



## **Law Centre (NI) response to the Social Security Advisory Committee's consultation on managed migration**

### **Introduction**

1. Law Centre (NI) promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals in social security, community care and mental health and employment law. Law Centre (NI) provides legal advice, representation, training, information and policy services. We work in partnership with Advice NI and Citizens Advice to deliver the Welfare Reform Support Project. We convene an Advisers Network for welfare rights advisers, and the Welfare Reform Group, which is an umbrella grouping of organisations that campaign for positive changes to policy, service provision and legislation for persons in receipt of social security.
2. Law Centre (NI) welcomes this opportunity to respond to the Social Security Advisory Committee (SSAC) consultation on proposals for moving all existing claimants of a working age income-related benefit to Universal Credit.
3. In our response, Law Centre (NI) proposes a new approach to managed migration. The response also comments on specific DWP proposals.

### **SUMMARY OF RECOMMENDATIONS**

#### **Key recommendations**

- 1) The term 'managed migration' is a misnomer as the onus is on claimants to migrate themselves from legacy benefits to Universal Credit ("UC") by making a new claim. We urge DWP to rethink its approach. Law Centre (NI) proposes a new process that will better protect entitlement to Transitional Protection ("TP"). This process is outlined below at paragraph 4. A key feature is that the legacy benefit is not terminated until a UC claim is in payment.
- 2) Managed migration should not commence in Northern Ireland until the Assembly is restored, thus affording necessary oversight and scrutiny of a complex process.
- 3) Steps urgently need to be taken to ensure that claimants do not inadvertently / prematurely 'naturally migrate' to UC. We strongly recommend that *before* accepting a new UC claim from a claimant in receipt of legacy benefits, DWP/DfC is satisfied that the claimant is aware of the relevant change of income (i.e. by completing a benefit check) and

that the claimant has been informed of the availability of independent advice.

- 4) We recommend that the *only* change of circumstance that triggers a loss of TP is where the household has attained income security for a period of 12 months.

### **Further recommendations**

- 5) Any claimant who is found to be negatively impacted due to the DWP “test and learn” approach should be entitled to financial redress.
- 6) Northern Ireland data outlining the number of claimants affected by managed migration should be published.
- 7) A public consultation on managed migration should be conducted in Northern Ireland.
- 8) The role of ‘external partners’ in managed migration should be clarified.
- 9) The 3 month period should be increased to 12 months whereby claimants can retain their TP if making a new UC after losing UC following additional earnings. This will enhance UC work incentives.
- 10) SSAC should invite DWP to remedy the difficulties experienced by disabled students in receiving UC.
- 11) In relation to the backdating of TP, all affected claimants should be informed of their entitlement to backdating and should be advised of other avenues of support during the interim period.
- 12) All migrated claimants should receive a personalised calculation of their TP amount and information on the circumstances in which TP might be lost.
- 13) If DWP continues with its current policy of managed migration, discretion should be incorporated into the regulations to afford decision makers some flexibility with regards to claimants who have missed the extended deadline.
- 14) If DWP continues with its current policy whereby a change of circumstances results in the loss of TP, an exception should be introduced



to ensure that victims of domestic violence may retain TP following separation from an abusive partner.

- 15) DWP should define 'changes of circumstances' for the purpose of losing TP.
- 16) A claimant should not lose TP due to genuine error if s/he makes a fresh claim within the parameters of the migration deadline.
- 17) The proposed 6 month grace period for self employed UC claimants should be extended to 12 months.
- 18) An Equality Impact Assessment should be conducted of managed migration. This assessment should inform the design of communications with claimants.
- 19) The Department for Communities should provide an assurance that Welfare Supplement Payments are unaffected by managed migration.

## Law Centre (NI) proposal for managed migration

4. The Law Centre is very concerned about the current proposals for managed migration given the onus on claimants to make a UC claim. Making a new claim incorporates an entirely new, online claiming procedure that existing legacy claimants will not be familiar with. The stipulated timeframe for making a new claim (generally 1 month) is relatively tight. The risk is that by not adhering to the proposed scheme, claimants will lose their Transitional Protection. For some claimants, this will constitute a considerable drop in income. We note that Housing Rights has voiced concerns that this potentially puts claimants at risk of homelessness.<sup>1</sup> We urge DWP to rethink its approach and to introduce a process whereby claimants are automatically moved from the old system to the new. Law Centre (NI) recommends the following:
- a) Claimants receive notification of their imminent managed migration. The notification should include an approximate calculation of the claimant's UC award and should clearly highlight the amount of Transitional Protection s/he may be entitled to receive.
  - b) All claimants are invited to attend a meeting with their Work Coach to make a claim. Where relevant, this should coincide with the claimant's regular 'signing on' requirements e.g. for JSA. A deadline applies for attending the meeting.
  - c) At the meeting, the UC Work Coach explains the managed migration process and Transitional Protection. The UC Work Coach provides an accurate calculation of the UC and TP award. The UC Work Coach will consider whether any of the UC vulnerable persons measures – such as home visits - are appropriate. Where the claimant is ready to proceed, the Work Coach goes on to discuss the claimant commitment with the view to complete the UC claim. If the claimant is not ready to proceed, the Work Coach arranges a further meeting / deadline.
  - d) The UC assessment should run for the last month of the claimant's legacy benefit claim. This will ensure that the claimant receives their first UC payment no more than 7 days after the legacy benefit is terminated. This will protect claimants from the risk of financial hardship during the first 5 weeks following making a claim: the National Audit Office notes that while

