

Managed Migration to Universal Credit – full steam ahead? Not quite yet...

The DWP say that they are to resume managed migration to Universal Credit in 2022, to ‘reach scale’ in 2023 and aim to complete in 2024.

In preparation for this, an invitation to tender for delivery of digital capability ‘to safely move people at scale from legacy benefits, to universal credit’ was issued in August 2021.

Secretary of State Dr Coffey also advised that those who would not be better off on Universal Credit should wait for managed migration rather than taking part in a ‘voluntary move’.

Note that the DWP have been encouraging a ‘move to Universal Credit’ since autumn, including a webpage for the general public, entitled [Could universal credit be for you?](#) 

The [Topical Questions to the Work and Pensions Secretary](#)  are also available from Hansard.

Some of you will know that a managed migration pilot ran in Harrogate in the second half of 2019, but was suspended in April 2020 due to the pandemic. In the first six months of this pilot around 13 legacy benefit recipients were supported to claim Universal Credit.

Nonetheless, on 8 November the Secretary of State Dr Coffey told the House of Commons ‘I am pleased to say that there was a considerable amount of learnings from that time in Harrogate, and we have also learned a lot during the pandemic. As such, I am not envisaging a need for the pilot to be resumed in Harrogate, but it has

informed our plan, which is still in preparation, on resuming the managed move to Universal Credit.’

[Dr Coffey’s answer on the Harrogate ‘Move to universal credit’ pilot](#)  is available from parliament.uk.



Personal Independence Payment Clearance Times

As we know, Personal Independence Payment claims are currently taking much longer to process.

End to end clearance times for new claims were 24 weeks in October 2021 compared to August 2021's peak of 26 weeks. This is still higher than October 2020's clearance time of 16 weeks end to end and roughly twice the amount of time expected pre-pandemic.

Record numbers of new PIP claims were registered in the three months to October 2021, with more claims received than at any point since the benefit was introduced in April 2013. The DWP has noted that pandemic-related disruption continues.

In order to manage its workload, the DWP has decided not to issue new invitations to claim PIP to working age DLA claimants.

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Personal Independence Payment Goes Online

Online PIP2 Form

From 6 December all new Personal Independence Payment claimants will be offered the option of completing and submitting their PIP2 form online, though note that this is not currently available for appointees.

New Online Claims Service Piloted

In a further move towards digital processing, the DWP have outlined a six month pilot scheme due to start in January 2022. As well as making an online claim, a small number of invited claimants will also be able to upload evidence to their online account.

Completed claims will be assessed by a case manager who will be able to refer the claim back to the claimant if, for example, further information is needed.

Post Office Card Accounts

You will remember from our Autumn edition, that we shared the news that those who receive DWP benefits and pensions into a Post Office Card Account would continue to receive payments into their accounts until November 2022, extended from August 2021.



After this date, any claimants who have not provided alternative bank details will be paid using the Payment Exception Service.

At the same time, HMRC was due to stop using Post Office Card Accounts from November 2021, with payments due to be suspended for those who had not provided alternative bank details by this point. This deadline was also recently extended, though only to April 2022. After this time, any claimants who have not provided alternative bank details will be paid via PayOut vouchers which are sent by mail or SMS to customers for them to cash at the Post Office.

For further details, see committees.parliament.uk/publications/8332/documents/84747/default/

Payment of Benefit Arrears by Instalments

Sometimes in the backwaters of benefit administration a change happens that is worth noting. Some of you will have clients waiting for backdated payments of benefits: caused by delays, successful challenges or official errors.

Usually, such arrears come to the client in a lump sum but in a minority of cases this can be a problem.

Such payments do not usually count as capital for 12 months from receipt (and in some cases of £5,000 or more for longer). But there may be other good reasons why a client would prefer to receive them in instalments: addiction being the most obvious.

Regulations recently introduced now give the DWP the option to pay benefit arrears by instalments.

The payment options went live from 18 October 2021. Staggered payments can be made only where the client agrees and where the DWP believes it is necessary to protect their best interests.

Something called the Advanced Customer Support Team will make these decisions. They are the team to contact if you know an arrears payment is due and your client agrees that it would be in their best interests to receive it by instalments.



For further details, see Social Security Benefits (Claims and Payments) (Amendment) Regulations 2021 (SI No.1065/2021) and Guidance: DMG Memo 13/21 and ADM Memo 18/21.

EEA/Swiss Nationals Without Status From 30 June 2021 – New DWP Guidance

The DWP has issued new guidance in relation to claimants who lack status following withdrawal from the EU and the end of the grace period on 30 June 2021. This guidance can be found in [ADM Memo 19/21](#) and [DMG Memo 14/21](#).

The guidance confirms that those who made an application under the EU Settlement Scheme before the deadline, 30 June 2021, have the same access to benefits as they did before the end of the grace period on that date.

The guidance also confirms that these rights are extended where the Home Office has accepted a late application under the EU Settlement Scheme, validated by the issue of a Certificate of Application.

