



Brighton Unemployed Centre Families Project Welfare Rights Group

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15/08/2018

Submission to the SSAC consultation on Universal Credit migration regulations

Introductory remarks

Since Universal Credit full service was introduced in Brighton & Hove (October 2017 – January 2018), we have supported 198 clients with applying for and maintaining their Universal Credit claims. We have encountered several issues with the implementation of the system and together with other local advice agencies we have contributed to the city-wide assessment of the impact, which was presented to Brighton & Hove City Council's Neighbourhoods, Inclusion, Communities and Equalities Committee on 2nd July 2018¹.

The committee heard that:

- ◆ by the end of March 2018, 68% of council tenant households on Universal Credit were in rent arrears (compared to a rent arrears level of 17% for households that were not affected by the government's welfare reform programme)
- ◆ vulnerable claimants (in particular those with disabilities, mental health difficulties literacy issues or whose first language is not English) have been struggling to maintain their Universal Credit claims, and there have been ongoing problems with documents going missing and inconsistent advice being given by the DWP.

Claimants who are inpatients in the mental health ward, those who are unable to leave their homes, and those who have their finances managed by a corporate appointee have experienced difficulties accessing their claims because of the strict requirements for explicit consent.

- ◆ around 14,000 people in Brighton & Hove are currently without access to the internet. Of those, 11,000 say that nothing would motivate them to use the internet. Around 38,000 residents don't have the skill to complete an online form. As a proportion of current Housing Benefit claimants, this is around 3,500 people. This is a massive challenge to the implementation of Universal Credit in its current form.
- ◆ claimants are having their council tax reduction recalculated frequently, as a result of changes to their UC claims. This has increased the workload of the council staff involved and also resulted in confusion and uncertainty for claimants.
- ◆ families who are already receiving support from social services are experiencing additional hardship due to problems with their Universal Credit claims, and have received conflicting advice from the DWP.
- ◆ 1,900 households in the city are currently claiming Housing Benefit due to low income from self-employment. These households are expected to suffer considerable hardship due to the Minimum Income Floor under Universal Credit.

¹ [https://present.brighton-hove.gov.uk/Published/C00000968/M00009224/AI00066058/\\$20180627095106_016114_0057786_CommitteeReportTemplate210617newsavedformat.docxA.ps.pdf](https://present.brighton-hove.gov.uk/Published/C00000968/M00009224/AI00066058/$20180627095106_016114_0057786_CommitteeReportTemplate210617newsavedformat.docxA.ps.pdf)

We are aware of the damning report of the National Audit Office², which identified many problems caused by the implementation of Universal Credit so far, and our experience has been in line with this criticism. For example:

◆ **Case 1 – R. family**

This couple (J & I) have experienced months of uncertainty and a significant reduction in income as a result of the loss of J's eligibility for PIP following a periodic reassessment. As a result of this decision, I lost his eligibility for carers' allowance and income support, and the couple were forced to claim Universal Credit while appealing against the PIP decision. This of course caused J's ESA and their Housing Benefit and Council Tax reduction claims to be stopped.

Every element of their household income was therefore disrupted by this DWP decision, which was subsequently overturned at tribunal.

This family needed substantial support, both from our advice team and from their adult son (himself a full time carer for his brother) to make and maintain their Universal Credit claim, and to make a new claim for Council Tax reduction. They needed an advance on their first UC payment and received an additional overpayment and they are now paying these debts back through deductions from their monthly payments. The process of negotiating an affordable payment schedule has been frustrating, necessitating repeated calls to the debt repayment line and UC in an attempt to find the correct department. They were advised to report I's part time earnings themselves, but these were also reported by his employer, resulting in an underpayment of UC.

They were wrongly advised by the DWP that J. needed to submit fit notes and a UC50 form, rather than her LCWRA status being automatically transferred over. Following a subsequent WCA (currently being appealed), their overall income is now reduced by around £200 per month and the deductions have reduced their income even further.

◆ **Case 2 – NG**

This claimant claimed Universal Credit in March when she was placed by the local authority in temporary accommodation and needed to make a new claim for housing benefit. She submitted an Overnight Carer form to request a decision to award her the 2 bedroom rate for her housing element, as she needs an overnight carer to stay regularly.

The UC service phone line on 29th June incorrectly advised that a UC50 needed to be completed to assess work capability before the Overnight Carer award can be made. This has no relevance to overnight care and in any case the claimant is awarded Limited Capability for Work and Work Related Activity allowance as she was migrated from the Support Group of ESA. She is also in receipt of PIP.

