**Derbyshire County Council Response to the SSAC:**

THE UNIVERSAL CREDIT (TRANSITIONAL PROVISIONS) (MANAGED MIGRATION) AMENDMENT REGULATIONS 2018

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**Response to the Social Security Advisory Committee**

1. Derbyshire County Council provides both a Welfare Rights Service delivering benefits advice to the population of Derbyshire, and the Derbyshire Discretionary Fund which is the local welfare assistance provision put in place in April 2013 following the end of elements of the Social Fund.

The comments in this response draw on the experience of operating both these services.

2. General Observations

The Regulations themselves occupy about 14 pages: their Explanatory Memorandum reaches fifty pages. Guidance is also referred to at several points (e.g. regarding ’good reason’ for extending a deadline day – the existing guidance on ‘good reason’ is itself over 90 pages long)

This suggests that the operation of manged migration will not be a straightforward matter for DWP staff, and it may be problematic to explain to claimants. It is also likely to result in a large number of disputes.

Transitional Protection was first outlined in a DWP Briefing Paper in December 2012 but until now there has been little information or discussion on the subject.

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/181344/ucpbn-transitional-protection.pdf>

It is unfortunate that after such a long wait, discussion and comment is confined to a relatively short period. The Regulations also appear to offer relatively meagre provision for assisting vulnerable claimants, and the DWP’s approach remains overly based upon trial; and error.

We draw attention to the continued and extensive use of the phrase ‘test and learn’, which although it implies flexibility also indicates that, five years after the Universal Credit Regulations were first made, progress is based upon a degree of guesswork and correcting errors only when they occur, rather than trying to make the process sufficiently efficient and flexible *before* it is applied to, and affects the lives of, potentially vulnerable claimants.

The majority of measures presented appear to be proposed reactions to broadly-anticipated problems as and when they are encountered, as opposed to researched and structured measures placed directly in to the Regulations. Measures to protect the interests of claimants which are built in to the Regulations themselves would provide a clearer structure, reduce potential ambiguity and ensure equality of outcomes.

There are, for instance, time limits imposed upon claimants which could result in unfair outcomes, and the claimants who are the hardest to reach and who are the most vulnerable of all are those most likely to suffer adverse consequences from what is a forced change to their benefits when their circumstances have usually not altered at all.

**EXAMPLE:** Para 29 of the Explanatory Memorandum:

*The [Migration Notice] will give the existing benefit claimants a timescale in which to make their UC claim. This will be a minimum of one month, but there is flexibility for this period to be extended… [A] maximum period of 3 months will be contained in guidance.*

We suggest that it would be preferable for the Regulations, not guidance, to address a maximum limit of time, and for this to be consistent with the time limits for requesting a late Mandatory Reconsideration, or making a late appeal.

Research in to previous benefits migrations should also inform this process: not least the migration from Disability Living Allowance to Personal Independence Payment and that from Incapacity Benefit to Employment and Support Allowance, to work out which elements of these migrations were successful and which were problematic (see below).

3. The Overall Migration Timetable

The Memorandum reiterates repeatedly the application of a ‘test and learn’ approach to various aspects of the Regulations, and although this implies a willingness to act on problems as they are encountered, there seems to be little anticipation of problems and few material measures in place to manage them.

An ‘agile’ approach is also mentioned and this word is used frequently by DWP when describing UC as a whole. ‘Agile’ is a software development term, but it has been employed more broadly by DWP, to the point at which its meaning is somewhat vague.

It is insufficient to invoke an ‘agile’ approach when the meaning of this is unclear, and for this to take the place of clear forward planning.

The precedents for migration from one benefit to another are also not encouraging; the change of payments for children from Income Support (etc.) to Child Tax Credit, and the migration from Incapacity Benefit to Employment and Support Allowance offer themselves as examples. The former is not yet complete (commenced in 2004) and the latter, commenced in 2011, is now scheduled to be finished in 2018-19, which is approximately four years over schedule.