For as long as the final decision on Settled or Pre-settled Status is pending, claimants should not be treated as 'a person subject to immigration control'.

For means-tested benefits, the claimant should also be prepared to show that they were resident before they retain a right to reside under EEA rules. Seek advice if this is an issue for your client.

In relation to those in receipt of non-means-tested benefits, the DWP says that it is taking a 'pragmatic approach'. On this basis claimants yet to submit their EUSS application are being contacted and encouraged to apply or risk benefit being suspended or terminated.

In all cases where your client or their family member is an EEA or Swiss national living in the UK on 31 December 2020 who has yet to make an application under the EUSS they should do so, giving reasons for lateness. Failure to do so is likely to mean that they have no access to benefits, social housing or employment etc due to their status as a person subject to immigration control (PSIC). Your clients may need immigration advice, particularly if they have an unsettled pattern of life and work in the UK. You can search

for organisations that may be able to help with applications at www.gov.uk/help-eu-settlement-scheme.

For a discussion on the benefit implications of Brexit and the end of the grace period see our Summer 2021 Bulletin at: www.welfare-benefits-unit.org.uk/wp-content/uploads/2021/07/WBU-Benefits-Bulletin-Summer-2021.pdf



How the Household Support Fund is Being Distributed Locally

At the time of our Autumn bulletin the Household Support Fund had only just been announced. This is the £500million fund to be distributed by local councils to help households meet essential costs over winter.

So, how is it going?

Guidance to councils was issued by the Government covering the period to 31 March 2022 (www.gov.uk/government/publications/household-support-fund-guidance-for-local-councils )

We set out below the different schemes set up by North Yorkshire County Council (NYCC) and City of York Council (CYC) to distribute their slices of the money.

It will be as well to check whether eligible clients, especially those with limited capacity, have applied for and received these grants.

North Yorkshire County Council

NYCC received £3.5million.

The eligibility criteria are that you:

- ✓ receive means-tested help to pay Council Tax (not just the 25% single adult discount) and
- ✓ have a child under 19 living at home.

NYCC identified and wrote to these people in December inviting them to apply by filling in an application form online using a unique code, and they will keep checking for people who become eligible for the first time.

Eligible people can apply for e-vouchers (like store gift cards) totalling £275 (increased from £250) to pay for food and other essentials.

Eligible people who did not receive, or lost, their letter can apply using the 'I've lost my letter' option. Those who do not have access to the internet can contact the NYCC customer service centre by telephone.

The HSF does not replace North Yorkshire Local Assistance Fund (NYLAF) but part of the pot of money allocated to NYCC is also being distributed via that fund, Warm and Well, and local food banks.

The deadline for claiming the e-voucher is 28 February 2022.

Full details can be found here: www.northyorks.gov.uk/household-support-fund 

City of York Council

City of York Council created the York Household Support Grant scheme on 15 November 2021 and it will close on 31 March 2022.

CYC sets out its 'application windows' clearly:

- ✓ from 15 November to 5 December 2021 for the period 6 October to 31 December 2021, and
- ✓ 10 January to 30 January 2022 for the period 1 January 2022 to 31 January 2022

Within CYC there were two routes to the grant.

First by invitation to those eligible as follows:

- ✓ families with dependent children under 18 currently receiving Council Tax Support; and
- ✓ people receiving Housing Benefit/ Council Tax Support and PIP enhanced rate.

CYC provided an online link or offered access via its customer service or benefits team by telephone.

The second route is by direct application from residents struggling to meet their winter bills. Eligibility for this category is wider and includes a number of specific categories and anyone suffering severe financial hardship.

Full details can be found here: www.york.gov.uk/information-covid1-9/household-support-fund 

Unlike NYCC, money payments are made.



The Motability Scheme – Speed Limits and Limitations

Jackie Fielding is a welfare rights worker operating in the Selby District. She is, without a doubt, one of the longest-serving advice workers in the county, with over twenty years experience.

One of her clients came up with a query. A query that, on first sight, might leave some advisers feeling non-plussed.

The simple question was: “Why can’t I get a motorbike on Motability?”

This prompted Jackie and ourselves to look into the structure, process and history of the Motability Scheme.

Jackie’s client said they got high-rate PIP mobility component but on the grounds of severe mental health under activity 1, not a physical difficulty with walking under activity 2.

This requires an examination of both the Motability Scheme, and the rules relating to awards of the enhanced rate of the mobility component of PIP.

To access the Motability Scheme, a claimant must be in receipt of one of the following allowances and have at least 12 months of the award remaining:

- ✓ Enhanced rate of the mobility component of Personal Independence Payment (PIP)
- ✓ Higher rate mobility component of Disability Living Allowance (DLA)
- ✓ Higher rate mobility component of Child Disability Payment (Scotland)
- ✓ War Pensioners’ Mobility Supplement (WPMS)
- ✓ Armed Forces Independence Payment (AFIP)

Only these allowances can be used through the Motability Scheme, in part or in whole.