Over five months after submitting the form, no decision has yet been made. The claimant has been making up her rent shortfall from her Limited Capability for Work & Work Related Activity element causing severe financial hardship and mounting rent arrears. She is now facing eviction.

◆ **Case 3 – GD**

GD, a Brazilian migrant with Portuguese nationality, contacted us in early May with his wife and young child, who are also Portuguese nationals

Although he was unemployed and actively seeking work, he had previously worked when he arrived in the UK and therefore had worker status, and we supported them to make a joint Universal Credit claim. However, the claim was rejected by the DWP on the grounds that he didn't have Right To Reside, with no reason given.

We submitted a Mandatory Reconsideration against this decision as it was incorrect and this took the DWP over 5 weeks to process despite several calls each week. During this time, GD and his family

2 <https://www.nao.org.uk/report/rolling-out-universal-credit/>

became regular Centre users for emergency food donations, free lunches and a referral to the food bank as they had no income and were at risk of eviction.

In June, after getting nowhere with the UC full service help line, we escalated the issue and finally managed to speak to a Decision Maker who overturned the original decision and awarded him the Right To Reside and a backdated UC claim.

Our comments on the draft regulations are based on our experience and the experience of our vulnerable clients with Universal Credit so far. As a result of this experience, we are extremely fearful about the full rollout of Universal Credit.

Overall migration timetable

We urge the government to delay the start of the full rollout until sufficient changes have been made to the system to mitigate the issues identified by the NAO, and full service areas are no longer reporting that Universal Credit is causing additional hardship for vulnerable claimants.

Arrangements for contacting claimants and inviting claims from them

We think the migration process should be designed so as to minimise the risk of some claimants losing their benefits completely. The current proposals do not do this, as they require claimants to initiate a new claim or lose all benefits.

Our experience of the migration from DLA to PIP, which was conducted in this way, has been that many claimants have suffered significant distress and anxiety as a result. Many benefit claimants are unable to access an online process without support. These – often very vulnerable – claimants are those most at risk of dropping out of the benefits system altogether at the point of migration if the process relies on them making a new claim.

We think the DWP should automatically transfer existing benefit claims to UC, and then notify claimants that they need to create an online account in order to manage their claim. This would still be difficult for some people, but at least they would not lose their income at the same time.

If the procedure is to remain as outlined in the draft regulations, we are sure that some claimants will claim Universal Credit *earlier* than they need to, because they will misunderstand the pre-awareness and warm-up communications described in paragraphs 141 and 142 of the explanatory memorandum for the draft regulations³ as meaning that they are required to claim immediately.

There is a lot of fear and uncertainty surrounding Universal Credit, and we are aware that people are already being misinformed about the circumstances in which they need to claim. If households make a Universal Credit claim when they have been sent a warm-up letter, but not a formal notification letter, we are concerned that they will miss out on Transitional Protection, as they will not be treated as a ‘notified person’ as described in the regulations.

We would like to see steps taken in the design of all pre-notification communications to guard against this risk.

Ideally, there would be a marker placed against the NI numbers of claimants who have been sent a warm-up letter, which would bring up a warning if they start to make a claim before they have been sent the formal notification letter.

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718580/uc-transitional-regs-2018-explanatory-memorandum.pdf

Issues associated with making a claim, and ending legacy benefit claims

Some claimants will miss the deadline for making a claim. We are pleased to see that provision has been made for backdating of claims in cases where the deadline has been missed due to claimants being ill or disabled.

However, due to the issues that have already arisen where people with mental and physical illnesses are struggling to make and maintain Universal Credit claims, **we would like to see an amendment to paragraph 26 (2) of the Claims and Payments Regulations, in order to extend the period during which a delayed claim can be made from 1 month to 3 months.**

Calculation of transitional protection

(including the treatment of earnings and capital)

We believe that the calculation of transitional protection for people who have already lost entitlement to Severe Disability Premium is incorrect.

It will result in a discrepancy between the amount of transitional protection received by claimants who are in receipt of SDP at the point of managed migration and that received by claimants who have claimed Universal Credit through natural migration up to the time when the regulations come into force.