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<sup>1</sup> Housing Rights response to SSAC consultation on managed migration (August 2018)

payment timeliness has improved, one in five new claimants do not receive their full payment on time.<sup>2</sup>

- e) With our proposal, the legacy benefit is *not* terminated until a UC claim is in place. This removes the risk of a person claimant losing their TP. The Department should take all reasonable steps to encourage the claimant to participate in the process e.g. telephone reminders, warnings, etc. If a claimant does not participate in the process then our preference would be that the Department considers sanctioning the claimant rather than terminating their legacy benefit. This would be a matter of last resort but and would protect a claimant's TP.

### **Protecting against loss of Transitional Protection through natural migration**

5. The Law Centre is aware of cases where claimants in receipt of legacy benefits have prematurely 'naturally migrated' by making an ill-advised claim for Universal Credit. There is no process by which a claimant can withdraw their UC claim in such instances and claimants have experienced considerable financial loss.

#### **Case study – monthly loss of £400**

Donal and his wife were in receipt of a number of means-tested legacy benefits. Between them, they received: Income Support, Employment & Support Allowance, Carer's Allowance (Donal), daily living PIP at standard rate (Donal), high rate care and mobility DLA (his wife). Donal heard a radio advert about Universal Credit and thought he had to make a claim immediately. Donal suffers from an anxiety disorder and worried about the implications of not making a claim. Donal made a joint online claim and was called in to an interview at the JBO to complete the process. At no point was he informed that it was not actually necessary for him to make the claim. Donal has since requested that he returns to his legacy benefit but has been informed that it is not possible. As a result of claiming UC, Donal and his wife have experienced a loss of approximately £400 per month.

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<sup>2</sup> National Audit Office, 'Rolling out Universal Credit' (2018 para. 11. Accessible here: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf> para 11

**Case study – 70% reduction in income**

Marie is a young woman < 25 years living in GB who received ESA (support group) and Enhanced Disability Premium. In total, she received £191.45 per week. Marie moved to Northern Ireland and expected a smooth transition to an ESA claim here through the Reciprocal Arrangements. However her claim was not transferred and she was advised she had to claim UC and undergo a new ECA medical assessment. Marie's weekly income is now £58.10 per week. As a result of claiming Universal Credit, Marie has experienced a loss of £133.35 per week i.e. almost 70% reduction.

**Case study – 61% reduction in income**

Pat's financial situation is similar to Marie's. Pat received ESA (support group) and Enhanced Disability. In total, he received £191.45 per week. Pat missed his WCA medical assessment and so his benefit was stopped. He sought a Mandatory Reconsideration MR to outline his good cause for failure to attend. During MR process he is not entitled to ESA again until his appeal is lodged. He rang the benefit provider (ESA) for advice of what to do for money until the MR certificate was received. He was told he had to claim JSA. When Pat went to claim JSA, he was told he was in a UC area and instead had to claim UC. He now receives £73.10 per week. Even if his ESA appeal is successful, he cannot transfer back to ESA. As a result of claiming Universal Credit, Pat has experienced a loss of £118.35 per week, which is a 61% reduction.

6. The Law Centre recommends the following precautions:
- a) DWP should identify legacy claimants who submit a UC claim and should perform a 'benefit check' to calculate the exact amount of UC the claimant will receive once migrated;
  - b) If there is going to be a financial loss, DWP should inform the claimant of same and should signpost to independent advice who can further advise the claimant on whether it is in their interests to claim UC.
7. While Law Centre's view is that all naturally migrating UC claimants should be alerted to any financial loss and signposted to independent advice, this is particularly important for vulnerable claimants i.e. legacy claimants in receipt of DLA/PIP, ESA or any disability premiums. Law Centre's recommendation is Universal Credit claims from such households should not progress until independent advice has been sought.