If we take, as an example, Jackie’s client and assume that he has an award of the enhanced rate of the mobility component solely under activity 1, and not a combination of points from activity 1 and 2, then this means that the client has been awarded the enhanced rate on the basis that he cannot follow the route of a familiar journey without another person, assistance dog, or orientation aid. Accessing the Motability Scheme for the purposes of transport by motorbike under the constraints of activity 1, descriptor f might seem unlikely.

Similarly, with the relevant activity 2 descriptors, speed limits or enclosure are the two factors preventing the inclusion of motorbikes.

So, what does the scheme cover? It covers the lease of a car, scooter,

powered wheelchair or Wheelchair Accessible Vehicle (WAV).

The scooters are all 3- or 4-wheelers. More information on these can be found at www.motability.co.uk/products/scooters-and-powered-wheelchairs/types-of-scooters/.

There are three classes, depending on whether they are for use on the road or the pavement.

All scooters and powered wheelchairs are given a classification by the Department for Transport. Class 2 products can only be used on the pavement and have a maximum speed of 4mph. Recipients aged under 14 are restricted to Class 2 products only.

Class 3 products must be registered with the DVLA. Motability dealers take care of this for most claimants. They can travel up to 8mph, although must only be driven at 4mph on pavements.

Motorbikes have never been included.

Continued overleaf →



Continued from page 6:

The history of the Motability Scheme begins with the 1976 Mobility Act. The Act brought in replacement options for the old mobility trike. These options included cars, adapted vehicles, taxis and scooters.

The evolution of an increasing number of mobility options required management by the Motability Scheme, but at no time have motorcycles been included.

However, looking at the products available, some of the scooters have now got the look of a motorbike (but not 2 wheels). Here's an example:

www.lifestyleandmobility.co.uk/product/drive-easy-rider/ 

This product has a top speed 8mph (the top speed for this type of product allowed by the regulations) and a maximum range of 31 miles.

If we return to Jackie's client, and his question "Why can't I get a motorbike on Motability?" we can now put it into some context. Jackie's client's award of PIP mobility was made under activity 1 – planning and following journeys. The original Act of 1976 was quite clearly aimed at claimants with physical disabilities. Physical difficulties are covered by mobility activity 2 – moving around.

Secondly, the combined effects of social security rules on the one hand, and Motability rules relating to driver safety on the other, currently prevents inclusion of motorbikes into the Motability Scheme.

Lastly, it's difficult to know at this time what technological innovation will lead to in the future.

Manage Your Appeal

Since the summer of 2018, benefit claimants have been able to submit appeals online.

Although it was initially restricted to certain benefits, from September 2021 the service was widened to cover all DWP benefits. Furthermore, not only were claimants able to submit an appeal, but, since the 2021 improvements they were then able to track the progress of their appeal online.

This feature was renamed the "Manage Your Appeal" (MYA) service in December 2019 and began operating in February 2020.

Since October 2021, a further facility has been added. Claimants are now able to submit video and audio evidence as part of the Manage Your Appeal service. This is in addition to the existing options to upload documents and photo evidence.

More information can be found in a presentation given by HMCTS, available at [SSCS Tribunals Project \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) 

New Sanctions Regime for New-style Benefits

Many of you may regularly advise clients claiming new-style Jobseeker's Allowance that they 'will get it' for 26 weeks.

You might not have emphasised the importance of the Claimant Commitment to those clients claiming new style benefits as much as you do for those claiming Universal Credit.

Until recently, such an approach would have been entirely understandable because there was no sanctions regime for new-style Jobseeker's Allowance (or new-style Employment and Support Allowance). This, however, is no longer the case.

On 3 November 2021 the DWP introduced a sanctions regime for these benefits. This means that those who do not meet their Claimant Commitment without having a good reason will lose some, or all, of their payment.

The three levels of sanctions mirror the Universal Credit regime. For more details see www.gov.uk/government/publications/jobseekers-allowance-sanctions-leaflet/jobseekers-allowance-sanctions-how-to-keep-your-benefit-payment 

For new-style Employment and Support Allowance, a sanction may be applied if you do not attend interviews or a work-related activity as agreed in the Claimant Commitment. It can be applied up to four weeks after you restart work-related activities. Sanctions are not applied in the support group.

For more details see www.gov.uk/guidance/new-style-employment-and-support-allowance#if-you-get-a-sanction 



Universal Credit Taper Rate and Work Allowance

Changes have been made to the way that income is assessed in Universal Credit. From 24 November 2021, the work allowances have increased, and the taper rate has decreased. The impact of these changes is that working claimants can keep more of what they earn.

Work Allowances

The work allowance is the Universal Credit equivalent of an earnings disregard. It is the amount of earnings that can be ignored in the calculation of income for certain claimants. Work allowances only apply if the claimant has responsibility for a child or has been assessed as having limited capability for work.

