part-time load", unlike the appellant who is in fact undertaking well over a full-time workload as defined by the Ministry. In support of this he says that the Ministry's *"emphasis on the singular 'course' and 'tertiary provider' when reading reg 12(1)(c)(i) is unhelpful and unnecessary (the singular need not exclude the plural)".* There is nothing in the Regulations that would specifically exclude a student studying a full-time load from receiving a Student Allowance because their study is split between two tertiary institutions and, in his view, there is nothing in the Regulations either expressed or implied that would suggest that it would be undesirable to do so. On the contrary, the outcome of the Ministry's restrictive interpretation of the Regulations is *"inherently unjust in that while having a slightly more than full-time study load* [the appellant] *is not treated in the same manner as other full-time students in regard to a Student Allowance".* This *"borders on discrimination"* and is not *"the intention of the Regulations nor a necessary outcome of their correct interpretation".*

[14] More specifically in her submission to the Secretary on review the appellant herself said:

> My *study programme is not different in a substantive way to that of a student studying a conjoint degree, except that I am studying at two universities. That should not be grounds for a different outcome for me in regard to a Student Allowance. If I were studying a conjoint at the University of Otago then I would end up with the same qualification as I can have in my current course of study: a degree in Law and a degree in Theology. I see no reason why, if StudyLink is willing to support me in the one option, that it should decline support in the other. As I have stated there is no substantive difference between the two.*

[15] Secondly, if her argument that her course is indeed a full-time one is rejected, she says that she should be approved for study in a part-time course under reg 12A(1)(a)(ii) on the basis that her inability to study full-time in one or other of the universities at which she needs to study to gain the qualifications she wants is due to "circumstances outside her control":

> *While it is my decision to study Law and Theology, it is causes outside my control that have led to me studying these subjects at two universities. Had I been approved entry into Otago's Law programmes, or if Auckland University offered a full programme of Theology courses I would not be in this situation. These things are outside my control.*

The fact that, as the Ministry argues, she had an *"option to study an alternative course full-time"* is irrelevant. She has a "well *thought out career plan and aspirations to contribute to society that requires tertiary study in both law and theology"* and does *"not wish to study an alternative course".*

The Ministry's Regulation 37(2) Report

[16] In its Regulation 37(2) Report and in its response to the appellant's subsequent submissions the Ministry addresses both these arguments.

[17] First, on the issue of whether two part-time periods of study in two different degree programmes can amount to a *"full-time course"* for the purposes of reg 12(1)(c)(i), the

Ministry emphasises that the definition of this term in reg 2 is *"in the singular"* requiring the period of study for which approval is being sought to be part of a single *"recognised programme"* — ie, in this case either an LLB or a BTheol — offered by a single tertiary provider. In the Ministry's view:

> *The text of the Regulations in restrictively using these singular definitions intends to restrict access to taxpayer funded Student Allowance to a specific recognised programme as being "full-time study".*

This reflects what the Ministry describes, without elaboration, as *"the targeted nature of Student Allowances".*

[18] While the Ministry notes two exceptions to the single programme requirement where a student is enrolled conjointly in two degrees simultaneously or is studying concurrently in some other recognised programme, these exceptions appear to be more apparent than real. Conjoint study can only be considered where *"both the qualifications are combined under one programme code"*— ie where the education provider submits a *"Verification of Study with a unique code which signifies that the study being undertaken is conjoint study".* For obvious reasons neither of the appellant's providers were in a position to do this. Similarly with concurrent study where students are permitted by their provider to include courses from programmes offered by other providers in the programme in which they are enrolled. The appellant's situation fits within neither of these exceptions since she is undertaking *"two separate degrees with two separate education providers* [which] *form two separate 'recognised programmes'."*

[19] On the issue of whether the appellant is nevertheless eligible to be considered for an allowance for one or other of the two part-time study programmes she is engaged in under the LFT study discretion conferred by reg 12A(1)(a)(ii), the Ministry instances the usual examples of *"sufficient cause[s] outside the student's control'* (ie family circumstances, disability, unanticipated changes made by the education provider and so forth) and emphasises that the appellant's situation is different in kind from them. She has not been forced to organise her study in the way she has by outside forces — rather she has *"herself freely chosen her particular study arrangements"* and her *"personal study choices* [in this regard] *are not of such a nature that StudyLink would exercise this discretion".*