There are also benefit problems still arising from the transfer to ESA from Incapacity Benefit which are unresolved and which do not have a clear timetable for completion (underpayment of Income-Related ESA to claimants) and the court challenge to PIP rules (first payments due summer 2018, but no clear end date) which could impact upon this timetable by taking up DWP resources if they take longer than anticipated.

We draw attention to the report of the Public Accounts Committee with regard to the ESA migration.

It required, inter alia that the DWP should, by October 2018:

*{I]identify lessons learned from the error and write to the Committee with details of the concrete actions it is taking to ensure mistakes in converting benefits are not repeated, especially in the roll-out of universal credit*

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/975/97502.htm>

We submit that this requirement should be clearly met before testing of managed migration proceeds.

4. Arrangements for contacting claimants and inviting claims from them

The Migration Notice does not initiate a transfer of a claim to a new system, but is an instruction to make a brand new claim, to provide supporting evidence etc. - even where the claimant may have been on benefits a long time with no change in their circumstances, and/or where supporting evidence is not easily available, or where the claimant has already provided all relevant evidence in a recent claim and must re-present it all.

This is bound to cause confusion among claimants, and considerable difficulty and distress for more vulnerable people.

The approach taken – to communicate with the claimant, invite a claim, suspend and then terminate existing benefits if no response is received within a set time – is the same as that used for the transfer from DLA to PIP: this migration is, however, even more significant as the termination will apply to all existing means-tested benefits and also passports to other help. It will not just reduce an element of a claimant’s income, it has the potential to eliminate most of or the whole of a claimant’s income and precipitate severe financial crisis.

It is very likely that the greatest losers in this arrangement will be those who are most vulnerable and/or hard to reach, who will also have the least capacity to take up available help and to do so in time.

Depending upon their content, the ‘generic information’ letters may cause panic and confusion. Advice agencies (and many others such as social care services) need to see the contents of these letters and to comment in detail, especially given the needs of the wide range of claimants that will be affected by UC.

Given the poor standard of some DWP decision letters – e.g. the misleading ESA assessments people received on transfer from Incapacity Benefit and are still receiving (see below) – significant reassurance will be needed that DWP’s communications will be appropriate, informative, accurate and clear.

It is to be hoped that the language of the legislation – ‘termination’, ‘deadline’, ‘migration’ – is kept firmly out of public communications, owing to its legalistic tone and enormous potential for misunderstanding.

There is also cause for concern about notifications of entitlement to and explanations of transitional protection (TP).

The calculations for TP appear to be very complex; it needs to be made clear how claimants will be notified, and how they may be confident that the figures put to them are correct.

Once again the recent problem of transfer to ESA from Incapacity Benefit offers itself as a cautionary example:

The purported assessments of ESA entitlement received by a large number of claimants over a long period were misleading, inaccurate and often nonsensical, lacking a distinction between Income-Related and Contribution-Based ESA, purporting to assess Income-Related entitlement when they did not, and missing out premiums such as the Severe Disability Premium and the Enhanced Disability Premium even when an IRESA assessment was attempted.

Additionally, the transitional amount available on this benefit migration was ambiguously expressed in the letter, and was easy to mistake for a calculated Income-Related ‘top-up’ rather than a transitionally protected sum.

The poor information in these letters led not only to approximately 70,000 claimants being underpaid by considerable sums over a number of years, it also led to claimants who were eligible for IRESA being charged for health costs when they had an entitlement to free health care, and to an unknown number of claimants incurring NHS penalties, as the letters misled both claimants and NHS staff.

Although the problem of ESA underpayments is now being addressed, inaccurate and misleading letters are still being received by ESA claimants, as the format of the letters has never been changed in spite of many protests by advisers.

Claimants will be able to bring or send the initial ‘generic’ letters regarding UC migration to advice agencies in order to be given clarification of what they mean – but after the online claim is made, it is presumable that there will be no further letters sent to claimants and that information such as entitlement to Transitional Protection will be sent to the claimant’s online account.

This will make it difficult for claimants without IT access/skills to share the information with an adviser, especially in areas where advice is not given face to face or where the claimant has no IT access or skills.