From 24 November, the work allowances have increased.

The **lower work allowance** (included if the UC award includes a housing costs element) has increased from £293 per month to £335 per month.

The **higher work allowance** (included if the UC award doesn't include a housing costs element) has increased from £515 per month to £557 per month.

Taper

Once any appropriate work allowance is deducted from a claimant's earned income, a taper is applied. Applying the taper provides the earned income figure which is used in the claimant's Universal Credit calculation.

From 24 November 2021, the taper rate has been decreased from 63% to 55%.

Example: Joni is a single parent living in rented accommodation. Her earnings are £450 per month after deductions of tax, national insurance and pension contributions. A work allowance of £335 is deducted ($£450 - £335 = £115$). A taper rate of 55% is then applied ($£115 \times 55\% = £63.25$). £63.25 is the income figure which will be used in Joni's Universal Credit calculation.

Welfare Writes...

An Exchange of Letters

...and I mean letters ... letters ... not emails. Two of them: one sent, and a reply.

Stephen Timms wrote and sent the first. Sent it, presumably first class, recorded delivery, to Ms Chloe Smith, Minister for Disabled People, Health and Work. Sent it on 14 October 2021. Stephen Timms is the Chair of the Work and Pensions Committee, so the contents of his letter to dear Chloe we can surely safely assume had something to do with our great and august social security system. It was, in fact, concerned with claimants affected by the Supreme Court decision in *Secretary of State for Work and Pensions v MM* ([2019] UKSC 34) – otherwise known, in short, as the “MM” case.

The MM case expanded the definition of “engaging socially” to include support given not just during an act of engagement, but also prior to and after that engagement. Social engagement, that is, not engagement of any other kind.

When a legal definition expands like this, more claimants come within its meaning, and a trawl is required to identify those claimants who might get netted by it.

How many might, exactly?

That’s what Stephen wanted to know, of Chloe. He wanted to know about her numbers.

Stephen addressed his letter to Chloe in the belief that if anyone was to know about the numbers involved, surely, it would be her. She is, as we have previously said, the Minister for Disabled People, Health and Work. No chance of misdirection with this one, he thought. Nor the whistling of a famous Elvis Presley tune.

Chloe began her reply with the words “Dear Stephen”, and then proceeded to confirm that between 320,000 and 340,000 claimants are expected to have their claims reviewed and that, of these, it is estimated that between 30,000 and 40,000 claimants may be eligible for extra PIP.

She concluded the letter with the words “Yours sincerely, Chloe Smith MP, Minister for Disabled People, Health and Work”

Written, but not Published

A revealing report has not been published.

“Well”, you might think, “maybe it’s not been published because, like my great unpublished novel, it’s rubbish!”

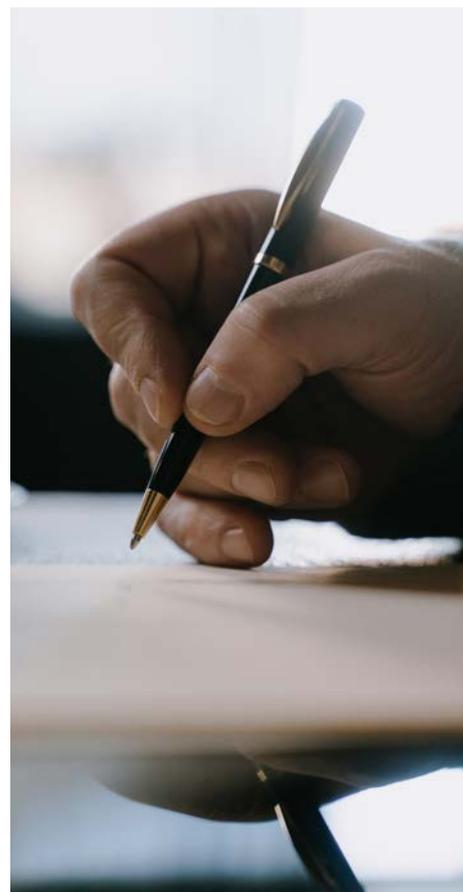
But the issue here isn’t about quality, it’s about content. Whether it’s been superbly written, like our novel, or not, is therefore immaterial.

The report concerns disabled peoples’ experience of the benefits system. It was commissioned by the Department of Work and Pensions and consisted of research carried out by the National Centre for Social Research. On this basis alone, I think we can be assured of its quality.

Stephen Timms has, once again, put pen to paper and written a letter. This time he’s written a letter not to dear Chloe, but to Dr Therese Coffey.

Dr Theresa Coffey still continues to be the Secretary of State for Work and Pensions.

To be more precise, Stephen wrote two letters to Therese, about the same situation, and containing, due to its urgency, considerably less affection than the one letter he wrote to Chloe.



He wrote the first letter in August 2021, and followed it up with another in December of the same year.

What has happened to Mr Timms affections, in respect of Dr Coffey? Assuming, of course that he had any in the first place.

