

# Benefits Bulletin

## Universal Credit - Unlawful Cuts...

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Issue **17**

### Unlawful cuts...

Last week the High Court in a case known as *R(TP and AR) v Secretary of State for Work and Pensions* ruled that the Department for Work and Pensions (DWP) had unlawfully discriminated against two disabled claimants because they were left financially worse off when they were required to cease claiming Income-related Employment and Support Allowance and claim Universal Credit instead as part of the 'natural migration' process.

The High Court ruled that despite the DWP stating early on (in the White Paper 'Universal Credit: Welfare that Works' dated November 2010) that no one would experience a reduction in overall benefit income when moved on to Universal Credit, the claimants concerned each lost over £40.00 per week following the switch. It was the view of the High Court that the treatment of both claimants was "manifestly without reasonable foundation".

High Court rules that universal credit cut in disabled person's benefit was unlawful...



Under Universal Credit rules there are two situations requiring claimants of 'legacy benefits' such as Income-related Employment and Support Allowance (see page 5) to apply for Universal Credit. These are:

- '**natural migration**': this applies when the claimant has a relevant change of circumstance (see page 4); and
- '**managed migration**': this applies when the claimant is randomly selected by the DWP to apply for Universal Credit but this process will not begin until July 2019 (see page 3).

At either of these points when Universal Credit is claimed, it replaces any 'legacy benefits' previously in payment.

Under ‘**natural migration**’ there is no protection against a reduction of benefit income whereas under the ‘**managed migration**’ arrangements there will be ‘transitional protection’. The High Court ruled that this was unfair.

The problem arises because people can be entitled to far greater amounts in ‘legacy benefits’ than Universal Credit. This is essentially because benefits like Employment and Support Allowance and Income Support can include the award of an ‘enhanced disability premium’ (worth up to £16.40 per week), a ‘severe disability premium’ (worth up to £64.30 per week) and/or a ‘disability premium’ (worth up to £33.55 per week). However, there are no direct equivalents under Universal Credit meaning that certain disabled claimants lose out financially when required to make the switch from ‘legacy benefits’ to Universal Credit.

The following case studies highlight the issue.

#### **Case Study One: Loses £64.00 Per Week**

Habib is disabled and unable to work. He has been entitled to £166.45 per week Income-related ESA to cover the costs of his disability and day-to-day living. In moving on to Universal Credit, due to a relevant change of circumstances, he is only entitled to Universal Credit of £443.93 per month (£102.45 per week). This represents an overall loss of £64.00 per week.

#### **Case Study Two: Loses £42.35 Per Week**

Holly is severely disabled and unable to work. She has been entitled to £191.45 per week Income-related ESA to cover the cost of her disability and day-to-day living. In moving on to Universal Credit, due to a relevant change of circumstances, she is only entitled to Universal Credit of £646.14 per month (£149.10 per week). This represents an overall loss of £42.35 per week.

The High Court cases involved a 52-year-old terminally ill man and a 36-year-old man who suffered from severe mental health who were, like Holly in the above case study, better off under the ‘legacy benefit’ system.



There is provision within the Universal Credit transitional framework (Regulation 4 of the Universal Credit (Transitional Provisions) Regulations 2014) which allows the DWP to select which groups of people are expected to apply for Universal Credit and in what circumstances. Where it is considered ‘necessary’ in order to either:

- ‘safeguard the efficient administration of Universal Credit’; or
- ‘ensure the effective testing of the system for the administration of Universal Credit’

the DWP can cease to accept claims in any particular category of case.

It is understood that as a result of the High Court judgement, the government is considering exempting those who get the ‘severe disability premium’ from the ‘**natural migration**’ process which means these claimants would not be expected to apply for Universal Credit even if they had a relevant change of circumstance. However, even with this exemption from ‘natural migration’ people would eventually need to apply for Universal Credit under ‘**managed migration**’ when invited to do so, although the amount of their overall ‘legacy benefit’ would be transitionally protected.

At the same time, it is also understood that the DWP has sought permission to appeal against the High Court judgement, maintaining that no error of law was involved in the practice of paying people less benefit than previously paid.

# What to do...

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In advance of any real legal resolution to this issue, the best advice is that any disabled person who has lost money as a result of being expected to apply for Universal Credit due to **'natural migration'** and the loss of disability related premiums in the process should seek to challenge the Universal Credit award decision.



They should do this by asking for a **'mandatory reconsideration'** of the decision which is likely to be refused and then by asking for an **'appeal'**. In doing so they should make reference to the judgement in the High Court and the fact that they believe that the decision to cut the amount of benefit they were getting was unlawful.

A person may ask for a 'mandatory reconsideration' by phoning the DWP (Universal Credit Service Centre - FREEPHONE 0800 328 5644) or writing to them (Universal Credit, Post Handling Site B, Wolverhampton WV99 1AJ).