[20] Finally the Ministry also briefly addresses an argument advanced by the appellant's father on this appeal that approval for LFT study should also have been considered under reg 12A(1)(a)(iii) on the basis that enrolment part-time in one of the two universities would be in her *"academic best interests"* in the sense that if she were to enrol full-time at one university and retain her part-time enrolment at the other she would be under such pressure that she could well fail one or more of her courses. The Ministry rejects this, pointing out that the definition of *"academic best interests"* in reg 12A(2) is clearly directed at assisting students who essentially lack the *"cognitive ability to successfully undertake a full-time course".* And there is no evidence to suggest that this might be the case here. Indeed she is currently enrolled in a combination of courses in excess of an ordinary full-time workload and nobody has suggested that she is in any danger of failure.

Discussion

[21] To be eligible for an allowance, a tertiary student must be enrolled in a full-time course at a tertiary provider. The appellant is enrolled for two different courses of study leading to two different qualifications with two different tertiary providers. She is undertaking a part-time workload in each course of study but in total is enrolled in courses with an EFTS value in excess of that required for ordinary full-time study. She is not enrolled in any formally recognised "conjoint" LLB/BTheol programme and although in the everyday meaning of the term she is clearly studying the two programmes concurrently, she is not doing so as part of a single programme and is therefore not within the meaning of the term in the Ministry Guidelines. She is in fact enrolled in a "double degree" but her enrolment is split between two providers. In her submissions she gives no reason for wishing to undertake the two programmes simultaneously — rather than, for example, serially or on a one-year-on, one-year-off basis — and her reasons for wishing to undertake study in this way are immaterial to this appeal. How she wishes to organise her study is up to her. In both academic and personal terms there are clearly good arguments for her enrolling as she has, and her choices are both understandable and entirely consistent with the emphasis that most tertiary providers place on providing their students with the opportunity to undertake their desired studies in as flexible a manner as possible. In this context it is significant that she has only in fact been able to arrange her study as she has through the provision of distance learning facilities enabling her to study at the University of Otago from her home in Auckland. This is an option that will no doubt become increasingly available to students in the future.

Regulation 12(1)(c)(i) — "enrolled in a full-time course at a tertiary provider"

[22] The basic issue is whether the requirement that a student be *"enrolled in a full-time course at a tertiary provider"* can apply to a student in the appellant's position or whether it is intended to be confined to students enrolled in a single recognised programme at a single provider. The Ministry's view of this is basically very simple — the Regulations are expressed in the singular and specifically require enrolment in *"a"* full-time course at "a" tertiary provider with *"full-time course"* also defined in the singular as meaning simply *"any recognised course of study ... forming part of a recognised programme".* Read literally, as the Ministry suggests it must be, this limits eligibility to students studying full-time as part of a single recognised programme at a single provider, and manifests an intention on the part of the Legislature *"to restrict access to taxpayer-funded Student Allowance to a specific recognised programme as being full-time study"* that, in policy terms, reflects and is justified by *"the targeted nature of Student Allowances".* Conversely, the appellant's argument is that this reading is too narrow and that in the interests of maintaining comparability and fairness between students engaged in identical courses with identical workloads a broader view should be taken. The fact that the basic eligibility requirement is expressed in the singular does not in itself *"exclude the plural'* and there is nothing elsewhere in the Regulations that suggests it is intended to. In policy terms, reg 12(1)(c)(i) is, on this view, intended simply to ensure that allowances are only available to students undertaking full-time study at a tertiary level, and will be satisfied so long as all the coursework being undertaken is part of a recognised programme and the student's workload in aggregate meets the minimum EFTS requirement for full-time study in courses of that duration.

[23] In defining a *"full-time course"* as *"any recognised course of study approved by the chief executive as a full-time course forming part of a recognised programme",* reg 12(1)(c)(i) confers on the chief executive a limited discretion to determine the criteria by

which a *"full-time"* workload is to be assessed for allowance purposes — ie the EFTS based calculation noted above at [6]. It does not confer any power to distinguish between different recognised courses of study and/or different recognised programmes. Nor does it confer any power on the chief executive to dispense with the single recognised programme requirement if it is determined that that is in fact what reg 12(1)(c)(i) requires. What courses students can or must complete and in what order, and what programmes they may enrol for are educational matters independent of any issue of allowance eligibility. As is the question of whether students should be permitted to study simultaneously at different tertiary providers.