I’ll tell you what’s happened to them.

Mr Timms is irate. The research report produced by the National Centre for Social Research has not been published. Maybe... maybe it has within its pages some very damaging content. Mr Timms has expressed his irritation by giving Therese, in his second letter, an ultimatum: publish the report by 11 January 2022, and be damned!

To this end Stephen has also advised Therese that he will use the powers of the Work Pensions Committee, powers given to it by Parliament, to order that the report be published, and published by 27 January 2022.

Supreme Court, pre-settled status and right to reside:

Fratila and another (AP) (Respondents) v Secretary of State for Work and Pensions (Appellant) [2021] UKSC 53, 1 December 2021

You might be aware of the ongoing challenge against excluding from entitlement to means-tested benefits those whose right to reside is based on limited leave to remain via pre-settled status.

In what now seems to be the conclusive decision, the Supreme Court has allowed DWP's appeal, finding no unlawful discrimination in excluding those with pre-settled status from having a qualifying right to reside for Universal Credit and other means-tested benefits.

Following the earlier judgement of the Court of Justice of the European Union in Case C-709/20 (see below) the Supreme Court agreed that the protection from discrimination on grounds of nationality under Article 18 TFEU (EU Treaty) applies only to those exercising rights under EU Directive 2004/38 (the 'residency directive') and entitled to equal treatment under Article 24 of that Directive. Consequently, in the opinion of the Supreme Court, exclusion from means-tested benefit is not unlawful.

This means that those with pre-settled status under the EU Settlement Scheme must demonstrate an alternative, non-excluded right to reside in order to access Universal Credit and other means-tested benefits.

Note that in the earlier test case, C-709/20, the Court of Justice of the European Union decided that, although the exclusion of entitlement for those with pre-settled status only was not unlawfully discriminatory, the DWP should check whether to refuse benefit risked a breach of the Charter of Fundamental Rights of the European Union, in terms of human dignity, respect for family life and/or well-being and best interest of a child. It may be worth considering a challenge on that basis, for example where the result of refusing benefit is destitution.

Many cases that had been stockpiled or 'stayed, pending the outcome of 'Fratila' must now be decided and, where the only right to reside is based on pre-settled status, this will be unfavourable to the claimant. However, where the claimant had an alternative, non-excluded right to reside the claim should be allowed on that basis. We understand that in such cases the decision maker sometimes makes a negative decision based on pre-settled status without taking account of an alternative right to reside. It is worth checking this and seeking advice.



You can see CPAG's advice for claimants at: [CPAG advice for claimants](#) 

Application of Personal Independence Payment activities to claimant who is a functioning alcoholic: CPIP/2229/2019 / SSWP vs DE [2021] UKUT 226

The appellant in this case had tried on many occasions to claim Personal Independence Payment, making unsuccessful claims in 2014, and twice in 2015.

A fourth and final claim was made in 2017 and they were awarded a mere two points for daily living on the basis of needing a perching stool to aid preparing and cooking a meal.

The decision remained unchanged by both the mandatory reconsideration and the appeal to the First-tier Tribunal despite the claimant being found to be “alcohol dependent”. Off it went to the Upper Tribunal and the appeal was allowed when Judge Jacobs found that *“the First-tier Tribunal’s finding that the appellant had no disability arising from alcohol dependence was inconsistent with the evidence before it.”*



So, we find ourselves by now in 2019 and the case remitted back to the First-tier Tribunal, who once again allowed just two points, the same two points that were awarded in 2017. The appellant, by now with representation from Citizens Advice Darlington, requested permission to appeal to the Upper Tribunal and the case was heard in 2021 with the appellant “seeking a decision with reasons on the basis that “the nature of the case is such that the Tribunal would gain some benefit from guidance” in the matter”.

Well, Judge Clough really took that request to heart and did indeed proceed in providing detailed guidance on how to assess alcohol use in the context of PIP assessments.

Though, as always, cases must be decided on the facts, the detailed guidance in this case will point claimants and their advisers, along with DWP decision makers and First-tier Tribunals, very much in the right direction.

Running at 40 pages, this is a long decision and unfortunately, we cannot include all of the findings in this short report. Here are some of the main points:

- ✦ Alcohol use disorder is a medical condition for Personal Independence Payment purposes, there may be other secondary mental or physical health problems which are also relevant
- ✦ Alcohol use could be categorised as dependence or a lifestyle choice, but not both at the same time; consideration should be given to the degree of self-control rather than choice
- ✦ How to approach regulations 4 and 7: “is it functioning to an acceptable standard if alcohol is required to secure the functioning?”

Considering how this applies to the case in hand, Judge Clough decided that the previous decision was made in error of law and remits the case back to a new First-tier Tribunal and leaves it to them to work through the guidance in relation to this appellant.