Discussion is also needed concerning the letters advising claimants of what to do to prepare for a claim, including what steps will be taken by DWP if a claimant:

* cannot open a bank account
* has no acceptable ID
* has a Post Office Card account – DWP has been telling POCA customers that they must change to a bank account in order to receive UC – this advice has no legal force, and Post Offices have been telling their customers as much. The type of account used should depend upon the needs of the claimant.

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

Responsibility falls upon claimants to make a completely new claim in an unfamiliar format – the most vulnerable are again the most at risk of falling foul of this requirement.

It has already been noted that far more claimants have needed help with making a claim to date than was estimated, and that the take-up of the online Verify scheme is far lower than anticipated.

<https://www.gov.uk/government/publications/universal-credit-full-service-claimant-survey>

Managed migration obliges a far wider range of claimants to make online claims or lose their money: this presents a danger of financial hardship for vulnerable claimants.

 Although there are relatively few cases of severely disabled people ‘naturally’ migrated on to UC to date, there are already clear instances of problems:

* some are not able to make an online claim at all
* some are unable even to make a claim by telephone
* support exists to commence a claim, but even with this provision, some disabled claimants have lost money through delays
* it is very unclear what support is available to those who need help with their online claim on a day-to-day basis
* DWP home visiting resources for vulnerable claimants appear to be very limited even prior to the managed migration process

Cancelling a notification (pp 11-12 of the Explanatory Memorandum]

Regulation 44 include measures to ‘cancel the notification in the interests of any claimant or class of claimant’ where it is identified that they have complex needs.

A clear but not exhaustive definition of complex needs is required, but at present DWP takes an atomised approach to complex needs and UC, with each Jobcentre area having its own policy.

We suggest that certain classes of claimant should be identified in advance and excluded from the process until time and resources are available to assist them in making a claim, and an assessment made of their ongoing needs.

This could include claimants who:

* are subject to corporate appointeeship (as there is presently no clear way in which the appointee can make an online claim)
* have severe learning disabilities
* have other disabilities which prevent them from making and managing an online claim
* are terminally ill
* are deemed to have severe, lifelong conditions for the purposes of ESA or PIP reviews

This process could be made easier if DWP were to consult with authorities who offer social care, prior to commencing managed migration.

Extension of the deadline day [pp 12-13 of the Explanatory Memorandum]

It is very likely that ‘good reason’ disputes on this subject will occupy a great deal of time once managed migration begins, and the onus appears to be on the claimant to ‘contact the department’ rather than DWP working to identify vulnerable claimants.

Recognition that some claimants will be unable to move to UC in the long-term is welcome, but this is an approach which has been wholly absent from DWP thinking to date. It is also notable that although there is no limit to the number of times a claimant may ask for an extension, the onus remains on the claimant to prove their case each time.

Only in ‘exceptional’ cases will the department cancel the notification – but it is unclear what ‘exceptional’ may mean.

As stated above, we submit that it would be a better measure to identify certain categories of claimant in advance and to exclude them from the process until there is time and capacity to assist them to make and maintain a claim.

Action on complex needs should not follow purely as an exercise in ‘test and learn’ – the making of Regulations should be informed by clear knowledge of the challenges ahead.

‘Backdating’ to migration day in the case of termination [pp13-14 of the Explanatory Memorandum]

Backdating is largely based on Regulation 26 of the Claims and Payments Regulations, with the addition of a provision for official error.

The relevant Regulation is exceedingly narrow in its scope and is not a sound basis for assisting claimants.

The backdating period of one month is also too brief, and this will once again disadvantage those with the greatest levels of need.

More information is needed about what checks are proposed regarding complex needs – see above – and the nature and extent of these checks needs to be clear.

More thought is needed about what ‘official error’ may mean – specifying *whose* errors may count as official error would be helpful, and specific protection should be added for claimants who have been misled by incorrect/out of date information or advice (from DWP or other agencies) upon which they were reasonably entitled to rely.