[24] As with any other legislative provision, the meaning of *"enrolled in a full-time course at a tertiary provider"* in reg 12(1)(c)(i) and of a *"full-time course"* in reg 2 must be ascertained from the *"text and in the light of its purpose":* see s 5(1) of the Interpretation Act 1999. In approaching the text of any enactment *"words in the singular include the plural ..."* (s 33). Accordingly insofar as reg 12(1)(c)(i) is concerned the starting point is that any term within it that is expressed in the singular — for example *"a tertiary provider"* — may also be read in the plural where it is relevant to do so unless there is other wording that suggests otherwise, or unless to do so would be clearly inconsistent with the intention of the provision. Similarly with the definition of *"full-time course"* and the requirement that a student be enrolled in *"a recognised programme"* in reg 2. In the absence of any indication in the text of a compelling reason to the contrary, *"enrolled ... at a tertiary provider"* must be read as including enrolment at more than one such provider, and *"forming part of a recognised programme"* will extend to course work forming part of more than one such programme.

[25] With all due respect to the arguments advanced by the Ministry in its Regulation 37(2) Report and in its subsequent response to the appellant's submissions on that Report, they do not proceed beyond the straightforward assertion that as the various terms are expressed in the singular they must therefore be read in the singular. Given the presumption provided by s 33 of the Interpretation Act 1999 this is unhelpful. There is nothing in the way in which the requirements themselves are expressed in the Regulations that precludes reading them in either the singular or the plural — ie as requiring enrolment in any *"recognised course (or courses) of study'* approved as a full-time course forming part of *"a recognised programme (or programmes)"* at *"a tertiary provider (or providers)".* If it had been thought desirable/necessary to do so it would have been simple to limit the availability of allowances to full-time study in a single programme offered by a single provider in the way the Ministry suggests. That has not been done and there appears to be nothing else in the Regulations themselves to suggest that it was intended.

[26] In the absence of clear wording limiting allowance eligibility to students enrolled in a full-time course in a single recognised programme at a single provider, the Ministry argues that it is nevertheless the intention of the provision to *"restrict access"* in this way as reflecting the *"targeted nature"* of Student Allowances. This bald assertion is, with respect, unconvincing. While it is elementary that the Student Allowance is a targeted form of assistance — intended to provide a basic level of funding for students wishing to study full-time at the tertiary level in properly approved and delivered programmes who might otherwise not be able to afford to do so — it is difficult to see why it might be thought desirable to deny assistance to those who tick all these policy boxes but wish to spread their study across more than one qualification or provider. Perhaps unsurprisingly, neither the Secretary nor the Ministry even attempt to make an argument in this regard,

let alone a credible one. Simply stating that the situation is the result of an intention to *"restrict"* access which *"reflects the targeted nature"* of the allowance system without providing any explanation as to why the specific restriction might be necessary and what valid policy objective it might be intended to achieve is not enough.

[27] On the other hand, the appellant's argument that reg 12(1)(c)(i) must be seen in policy terms as intended simply to limit allowance eligibility to students who are in fact engaged in study on a full-time basis is rather more persuasive. At first glance it is certainly what the provision appears to be about. More significantly, the limitation is consistent with the recognition both that full-time study is a social "good" in its own right that should be encouraged, and that students undertaking a full-time workload at a tertiary level — in terms of the number of EFTS that are allocated to the courses they are taking — will inevitably have to forego other sources of income and will accordingly be in need of state assistance if they are to be able to study at all. In other words, providing allowance assistance to students in the appellant's position would appear to fit firmly within the policy objectives of the targeting that underlies allowance eligibility. Conversely, the interpretation adopted by the Ministry would appear to lead to results that are at least counterintuitive, if not absurd. Furthermore it has effects that go beyond questions of mere allowance eligibility and begin to trespass into areas that are more properly the concern of both the students and the academic providers involved.