The full decision can be found here: assets.publishing.service.gov.uk/media/6166e631e90e07197483b70d/CPIP_2229_2019-00.pdf

Tax Credits, withdrawn claim for UC and stop notices: CTC/2193 /2019 / [2021] UKUT 209 (AAC)

Does a claim for Universal Credit always terminate entitlement to tax credits even where the Universal Credit claim is withdrawn before it is decided?

The answer is – it depends on whether the DWP have considered that the basic conditions for entitlement to Universal Credit are satisfied before the claim is withdrawn.

Under regulation 8 of the Universal Credit (Transitional Provisions) Regulations 2014, an award of Income Support or Tax Credits terminates where a claim for Universal Credit is made and the Secretary of State is satisfied that the claimant satisfies the basic conditions relating to age, residence in Great Britain and education.

Under regulation 31 of the Universal Credit etc (Claims and Payments) Regulations 2013, a claim for Universal Credit may be withdrawn at any time before a determination has been made on it. The withdrawal request must be in writing and takes effect when received.

DWP practice on receipt of a claim for Universal Credit is to issue a ‘stop notice’ to HMRC stating that a claim for Universal Credit has been made and entitlement to tax credits terminates.

In this case, a claim for Universal Credit was made on 6 October 2019. On 7 October, following advice, the claimant withdrew their claim. On 9 October 2019 the DWP issued a ‘stop notice’ to HMRC to terminate

Tax Credits from 6 October which they did.

The First-tier Tribunal allowed the claimants appeal, accepting that the stop notice was ineffective because, at the time it was issued, the claim had been withdrawn and there had been no determination as to whether the basic conditions were satisfied.

HMRC appealed to the Upper Tribunal who rejected their appeal and upheld the decision of the First-tier Tribunal.

Reasons for Upper Tribunal decision

Judge Mitchel gave detailed consideration to various legal provisions including case [CTC/1276/2018 \[2018\] UKUT 306 \(AAC\)](#) , in which Judge Jacobs decided that withdrawal of a claim did not prevent termination of a Tax Credit award.

In that earlier case, the stop notice was issued before the claim for Universal Credit was withdrawn. Judge Jacobs did accept that, for a stop notice to be effective, there must be some evidence that the DWP has considered that the claimant satisfies the basic conditions.

In contrast, in the present case, Judge Mitchel held that there was no evidence that consideration had been given to whether the claimant

satisfied the basic conditions prior to the claim being withdrawn. No claim for Universal Credit subsisted at the date the stop notice was issued.

Furthermore, Judge Mitchel stated that *‘It is most unlikely that DWP civil servants would go about making determinations as to whether the universal credit basic conditions are met before a particular individual has made a claim for universal credit.’*

At paragraph 22 Judge Mitchel also states that *‘I proceed on the basis that the universal credit claim always comes first and is followed by a determination under regulation 8(1)’.*

Conclusions

On the basis of the above judgement there is a strong argument that an award of legacy benefit should not terminate purely on the basis of issue of a claim for Universal Credit, where the claim has been withdrawn prior to issue of a stop notice or other indication that consideration has been given as to whether the basic conditions for UC are satisfied.

Note that other arguments may apply, for example a stop notice being issued where the basic conditions are not satisfied, leading to the claim for Universal Credit being unsuccessful.

Looking Forward to...

Changes to the Terminal Illness Rules

The reason we are looking forward to the changes to the terminal illness rules in April 2022 is that we have to look considerably further back to trace their beginnings.

The current legal test is that at the time of the claim the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within six months.

First hints of a revision to the rules came from the Scottish Government. They announced their intention to remove the six month rule in April 2018, and to replace it with the clinical judgement of a medical practitioner.

A Bill – the Access to Welfare (Terminal Illness Definition) Bill – was given its first reading in the House of Commons on 18 July 2018, and was moved by the Labour MP for Bridgend, Mrs Madelaine Moon. The Bill reflected the recent proposals in Scotland.

A slightly different approach was taken by the Work and Pensions Committee in March 2019.

The chairman of the Committee, Mr Frank Field, wrote to the Minister for Disabled People, Health and Work Sarah Newton, stating that he is ‘perplexed’. He was perplexed by a refusal by the DWP to accept the Committee’s recommendation that the terminal illness rules be changed. That change would require claimants only to provide evidence that they have a terminal illness that is likely to cause their death with no requirement for it to be within six months.

A month later, on 24 April, and in response to pressure from the Work and Pensions Committee, the DWP made some small changes to its guidance, but no changes to primary or secondary legislation. Further pressure came from a 3 July report from the All Party Parliamentary Group which described the six month rule as “arbitrary and outdated”. They also urged the Government

at Westminster to follow the proposals of the Scottish Government, first outlined in April 2018.

Confirmation from the DWP that the rule would be changed came on 20 October 2020. Pandemic postponements delayed a second confirmation announced on 8 July 2021. It contained a detail absent from the first: the six-month rule would be replaced with 12 months.