## Timeframe for managed migration, “test and learn” and need for scrutiny

8. The government’s intention to commence managed migration in January 2019 is very ambitious. Universal Credit was only introduced in Northern Ireland in September 2017 with the roll-out of Full Service due to complete in December 2018. We think it would be prudent to allow a period of ‘bedding in’ for the UC new system *before* it is further extended. It is necessary that DfC staff are able to competently administer UC to new claimants, and that the advice sector fully understands it, before the migration process begins as it will add additional complexity to the overall system.
9. The Law Centre has concerns about DWP’s reliance on a “test and learn” approach during the managed migration process. While it is right that there is a degree of flexibility in the application of public policy, our concern is that claimants may be subject to multiple administrative changes. Law Centre considers that the principle of legal clarity should apply and that persons migrating from legacy benefits should feel confident about the process and how they will be affected. As SSAC Chairman, Paul Gray, recently outlined the importance of identifying operational consequences of proposed policy changes before they are legislated and not after.<sup>3</sup> If the government pushes forward with a “test and learn” approach those who are found to be negatively impacted should be entitled to financial redress.
10. The scale of Universal Credit is significant as 3 million claimants (in around 2 million households) across the UK will be moved from legacy benefits to Universal Credit. It is unclear how many claimants are likely to be affected in Northern Ireland as this data is not currently available. An understanding of the size of the transfer is necessary for the advice sector to design and deliver appropriate services. Further, the advice sector (and other sectors) in Northern Ireland should be properly consulted through a public consultation; there has been no consultation to date.
11. Law Centre (NI) is concerned at the prospect of the migration process progressing without the presence of a government in Northern Ireland. It is vital that the “test and learn” approach is independently monitored and there are proper accountability mechanisms. We are concerned that without adequate and additional funding via the Northern Ireland monitoring round, the managed migration process will have a detrimental impact on the welfare of claimants.

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<sup>3</sup> SSAC annual report 2017/18 accessible here:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730615/ssac-annual-report-2017-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730615/ssac-annual-report-2017-2018.pdf) p.3

12. DWP indicated in its meeting with SSAC in June that success of the migration project is based on input from external partners. It is unclear what is meant by 'external partners' and their role in this initiative. Law Centre (NI) considers that current use of external partners – namely the contracting of ATOS and Capita to conduct disability assessments – has increased the complexity of the process for claimants and unfortunately has led to issues relating to transparency and accountability.<sup>4</sup> The involvement of external partners needs to be closely monitored to ensure that the interests of claimants are prioritised over the requirement to meet contractual targets. The use of external partners makes it all the more important that there are effective scrutiny mechanisms – i.e. the NI Assembly – in place.

## SPECIFIC PROPOSALS

- **Housing**

13. DWP proposes a provision to allow payments of Housing Benefit to continue for a further 2 weeks for existing HB claimants. This payment will be disregarded as unearned income. This provision already exists in natural migration and we are pleased that it has been mirrored for managed migration.

- **Work incentives**

14. DWP makes two proposals to maintain work incentives. First, it will enable claimants whose UC award terminates due to their receiving additional earnings in an assessment period to be re-awarded TP if they make a new claim to UC within 3 months. Second, it will enable claimants who are receiving the childcare element to keep their TP if there is any increase in this element. Both proposals are welcome. However, given the rise in temporary / precarious work, including that associated with the gig economy,<sup>5</sup> we recommend that the 3 month period is increased to 12 months. This will ensure that claimants have income security before losing their TP.

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<sup>4</sup> See Law Centre (NI) response to Law Centre response to Independent Review of PIP Assessment (NI) Process (March 2018) accessible here: <https://www.lawcentreni.org/consultation-responses-by-category/social-security-responses.html>

<sup>5</sup> Mathew Taylor, 'Good work: the Taylor review of modern working practices' (July 2017) accessible here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)



- **Students**

15. DWP also proposes provision to ensure that full-time students in receipt of an existing benefit and tax credit claimants who have more than £16,000 capital can be entitled to UC. For students, this easement will last until the end of their course, and for those with capital, for 12 months. While welcome, this does not address the difficulties faced by disabled students wishing to claim Universal Credit. Before being entitled to UC, students must satisfy two provisions: they must be entitled to DLA/PIP and they must have Limited Capability for Work (“LCW”). A difficulty arises for a new UC claimant who does not already have LCW. Students are obliged to make a ‘credits-only’ claim for ESA as a means to obtain the LCW they need to make a claim for UC. This is unnecessarily cumbersome. We would ask SSAC to invite DWP addresses this problem.

- **Backdating TP**

16. DWP proposes a regulation that will effectively ‘backdate’ TP for certain claimants who have already naturally migrated to UC.<sup>6</sup> This backdating is based broadly on the amount of Severe Disability Premium that the claimant(s) were receiving prior to natural migration. This is welcome. However, until these regulations come into force, interim measures are needed to support such claimants. At a minimum:

- a) All affected claimants should be informed that they are eligible and that they will receive a backdated payment. This will enable claimants to plan accordingly;
- b) In addition, claimants should be advised of available support during the interim period e.g. Discretionary Support, Contingency Fund, etc. Where appropriate, claimants should be referred to independent advice to assist making the claims.