The normal time limit for making a 'mandatory reconsideration' request is one month from the date of the Universal Credit award decision. If more than one month has passed since the Universal Credit award decision, the person should ask for the 'mandatory reconsideration' to be allowed even though the application being submitted is late. It should be explained that the person would have made the 'mandatory reconsideration' request sooner if they had been aware that the DWP were in breach of the law in paying them a reduced amount of benefit. Further, if any other reasons exist as to why the 'mandatory reconsideration' could not be made sooner, this should be explained.

It is most likely that a person is only going to get the decision to cut their benefit overturned on appeal by a First-tier Tribunal or Upper Tribunal. Going to appeal can take many months but it may be worth it in the long run.

If a person's 'mandatory reconsideration' request is turned down, they must appeal in writing on a SCS1 appeal form. This form is available on the internet - type 'SCS1 form' into a browser. The time limit for making an appeal is one month but the time limit may be extended by the First-tier Tribunal for 'fair and just' reasons. Therefore, if a person is outside of the one-month time limit they should submit an appeal but in doing so explain why the appeal is being made late.

## Universal Credit and migration...

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Universal Credit is a single benefit designed to replace a number of existing, so called 'legacy benefits' (see below) formerly available to people of 'working age'. The aim is to make the benefit system more straightforward by having one benefit rather than several different individual benefits. The intention is that eventually everyone who is presently getting a 'legacy benefit' will be 'migrated' on to Universal Credit at some stage.

Those people who now get a 'legacy benefit' who have a relevant change in circumstance (see below) will be expected to apply for Universal Credit at that point and Universal Credit will replace any 'legacy benefits' they get. This process is known as '**natural migration**'. Whereas, those who do not have a relevant change of circumstances will be randomly selected to apply for Universal Credit between 2019 and 2022. This process is known as '**managed migration**'.



Those moving on to Universal Credit under '**natural migration**' get the amount of benefit it is considered that they are entitled to under Universal Credit and no more, even if the total amount of their 'legacy benefits' came to more. However, the stated plan has been to grant 'transitional protection' to those who make the move on to Universal Credit under '**managed migration**'. Under '**managed migration**' those who find themselves worse off have been promised 'cash protection' - they will be paid an amount in addition to their basic Universal Credit entitlement to compensate and save them losing income.

It is the difference between the two migration systems that the High Court could not accept and held was unlawful.



## Relevant change of circumstance

Those people who are presently in receipt of a 'legacy benefit' will be expected to migrate on to Universal Credit upon a relevant change of circumstance. Under the rules there are a number of different situations which amount to a relevant change of circumstance which would trigger the requirement to apply for Universal Credit.

In the High Court cases it was the fact that the claimants were getting Employment and Support Allowance and moved home into an area where Universal Credit FULL SERVICE had been rolled out.



Therefore, a person who gets a 'legacy benefit' who moves to a part of Wolverhampton where Universal Credit FULL SERVICE has been rolled out will trigger a need to apply for Universal Credit. However, this would not include a person who simply moves from one part of Wolverhampton in which Universal Credit FULL SERVICE has been already been launched to another part of the city in which Universal Credit FULL SERVICE also exists.

Other relevant changes of circumstance triggering a requirement to apply for Universal Credit include where:

- A person is getting Income-related ESA and undertaking 'permitted work' and they increase the number of hours they work to more than 16 hours per week

# Legacy Benefits

- A person is getting Income-related ESA and undertaking 'permitted work' and they start to earn in excess of £125.50 per week
- A person is getting Income-related ESA and fails the Work Capability Assessment - although in this case a person should read Benefits Bulletin 15 before applying for Universal Credit
- A person is getting Income Support as a lone parent and their youngest child reaches the age of five
- A person is getting Income-related ESA and they become responsible for a child
- A person is getting Income-related ESA and takes up a tenancy.

Universal Credit is ultimately set to replace:

- Income-related Employment and Support Allowance
- Income Support
- Income-based Jobseeker's Allowance
- Child Tax Credit
- Working Tax Credit
- Housing Benefit

These are the so called 'legacy benefits'. They are benefits that may be claimed by people when they are too sick to work, unemployed or in low paid employment.

Universal Credit will not be replacing Child Benefit, Council Tax Reduction, Contributory Jobseeker's Allowance, Contributory Employment and Support Allowance, State Retirement Pension, Pension Credit, Personal Independence Payment, Disability Living Allowance, Attendance Allowance or Carer's Allowance. Universal Credit will also not be replacing Statutory Sick Pay and Industrial Injuries benefit.

If you would like any further information and/or advice on any of the issues covered in this Benefits Bulletin then please email our Specialist Support Team. See below.



**Note:** Families who have three or more children are not able to apply for Universal Credit for the first time until 1<sup>st</sup> February 2019. Therefore, if such a family is getting a 'legacy benefit' and they have a relevant change of circumstance they will remain on 'legacy benefits'.

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