Legal Briefing for Advisers – January 2025

Universal Credit Managed Migration for Carer's who have limited capability for work related activity

Law Centre NI

Adviser Legal Information Briefing

This legal information briefing warns advisers that Carers with a disability, who have gone through the managed migration process to Universal Credit, can actually be worse off if they are *subsequently* awarded the Limited Capability for Work Related Activity Component.

This briefing does not apply to ESA claimants who are already assessed as having limited capability for work-related activity *before* going through managed migration to Universal Credit.

For free, tailored advice on any of the issues discussed in this document or any other aspect of social security, please call (028) 9024 4401 and speak with our specialist social security advice team.

An Overview of Managed Migration

Managed migration is the official process of transitioning from a claim for previous means-tested legacy benefits and Tax Credits[1] to an award of Universal Credit. As part of the managed migration process, the government introduced 'transitional protection' with the policy intention of ensuring no one was worse off at the point of transferring to Universal Credit. Although there are different types of protection, the most common is known as the 'transitional element'[2] – this is an additional element that is can be added to a claimant's Universal Credit award if they are going to receive a lower benefit award than they previously had on their legacy benefit.

It is important to note that the 'transitional element' is an additional component that is only available to claimants who are invited to apply for Universal Credit via the managed migration process. It ensures that all eligible claimants that make a valid claim for Universal Credit within their deadline or extended deadline (as noted in

[1] Including: Income-related Employment and Support Allowance; Income-related Jobseeker's Allowance, Housing Benefit, Income Support; Tax Credits (Child Tax Credits and Working Tax Credits).
[2] The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016, Reg. 53

their ‘migration notice letter’) will be no worse off at the point they move across to Universal Credit.

In reality this means that the Department will compare a claimant’s entitlement to their existing legacy benefits with that of their Universal Credit entitlement based on their circumstances the day before their award of Universal Credit begins. If their entitlement is lower on Universal Credit, then a ‘transitional element’ will be added to their award to ensure they are no worse off.

Erosion of the Transitional Element

The transitional element is different from normal elements of Universal Credit as it can be subject to loss or erosion after a claimant’s first assessment period.[3]

Any relevant increase to, or addition of, a Universal Credit element will normally reduce a claimant’s transitional element pound for pound for any subsequent period.[4] This is how the transitional element will “erode”.

There are some exceptions and the addition of, or increase to, the childcare element will not erode the transitional element. Also, the addition of a housing costs element if moving from supported or temporary accommodation to standard accommodation will not cause erosion. However, normal increases to the housing costs element will trigger erosion.

How a Work Capability Assessment (WCA) decision affects the amount of Universal Credit paid

If a claimant has a health condition or disability that limits their ability to work, they could be entitled to an additional element in their Universal Credit award. The additional LCW (limited capability for work) or LCWRA (limited capability for work-related activity) element can be added to a claimant’s award following a work capability assessment.

A claimant who is assessed as having limited capability for work related activity (LCWRA) will normally receive an additional payment as they will receive the LCWRA element. However, if a claimant is entitled to the LCWRA element and Carer Elements they will only receive the higher paying element – the LCWRA element[5]. You cannot be paid both elements together.

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[3] Ibid, Reg. 56 (2)

[4] Ibid, Reg 56 (4)

[5] The Universal Credit Regulations (Northern Ireland) 2016, Reg. 30(4)

Transitional Protection for Carer's with Limited Capability for Work Related Activity

The transitional element is awarded to claimants who go through the managed migration process to Universal Credit to ensure they are not worse-off at the point of transfer. Law Centre NI has been highlighting that the current transitional protection legislation regulations unfairly apply to carers who are subsequently awarded the limited capability for work related activity element *after* they migrate to Universal Credit. This will be counter-intuitive for advisers, as normally a carer will be better off if they claim the limited capability for work-related activity element - as it is paid at a higher rate.

As this is a new element that is to be added to a claimant's Universal Credit award, their transitional element will be eroded as their award has increased.

However, why does this unfairly impact carers who have a disability?

