

## **Severe Disability Premium**

### **Summary of the issue**

A UC claim that meets the conditions for ‘making’ of a claim<sup>1</sup> and in which a claimant meets the basic conditions of entitlement to UC, causes termination of legacy benefits.<sup>2</sup> The SDP gateway<sup>3</sup> is in place to prevent claimants entitled to the SDP from claiming UC and to allow them to remain on legacy benefits. It will be removed from January 2021.<sup>4</sup> There are operational processes in place to identify and prevent these claimants from claiming UC to ensure that the SDP gateway operates as robustly as possible.

There are a small number of claimants who have inadvertently claimed and been awarded UC despite the measures in place to prevent this happening.

### **Policy**

Our aim is to identify any claimants who breach the SDP gateway as quickly as possible and before UC is awarded and paid. Where claimants have not been prevented from claiming UC by the SDP gateway when they should have been, the Secretary of State for Work and Pensions can revise the decision to award UC<sup>5</sup> and reinstate any DWP legacy benefits that have been terminated,<sup>6</sup> so as to put claimants back in the position they were in, as regards DWP legacy benefits, before they claimed UC.

Where it is in the claimant’s best interests to do so, the Secretary of State for Work and Pensions can revise the UC award decision. The Secretary of State for Work and Pensions will consider cases that have breached the SDP gateway on a case by case basis.

Secretary of State for Work and Pensions will return claimants to DWP legacy benefits where:

- the error is identified promptly, prior to any award of UC, or
- returning the claimant is in their best interests (which may include financial interests).

### **Tax Credits**

The Secretary of State for Work and Pensions cannot revise Tax Credits decisions, which are the responsibility of HMRC. HMRC do not have the same powers to revise their decisions. Accordingly, it is not possible for HMRC to reinstate Tax Credit awards in cases that have breached the SDP gateway.

As a result, claimants who breach the SDP gateway and have had Tax Credits terminated will have to reclaim Tax Credits after their DWP legacy benefit/s (with SDP) have been reinstated, if they want to take up Tax Credit entitlement again.

In these cases, Secretary of State for Work and Pensions will consider complaints of any financial loss resulting from loss of Tax Credits and the suitability of a special payment to compensate for such financial loss. In seeking to broadly recompense the claimant for the financial loss, this special payment will take into consideration any money that has already been paid to the claimant.

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<sup>1</sup> In the Social Security Administration Act 1992 and the UC etc. (Claims & Payments) Regs 2013, SI 2013/380.

<sup>2</sup> Reg 8 of the TP Regs.

<sup>3</sup> Reg 4A of the UC (TP) Regs 2014, SI 2014/1230 – “the TP Regs”.

<sup>4</sup> Reg 7 of the UC (MM Pilot) Regs 2019, SI 2019/1152.

<sup>5</sup> Section 9 of the SSA 1998 and regs 8 and 9 of the UC etc. (Decisions & Appeals) Regs, SI 2013/381.

<sup>6</sup> Section 9 (ibid) and reg 3(5)(a) of the SS & CS (Decisions & Appeals) Regs, SI 1999/991, for old style ESA/JSA and IS, and reg 4(2)(a) of the HB & CTB (Decisions & Appeals) Regs, SI 2001/1002, for HB.