[28] In the instant case if, on being declined entry to the LLB at Otago, the appellant had decided to enrol full-time for first year Law at Auckland in 2020 and then full-time for the first year of the BTheol at Otago in 2021 she would presumably have achieved exactly the same academic outcomes over the two year period that she will achieve with her present enrolment but with the benefit of an allowance in both years. Similarly if she had decided to complete her BTheol at Otago and then move on to an LLB at Auckland she would have been able to cross-credit some BTheol credits to the LLB and complete most, if not all, of her study within her allowance entitlement. Apart perhaps from considerations of administrative convenience — which are scarcely an adequate ground for depriving a student of the financial support they would otherwise be entitled to — it is difficult to see what is achieved by denying her an allowance because she chooses to arrange exactly the same courses of study in one way rather than the other. I have little doubt that for both academic and personal reasons many — if not most — academic advisors would consider the course she has actually taken to be the more desirable option in her situation. It enables her to pursue and maintain her different interests, combine them in the same period of study and keep herself grounded and engaged with both providers. Indeed being able to do this is one of the obvious benefits of the enhanced opportunities now becoming available for distance study. However, regardless of which option may be the better one, that is a decision for her to make on academic and personal grounds in conjunction with her respective academic advisors. It is not a decision that should be dictated by allowance eligibility requirements unless there are very good reasons relating to the integrity of the allowance system itself for doing so. None have been suggested and it is difficult to imagine that any could be.

[29] It was, of course, always open to the appellant to change the mix of course that she intended to take at the two providers to ensure that she was undertaking the required 0.8 EFTS in one of the two programmes. In most cases this will no doubt be relatively easy to do and will not affect the student's overall programme unduly. However it does at least have the potential to impact both the coherence and the usefulness of the programmes that the student is undertaking — for example by forcing them to take subjects out of order

or divorced from related subjects, or to take some subjects rather than others. In principle the distribution of a student's workload between two courses of study should be up to them and will depend on how the programmes are structured, their personal situation and study needs, the academic advice they receive and the vagaries of the university timetable. Within the overall requirement that they must be undertaking a full-time workload, choices as to which courses to do and when, should not be dictated by the need to ensure that they are taking a full-time workload in one or other of the component programmes at any one time in order to be eligible for financial support. Any interpretation of the Regulations that contributes to such a result courts perversity and should be rejected unless good reasons can be advanced in its favour

[30] More generally, while in the appellant's case the problem has arisen because the programmes she wants to pursue can only be found at two different providers, if the interpretation of reg 12(1)(c)(i) that the Ministry has adopted is correct then exactly the same issue arises where a student seeks to undertake two qualifications at the same provider that do not form part of a single approved conjoint programme — ie, to use the terminology outlined in [8] above, in simple "double" or "combined" degree situations. Unlike a conjoint degree approved by TEC/Universities NZ, a double degree is not a *"recognised programme".* It is simply a permitted combination of two separate programmes, linked by the ability to cross-credit a number of courses. Apart from anything else the fact that double degrees do not need to be undertaken simultaneously and can be used to combine completely unrelated areas of study, makes this clear. Yet clearly it would be a nonsense to distinguish between students enrolled in an approved conjoint programme (eg BA/LLB), and undertaking a less than full-time course in each component qualification, and those undertaking exactly the same courses but enrolled instead for the component qualifications (eg a BA and an LLB) separately. There is no conceivable justification for regarding the former as full-time for Student Allowance purposes and the latter as only part-time. And this is clearly recognised both by the Universities in creating their own PC codes to cover such cases, and by StudyLink in accepting this workaround as satisfying the requirements of reg 12(1)(c)(i) despite the Ministry's own interpretation of that provision (see [8] above). In this context the only interpretation of enrolled in *"a recognised programme"that* makes sense is enrolled in *"a recognised programme or programmes"* approved by TEC/Universities NZ. And that is the interpretation that, in reality, is actually being applied by all the parties involved under the Ministry's Guidelines on "conjoint" study.