A claimant is not able to receive the 'Carers Element' and 'LCWRA element' of Universal Credit at the same time[6]. Carers that go through the managed migration process may receive a transitional element to ensure they are no worse off at the point of transfer. If they are *subsequently* awarded LCWRA this will erode their transitional element. At this point in the calculation, they are no worse off as the transitional element is eroded by the amount of the LCWRA. However, because they cannot receive LCWRA and the Carers Element together, the Carer's Element is then removed from their award, with the result that they are actually worse off.

In reality this means that although a claimant will continue to receive a transitional element to protect their level of income, a carer with a pre-existing debilitating condition will experience an overall reduction in their Universal Credit award by the removal of the Carer Element. Normally, the failure to pay both the Carer Element and LCWRA element prevents a claimant from being better off, however, in these circumstances, as a migrating carer with a disability, the claimant is actually worse off.

This is demonstrated in the example below:

David has migrated from Tax Credit to Universal Credit via the managed migration process. Whilst he was receiving Working Tax Credits, he was self-employed as this enabled him to work despite his pre-existing disability. At the time he migrated to Universal Credit, he was in receipt of both the enhanced daily living and mobility component of Personal Independence Payment, along with Carer's Allowance as he looked after his disabled partner.

When David moved to Universal Credit, he had a transitional element of £736.75 and received an award of £799.61 after a tariff income reduction. David reported his

[6] Ibid, Reg. 30(4)

limited capability for work due to his pre-existing disability. When he was subsequently awarded the LCWRA element in this fourth assessment period, it eroded his transitional element by the amount of LCWRA element awarded. Therefore the award of the amount of the LCWRA element did not impact on his UC entitlement and it remained at £736.75. At this point in the calculation David is no worse off. However, as he cannot receive the carers element and LCWRA at the same time, his Universal Credit award will subsequently be reduced to £601.30 after the Carers Element is removed. This means he is worse off because of the award of the LCWRA element.

The combination of the erosion of the transitional element and the removal of the Carers Element means that David is treated less favorably than a carer without a disability. A carer who has migrated to Universal Credit under the managed migration process but who does not have a disability, will continue to receive the same rate of benefit that they had received from their legacy benefit.

The Calculation:

David's UC award on Managed Migration

Standard Allowance	£393.45
Carer Element	£198.31
Transitional Element	£736.75
Carer's Allowance	-£354.90
Tariff Income	-£174.00
UC Award:	£799.61

David's UC award after LCWRA awarded

Standard Allowance	£393.45
~~Carer Element~~	~~£198.31~~ **(Removed following LCWRA award)**
LCWRA Element	£416.19
Transitional Element	**£320.56 (Eroded by the amount of the LCWRA award)**
Carer's Allowance	-£354.90
Tariff Income	-£174.00
UC Award:	£601.30

In these circumstances the claimant is left £198.31 per assessment period *worse off*.

Going Forward

The Law Centre NI has an ongoing case regarding this issue arguing that the erosion of the transitional element in this manner unlawfully discriminates, by treating migrating carers with a disability less favorably than non-disabled carers.

Law Centre NI is also aware of a legal challenge in England & Wales where an Upper Tribunal is due to rule on this matter.[7]

In the interim advisers should advise claimants that, at present, carers who are going through the managed migration process may actually be worse off if they subsequently claim the LCWRA element.

If you are assisting a claimant in these circumstances that has already lost out because of subsequent LCWRA award, then they should request a Mandatory Reconsideration. Currently DfC are refusing to issue Mandatory Reconsideration notices pending the outcome of the test case challenge. Law Centre NI has written to DfC to outline that legislatively[8] they can issue a mandatory reconsideration notice and a failure to do so is denying access to justice.

Contact Law Centre NI

Our legal team also provides advice and assistance to social security advisers throughout Northern Ireland, and you can contact our team for advice about this issue.

You can contact our free, specialist and confidential social security advice line to speak with one of our advisers. Our telephone advice line is open between 09:30 to 13:00 from Monday to Friday and you can contact us on 028 9024 4401.

We can also provide advice and representation for members of the public who are challenging social security decisions in court, and they can also contact us using the details above.

[7] Tribunal appeal number: UA-2023-000561-USTA
[8] The Social Security NI Order 1998, Art. 25(3)(b) and The UC, PIP, JSA and ESA (Decisions and Appeals) Regulations (NI) 2016, Reg. 52(1)(a)

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