- **Communication with claimants**

17. Law Centre (NI) is mindful that TP brings an additional level of complexity to the UC process. Law Centre emphasises that it is important that claimants fully understand how much TP they are receiving and in what circumstances the TP may end. Law Centre recommends that all migrated claimants receive

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<sup>6</sup> This relates to claimants who are receiving: Income-related Employment and Support Allowance (ESA(IR); Income-based Jobseeker’s Allowance (JSA(IB)); Income Support (IS); or HB; and have the Severe Disability Premium (SDP)

a personalised breakdown of their TP and also information on the circumstances in which TP will be lost. (See section below on changes of circumstances).

- **Deadline to make claim**

18. Law Centre is concerned by the limitations of the government's proposal to allow an extension of a minimum of one month and maximum of three months (pending good reason) of the deadline to make a new claim. This one/three-month extension does not adequately mitigate the risk for the most vulnerable claimants who will be the most significantly impacted if they lose out on transitional protections. Law Centre recommends that discretion is introduced into the regulations that permit decision makers to exercise discretion for claimants who have missed the extended deadline for good reason.

- **Changes of circumstances**

19. One of the principles of managed migration is that entitlement to Transitional Protection ends when there is a change of circumstances. The Law Centre's view is that *unless* the change of circumstances results in income security for a period of 12 months, a claimant should *not* lose their Transitional Protection. Other changes – such as a new baby, death of a family member, an improvement / deterioration to a health condition – do not have any significant bearing on a household's income and therefore it seems arbitrary that they trigger the loss of Transitional Protection. DWP has not provided a satisfactory rationale for this approach. The Law Centre considers that the DWP's focus shifts from changes of circumstance to income security: only once a claimant/household has attained income security is it reasonable to withdraw the Transitional Protection.

20. Law Centre's recommendation would constitute a bold departure from the current framework. If not accepted, we recommend that DWP revises its approach to victims of domestic violence: it is wholly unjust that a victim (usually a woman) loses her Transitional Protection if she leaves an abusive partner. A victim fleeing her partner is likely to make a separate claim for UC. We recommend that the victim may continue to avail of any Transitional Protection relating to her or to her dependent children/family members. For example, if a woman who receives TP by virtue of her disability premium needs to make a new claim due to domestic violence, her TP should continue.

21. In addition, the Department should define changes of circumstances for the purpose of losing TP.

- **Claimant error**

22. It is unfair that a claimant is liable to lose TP if due to genuine error they are unable to comply with the eligibility criteria set out at para. 51 (Explanatory Memorandum). If they make a fresh claim within the parameters of the migration deadline they should still be able to access TP.

- **Self employed**

23. Law Centre is concerned at the additional burdens for self employed UC claimants consider it is unfair that they will lose TP if they experience a spike in earnings for a three month period. For example, a self-employed worker may have a successful summer period, lose their TP and face a difficult winter. Without TP, that worker may be pushed into in-work poverty and financial hardship. DWP proposes a 6 month 'grace period' for self employed managed migration claimants before the Minimum Income Floor is applied to them (Explanatory Memorandum, para 89). This is welcome. However, to better reflect the possibility of annually-fluctuating earnings, we recommend that this grace period is extended to 12 months. This is consistent with our proposed focus on income security.

- **Equality impact**

24. Law Centre (NI) asserts that there is a requirement that an up to date Equality Impact Assessment is carried out. Although an Equality Impact Assessment was carried out as part of the Welfare Reform Bill 2011, it is clear that UC has encountered significant changes since the Welfare Reform Bill was debated. Law Centre also considers that it is important to fully understand and evaluate the equality implications of DWP's 'test and learn' approach. Considering that 36% of those who will be migrated from legacy benefit to UC are claiming ESA, Law Centre believes it is particularly necessary to conduct an Equality Impact Assessment for this group of claimants. The Assessment should determine the impact of the communications from DWP in respect of migration, the understanding and level of TP and the online claim process.

- **Methodology**

25. Law Centre seeks clarification from DWP on its 'iterative' (para. 138, Explanatory Memorandum) research process and the scope and methodology used to 'validate assumptions'. Law Centre is concerned that the starting point for this research is an assumption. The development of communications should reflect scientific, evidence based research.

- **Welfare Supplementary Payments**

26. That a number of claimants in N Ireland are in receipt of Welfare Supplementary Payments (i.e. mitigation package) is a complicating factor for claimants migrating to UC. The Department for Communities should clarify that Welfare Supplement Payments are unaffected by managed migration.

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