For example, a single claimant on ESA, in the support group is entitled to a weekly amount of:

73.10 (basic ESA)

37.65 (support group)

16.40 (enhanced disability premium)

64.30 (severe disability premium)

191.45 Total (equivalent to 829.62 monthly)

If this person has already had a change of circumstances which caused them to make a claim for UC, under these draft regulations they will be entitled to monthly amounts:

317.82 (personal element)

328.32 (LCWRA element)

80.00 (SDP transitional element)

726.14 Total

However, if they have not yet moved over to UC, they would receive full transitional protection at the point of managed migration, and their transitional element will be £183.48 per month, not £80.

We think the SDP transitional element should be calculated in the same way as a standard transitional element, and should fully compensate these claimants for the amount of income they have lost. These severely disabled claimants have already experienced substantial hardship as a result of the decision to abolish the SDP. We do not think they should be disadvantaged further.

Impact of proposed transitional protection

(including how easily it will be delivered and the degree to which it will be understood by claimants)

We are concerned about the implications of the erosion of the Transitional Element if the Housing Element increases. Increases in most elements (assuming no change of circumstances) will only occur when they are

updated annually in line with inflation. This is how claimants will be expecting the erosion of the Transitional Protection to occur, as described on the EntitledTo website⁴.

However, if claimants are renting in the private sector, they can be subjected to large rent increases, without their underlying circumstances changing. In this case, claimants would be substantially worse off on Universal Credit than they were on legacy benefits, which seems to undermine the intention of Transitional Protection.

We would like to see the Housing Element treated in the same way as the childcare element, so that claimants are not penalised unduly if their rent increases.

Impact on workers

(including the self-employed)

The Minimum Income Floor is one of the most troubling aspects of Universal Credit, and we are very concerned about the impact on people currently living on low incomes from self-employment, many of whom do not claim any benefits other than housing benefit.

Ideally, we would like the Minimum Income Floor to be scrapped, as it causes unnecessary hardship to people who have seasonal fluctuations in their income, and is likely to mean that many people will have to cease running small businesses.

If the Minimum Income Floor is to be retained, we think it would be more appropriate to exempt self-employed people from the Minimum Income Floor for 12 months, rather than 6 months.

Equality impact

(whether there will be particular effects for different groups and how these can best be addressed, for example are there any groups that will not be covered by transitional protection?)

We have identified two further issues relating to the transitional payments due to claimants who have already lost their SDP:

Firstly, the regulations as drafted mean that claimants who experienced a loss of income due to their natural migration to Universal Credit and loss of SDP, but who later had a change of circumstances that means they no longer meet the eligibility criteria for SDP will not be entitled to the SDP transitional element.

We think these people should receive a back payment for the period from the start of their UC claim, up to the change in their circumstances.

Secondly, we are concerned that there is no proposal about how people affected by this are to be notified that they are entitled to back payments.

We think the DWP should proactively contact people who were claiming benefits with SDP included, in the month preceding the start of their UC claim, to let them know that they are entitled to this additional payment.

Summary of recommendations

1. We urge the government to delay the start of the full rollout until sufficient changes have been made to the system to mitigate the issues identified by the NAO, and full service areas are no longer reporting that Universal Credit is causing additional hardship for vulnerable claimants.
2. The DWP should automatically transfer existing benefit claims to UC, and then notify claimants that they need to create an online account in order to manage their claim

⁴ <https://www.entitledto.co.uk/help/Transitional-protection-Universal-Credit>

3. If the proposed migration method is to be used, place a marker against the NI numbers of claimants who have been sent a warm-up letter, which would bring up a warning if they start to make a claim before they have been sent the formal notification letter. Take steps in the design of all pre-notification communications to guard against the risk of people making a claim before they have been notified.
4. If the proposed migration method is to be used, amend paragraph 26 (2) of the Claims and Payments Regulations, in order to extend the period during which a delayed claim can be made from 1 month to 3 months.
5. Calculate the SDP transitional element in the same way as a standard transitional element, so as to fully compensate affected claimants for the amount of income they have lost.
6. Treat the Housing Element in the same way as the childcare element, with regard to the erosion of Transitional Protection, so that claimants are not penalised unduly if their rent increases.
7. Scrap the Minimum Income Floor
8. If the Minimum Income Floor is to be retained, exempt self-employed people from the Minimum Income Floor for 12 months, rather than 6 months.
9. Ensure that people who have lost SDP after claiming UC but later changed circumstances so that they no longer have SDP entitlement receive a back payment for the period from the start of their UC claim, up to the change in their circumstances.
10. The DWP should proactively contact people who were claiming benefits with SDP included, in the month preceding the start of their UC claim, to let them know that they are entitled to this additional payment.