The most recent announcement was made on 9 November 2021. Due to the nature of the terminal illness rules as they apply to Universal Credit and Employment and Support Allowance, and the main disability benefits, changes to the former – UC and ESA – will be introduced in April 2022. Similar changes to the disability benefits – AA, PIP and DLA – are to be introduced somewhat later as these changes require the amendment of primary legislation.



Upcoming Training

Are you new to welfare benefits, in need of a refresher, or looking to expand your knowledge? Whatever your level of experience or particular interest, take a look at our upcoming courses and come and join our “friendly supportive and extremely knowledgeable” tutors.

Here's the menu:

Personal Independence Payment – How to get the right decision

Tue 8 February, 10am to 4pm

Benefits Overview working age

Thu 17 February, 10am to 4pm

Introduction to Benefits

Wed 27 and Thu 28 April,
Wed 4 and Thu 5 May and
Wed 11 and Thu 12 May,
10am to 12.30pm

Universal Credit and Housing Costs

Thu 26 May, 10am to 12.30pm

Universal Credit and Work

Thu 26 May, 1.30pm to 4pm

Benefits for Disabled Young People including students

Tue 7 June, 10am to 4pm

Introduction to Benefits

Thu 7, 14 and 21 July, 10am to 4pm

Limited Capability for Work (ESA and UC)

Wed 15 September, 10am to 4pm

Introduction to Universal Credit

Wed 21 and Thu 22 September,
10am to 12.30pm

All our courses are run online via  zoom

“Really great combination of delivered information and practice exercises made complex information easy to learn”



Welfare Benefits Unit Advice Line 01904 642512
advice@welfare-benefits-unit.org.uk

Monday – Thursday, 9am – 5pm | Friday, 9am – 4.30pm
Available to advisers in North Yorkshire and York

Please do not give our contact details to members of the public

welfare-benefits-unit.org.uk
twitter.com/WBUadvice

MEANS-TESTED

Universal Credit

figures per month

Capital limits

Upper limit	£16,000
Lower limit	£6,000
Yield income – £4.35 per £250 or part £250	

Allowances

Single age under 25	£265.31
Single age 25 or over	£334.91
Couple both under 25	£416.45
Couple either 25 or over	£525.72

Elements

Eldest or only child	£290.00 ^(a)
Child	£244.58 ^(b)
Disabled child	
Lower rate	£132.89
Higher rate	£414.88
Limited capability for work	£132.89 ^(c)
Limited capability for work – related activity	£354.28
Severe disability transitional element (up to)	
Single	£120 or £285
Couple	£120, £285 or £405
Carer	£168.81

Childcare: maximum

One child 85% of cost up to	£646.35
Two or more children 85% of cost up to	£1,108.04

Housing cost contribution £77.87

Work Allowances

Responsible for child/limited capability for work	
Lower: with housing costs	£344.00
Higher: without housing costs	£573.00

Income Support, income-related Employment and Support Allowance and income-based Jobseeker's Allowance

figures per week

Capital Limits

Upper limit	£16,000
Lower limit	£6,000
Lower limit – care homes	£10,000
Tariff income – £1 pw per £250 or part £250	

Personal allowances

Single	
Age 16–24	£61.05
Age 16–24 main phase ESA	£77.00
Age 25 or over	£77.00
Lone parent	
Under 18	£61.05
Age 18 or over	£77.00
Couples	
Under 18 depends on circumstances	
Both aged 18 or over	£121.05

Components – ESA

Work-related activity component	£30.60 ^(c)
Support component	£40.60

Premiums

Disability – not payable in ESA	
Single	£36.20
Couple	£51.60
Enhanced disability	
Single	£17.75
Couple	£25.35
Severe disability	£69.40
Carer	£38.85
Pensioner	
Couple	£157.65
For ESA reduce by the component amount	

Disregarded earnings

Single	£5.00
Couple	£10.00
Disability	£20.00
Carer	£20.00
Lone parent	£20.00
Firefighter/Lifeboat/Coastguard/TA	£20.00
Permitted work – higher limit (not IS)	£152.00

Other disregarded income

War Pensions/Armed Forces Scheme	£10.00
Widowed Mother's/Parent's Allowance	£10.00
Student loan	£10.00
Income from boarder (plus 50% of remainder)	£20.00
Income from subtenant	£20.00

Housing Benefit

figures per week

Capital limits**Under State Pension age**

Upper limit	£16,000
Lower limit	£6,000
Tariff income – £1 pw per £250 or part £250	

Over State Pension age

Upper limit	£16,000
Lower limit	£10,000
Tariff income – £1 pw per £500 or part £500	

**Applicable amounts same as
Income Support/JSA/ESA except:****Personal Allowance****State Pension age before 1 April 2021**

Single	£197.10
Couple (one or both)	£294.90

State Pension age on or after 1 April 2021

Single	£182.60
Couple (both)	£278.70

Dependent children

Child allowance	£70.80
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Premiums

Family (pre May 2016 claims)	£17.85
Disabled child	£68.04
Enhanced disability (child)	£27.44