Meaning of a qualifying claim [page 15 of the Explanatory Memorandum]

In the discussion of Regulation 48, it is stated that for transitional protection to apply, the claim should be made correctly etc. and:

*If they do not comply and their UC claim is disallowed, no TP would be applied to any subsequent UC award, even if another new UC claim is submitted by or before the original deadline day specified in the migration notice*

This seems arbitrary and unnecessarily harsh. Once again, the most vulnerable claimants are likely to fall foul of this measure.

The inclusion at Regulation 58 of the power to set a later commencement day is welcome, but it is not clear why it should be strictly limited to one month. It should be flexible, remaining in operation until it is clear that the number of claims that need to be assessed will no longer put undue pressure on operational capacity and will no longer threaten service delivery to claimants.

6. Claimants in receipt of severe disability premium: restriction on new claims for UC and transitional payments

Although measures are in place to assist those who, through natural migration, lose out on the Severe Disability Premium, these claimants and are likely still to lose money on natural migration to UC.

Further and better explanation of the calculation of the amount payable (page 27 of the Explanatory Regulations) is needed.

There is no protection against the loss of the Enhanced Disability Premium (in Income Support, Income-Based JSA, Income-related ESA and Housing Benefit)

(£ 16.40 for a single person, £23.55 for a couple)

Similarly for the Disability Premium (in Income Support/Income-Based JSA/Housing Benefit) (£33.55 single, £47.80 couple)

There appears to be no clear reasoning for addressing the severe disability premium only.

Those who lose out the most will be those who are unable to work or otherwise boost their income in any way, and those who are both a disabled person and a carer for another disabled person.

Restrictions are placed on SDP help for those who:

* form a couple with a UC claimant – on the grounds that *the formation of a couple in the legacy benefits might have meant the cessation of entitlement to the SDP* – and yet many couples would qualify for either single or couple-rate SDP in the legacy benefit system, and the removal or protection seems unnecessarily punitive and based upon a ‘*might-have’*
* those who no longer receive UC - but what if this is owing to an incorrect decision which is later corrected by DWP or a tribunal?
* those who have become single without choosing to do so/victims of domestic violence

Removal of help for these claimants also appears harsh, and does not relate to their needs

If there is a one-off check of entitlement to DLA/PIP, we are concerned that this may lead to the loss of help for claimants who have had one of these benefits removed incorrectly.

There needs to be clear provision for dealing with an incorrect decision which is later revised by DWP or a tribunal.

Given the gap between levels of income in the UC and legacy systems, some of those who benefit from Transitional Protection may find their incomes frozen for many years, even if their needs increase.

7. Equality impact (whether there will be particular effects for different groups and how these can best be addressed), including whether there any groups that will not be covered by transitional protection

The ‘digital by default’ of full service UC overlooks the potential levels of digital exclusion:

according to <http://heatmap.thetechpartnership.com>, the likelihood of overall digital exclusion is ‘medium’ in most areas of Derbyshire, and ‘high’ in two – Derbyshire Dales and Bolsover.

DWP statistics, frequently quoted in public presentations, showing that 90%(+) of claims are being made online are more than a year out of date and are based upon the trial ‘live’ service which was restricted to single jobseekers only – the least complicated cases, the people most able to use I.T., and those without disabilities etc. which may prove a barrier to claiming.

The capacity of the DWP’s work coaches to offer the full, personalised assistance of which the DWP speaks must also be subject to some examination.

According to the National Audit Office report, the current ratio of Work Coach-to-claimant is 1-85.

By 2024-5, this is projected to increase to 1-373.

<https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

Given that work coaches will have to deal with a very wide range of claimants, from those completely unable to work through to those in active employment and self-employment, this seems rather unrealistic.

8. Monitoring and evaluation

See above for comments on the liberal use of ‘test and learn’ in the Explanatory Memorandum.

Just two paragraphs of the Explanatory Memorandum are addressed to monitoring and evaluation. No criteria for evaluation are set, and how the process will be ‘closely monitored’ is not mentioned.

Will there be any accessible records of problems encountered and solutions implemented?

More information is needed on what may constitute ‘success’ or ‘failure’ in rolling out managed migration, and what measures may be taken to assist claimants who have been ‘left behind’ by the process.