[31] It is, in my view, no different where the problem, as here, involves a double degree spread over two providers. As the appellant suggests in her submissions, if she had been able to enrol at Otago as she originally intended StudyLink would almost undoubtedly have accepted her as a *"full-time"* student without a murmur. She would have been enrolled for a double (or, at Otago, "combined") degree and I have no doubt that her provider would have treated her as such on its VoS response, generating the "unique" PC code required under the Ministry Guidelines to enable StudyLink to *"treat the study as being combined under one programme".* It is very difficult to see how denying her an Allowance simply because she has been obliged to split her chosen areas of study between two providers achieves any legitimate policy purpose that might underlie the Student Allowance scheme. She is still undertaking a full-time workload in recognised courses that form part of duly recognised tertiary programmes at duly approved tertiary providers. The courses still form part of a double degree structure in much the same way as they would if taken at a single provider. As with intramural degrees, cross-crediting within a framework approved by Universities NZ will be available to at least some extent and the overall completion timeframe for the two qualifications

will be reduced. The only real distinction between undertaking a double degree in Law and Theology at a single provider and the situation the appellant actually found herself in, appears to be in the administrative complications the existence of two providers responsible for two separate VoS responses may generate. As this case demonstrates, however, these complications are scarcely insurmountable — early on in her application StudyLink was fully aware that she was studying two programmes concurrently at two different providers and that her overall workload exceeded the relevant full-time study threshold. The only difficulty lies in aggregating the two VoS responses to verify this fact — a task that StudyLink proved itself to be well able to do in the appellant's case. It may be that restricting Student Allowance eligibility to students enrolled for a programme or programmes at a single provider is seen by the Ministry as desirable in order to prevent such things as the mixing and matching of courses offered by different providers or students frittering away their allowance entitlement on a multiplicity of unrelated courses and qualifications. However, even if this were felt to be a serious concern, it is difficult to see that it is the business of the Ministry of Social Development to try and address it or that restricting access to Student Allowances is an appropriate tool for doing so.

[32] Accordingly I see no good reason, either in the text of the Regulations or in the policy considerations that lie behind the targeting of Allowance availability, to justify the restriction of the definition of full-time study to work undertaken in relation to a single recognised programme at a single tertiary provider. To target the allowance in the way suggested by the Ministry — even if it could be applied consistently — would appear to serve no useful policy purpose and has the potential to produce results that are little short of perverse. Provided a student is studying a recognised course or courses, forming part of a recognised programme or programmes, and in doing so is undertaking a full-time workload as specified by the chief executive, it is in my view irrelevant that the courses that are being undertaken are in different programmes and lead to different qualifications or are being undertaken at different tertiary providers. The choice of programme and provider and the distribution of workload between different programmes in any one academic year is ultimately a matter that must be decided between the student and their educational provider(s) within the approved qualifications framework and should be determined by that student's interests, needs, abilities and personal situation.

Regulation 12A(1)(a)(ii) and (iii) —"limited full-time study"?

[33] In the light of this conclusion it is unnecessary to consider the appellant's fallback argument that she should in any case be approved for an allowance to cover her part-time enrolment at Auckland University on a limited full-time basis under the discretion conferred on the chief executive by reg 12A(1)(a)(ii) and (iii). If it were necessary to address this, I am clear that the Ministry is correct in its view that the situation she is in cannot be seen as the result of circumstances beyond her control justifying the approval of an allowance. It is not simply that, as the Ministry says, she has chosen to study the courses that she has. More significantly, it is that it was always open to her to achieve her goal of completing both degrees by either doing them separately and consecutively or by studying each full-time year and year about. It was also, of course, open to her to tweak the mix of courses at each provider to ensure that her workload in one of the two programmes reached the 0.8 EFTS threshold. In either case she would have been eligible for an allowance for the whole period of study. While I accept that these may well have been a less desirable options, both from an academic and a personal point of view, they were nevertheless clearly open to her and in the circumstances — at least insofar as they appear from her various submissions — are options that she could have been reasonably expected to take. The Ministry is also in my view clearly correct insofar as the appellant's *"academic best interests"* argument is concerned. Her need to enrol

for a part-time course of study at both providers simply has nothing to do with any lack of the necessary academic ability to undertake a full-time programme.

The appeal is allowed. The decision of the Secretary on review to uphold StudyLink's decision to decline the appellant's application for a Student Allowance for the 2020 academic year is overruled. Assuming the appellant fulfils the other relevant criteria, she must be paid an allowance for 2020.

Insofar as the Ministry's Guidelines on the meaning of *"full-time tertiary study",* and in particular on combining periods of part-time/"unrelated" study, are inconsistent with the proper interpretation of *"full-time study"* in reg 2 they need to be revised.

Dated at Wellington this 11th of February 2021

Neil Cameron
Student Allowance Appeal Authority