**Disregarded earnings same as
Income Support/JSA/ESA except:**

Lone parent	£25.00
Working 16hrs/30hrs	£17.10
Childcare: maximum	
One child	£175.00
Two or more children	£300.00
Incapable of work prior to State Pension age or aged 80+	£20.00

Other disregarded income

Maintenance paid for an adult	£15.00
War Pensions/Armed Forces Scheme	£10.00
Widowed Mother's/Parent's Allowance	£15.00
Student loan	£10.00
Income from boarder (plus 50% of remainder)	£20.00
Income from subtenant	£20.00

Fuel deductions

Heating	£35.25
Hot water	£4.10
Lighting	£2.85
Cooking	£4.10
All fuel	£46.30
One room	£21.10

Meals deductions

Three meals per day	£30.10
Less than three meals a day	£20.05
Breakfast only	£3.70

Non-dependant deductions

Age 18 and working 16+ hours pw	
gross income less than £154.00	£16.45
gross income £154.00–£223.99	£37.80
gross income £224.00–£291.99	£51.85
gross income £292.00–£388.99	£84.85
gross income £389.00–£483.99	£96.60
gross income £484.00 or over	£106.05
Others age 18 or over unless disregarded	£16.45

Child Tax Credit

figures per annum

Threshold
(entitled to CTC but not WTC)

Elements

Family
Child
Disability
Severe disability

Working Tax Credit

figures per annum unless otherwise stated

Threshold

Elements

Basic
Couples and lone parents
30-hour
Disability
Severe disability
Childcare: maximum
 One child
 70% of weekly cost up to
 Two or more children
 70% of weekly cost up to

Additional amounts

Severe disability £69.40
Carer £38.85

Savings credit threshold

Single £158.47
Couple £251.70

Savings credit

Single (maximum) £14.48^(d)
Couple (maximum) £16.20^(d)

Disregarded earnings

Single £5.00
Couple £10.00
Carer, age 80+, incapable of work prior to State Pension age, lone parent £20.00

Other disregarded income

War Pensions/Armed Forces Scheme £10.00
Widowed Mother's/Parent's Allowance £10.00
Income from boarders (plus 50% of remainder) £20.00
Income from sub-tenant £20.00

Pension Credit

figures per week

Capital limits

No upper limit
Lower limit £10,000
Deemed income – £1 pw per £500 or part £500

Standard minimum guarantee

Single £182.60
Couple £278.70

Dependent children

Eldest child or only child £66.85^(a)
Child £56.35
Disabled child
 Lower rate £30.58
 Higher rate £95.48

(a) Born before April 2017
(b) Check two child limit rules
(c) Pre April 2017 claims
(d) If State Pension age before April 2016
(e) Pre April 2003 claims

NON-MEANS-TESTED

figures per week

Attendance Allowance

Lower rate	£61.85
Higher rate	£92.40

Bereavement Support Payment

With dependent children	
Lump sum	£3,500
Monthly payment	£350.00
Without dependent children	
Lump sum	£2,500
Monthly payment	£100.00

Carer's Allowance

Supplement (paid twice yearly in Scotland)	tbc
Earnings threshold	£132.00

Child Benefit

Eldest or only child	tbc
Each other child	tbc

Child dependant additions

Eldest or only child	£8.00 ^(e)
Each other child	£11.35 ^(e)

Disability Living Allowance / Child Disability Payment (Scotland)

Care component	
Lower rate	£24.45
Middle rate	£61.85
Higher rate	£92.40
Mobility component	
Lower rate	£24.45
Higher rate	£64.50

Employment and Support Allowance

Basic allowance	
Age 16–24	£61.05
Age 16–24 main phase	£77.00
Age 25 or over	£77.00
Work-related activity component	£30.60 ^(c)
Support component	£40.60
Permitted work – higher limit	£152.00

Guardian's Allowance

Industrial Injuries (100%)	£188.60
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Jobseeker's Allowance

Age 16–24	£61.05
Age 25 or over	£77.00

Maternity Allowance (up to)	£156.66
Earnings threshold	£30.00

Personal Independence Payment

Daily Living Component	
Standard	£61.85
Enhanced	£92.40
Mobility Component	
Standard	£24.45
Enhanced	£64.50

State Pension

State Pension (full)	£185.15
State Pension Category A or B	£141.85
State Pension Category B or D	£85.00

Statutory Adoption, Maternity, Paternity, Shared Parental and Parental Bereavement Pay

Earnings threshold	£123.00
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Statutory Sick Pay

Earnings threshold	£99.35
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Widowed Parent's Allowance (up to)

Benefit Cap

figures per annum

Outside Greater London	
Couples/lone parents	£20,000
Single adult	£13,400
Greater London	
Couples/lone parents	£23,000
Single adult	£15,410

National Minimum Wage

	£ per hour
Age 23 or over	£9.50
Age 21–22	£9.18
Age 18–20	£6.83
Age 16–17	£4.81
Apprentice rate	£4.81