

Benefit Matters

Our newsletter for advisers in Royal Greenwich

Directorate of Finance

DWP extends Universal Credit transitional protection and further delays full roll-out to March 2023

Claimants with severe disability premium not to be transferred to new benefit until they are eligible for protection

On 7 June 2018, Secretary of State for Work and Pensions Esther McVey announced the extension of transitional protection for some groups of legacy benefit claimants transferring to Universal Credit. The DWP's policy is that transitional protection (which maintains the level of the legacy benefit award) will only be available to claimants transferring to Universal Credit under 'managed migration', which is not due to start until July 2019, and so is not available to anyone transferring before then due to a change of circumstances.

The groups who will benefit from the additional transitional protection are –

- people entitled to the severe disability premium under legacy benefits- these people will not now be moved to Universal Credit until they are eligible for transitional protection (i.e until they are moved to Universal Credit under managed migration). Where people have already moved to Universal Credit and lost the severe disability premium, they will be provided with a payment to cover the amount they have already lost and an ongoing payment to reflect the loss.
- parents who take short-term or temporary work and increase their earnings will not have their transitional protection eroded by an award of, or

- increase in, support for childcare costs will not erode transitional protection.
- claimants' transitional protection that has ceased owing to short-term increases in earnings within an assessment period will be reinstated if they make a new claim to Universal Credit within three months of when they received the additional payment.
- Tax Credits claimants with capital of more than £16,000 (who would take them over the capital limit for Universal Credit) will have their capital disregarded for 12 months from the point they are moved to Universal Credit.

Ms McVey also said that, to give time to make the necessary changes to the system, the full roll-out of Universal Credit won't now be completed until March 2023.

The Social Security Advisory Committee has now launched a consultation on the DWP's proposals for moving people to Universal Credit, including the transitional protection provisions. The deadline for responses to the consultation - which is available at <https://www.gov.uk/government/news/government-proposal-to-move-claimants-on-legacy-benefits-to-universal-credit-consultation-announced> - is 20 August 2018.

Advisers Advice Line

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wrs.ce@royalgreenwich.gov.uk

[uk](#)

Public Advice Line

020 8921 6375

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18001 020 8921 6375

Mon, Wed, Thurs:

10am – 1pm



Weekdays: office hours

Personal Independence Payment update

DWP to introduce ongoing awards for people with severe or progressive conditions from this summer

The DWP has announced that it will introduce ongoing awards of Personal Independence Payment (PIP), with a 'light touch' review every ten years, for claimants who have severe or progressive conditions and are awarded the enhanced rate of both the daily living and mobility components.

The DWP says that it will introduce the ongoing awards through guidance to decision makers which will come into effect this summer and that it is working with stakeholder groups to design the 'light touch' review process.

The new policy is an extension of the recent DWP decision not to reassess people with those conditions under the work capability assessment for Employment and Support Allowance (as set out in the April 2018 Benefit Matters).

DWP to trawl for four errors in assessment of PIP descriptors

In January 2018, the DWP conceded that it had been wrong to exclude the effects of psychological distress when assessing whether claimants satisfied Mobility Activity 1. 'Planning and following journeys' – see the April 2018 Benefit Matters for more details. As a result of this error, the DWP has confirmed that it will be conducting a trawl of 1.6 million PIP awards to identify the estimated 220,000 claimants who have been underpaid since the Upper Tribunal decision of 28 November 2016.

In a statement to parliament dated 26 June 2018, Minister for Disabled People Sarah Newton the DWP confirmed that the trawl of claimants affected by the error in interpreting the Mobility Activity 1 descriptors has now started and that the DWP will also be trawling for claimants who have not been assessed properly as to whether they are able to carry out an activity 'safely' following an Upper Tribunal decision dated 9 March 2017 which found that there was a need to consider both -

- the likelihood of harm occurring
- the severity and nature of the harm that might occur

In addition, the Minister said that the DWP will be looking again at the 420 PIP cases where the main disabling condition of the claimant is haemophilia following feedback that the functional needs of this group were not being adequately assessed.

Separately to these three trawls, the DWP has also conceded that its assessment of claimants under Daily Living Activity 3, 'Managing therapy or monitoring a health condition' was wrong before amendments

were made to it in March 2017. The DWP had been arguing that ‘therapy’ excluded treatment which consisted of the monitoring of health and administration of medication in two appeals to the Upper Tribunal that were due to be heard on 21 May 2018 but withdrew the appeals shortly before the hearing and also withdrew its appeal in the related Court of Appeal case *Secretary of State for Work and Pensions v Birch* C3/2017/0894.

The DWP has not yet given any further information on a trawl for claimants affected by the problem in the assessment of the Daily Living Activity 3 descriptors.

Further reading:

ADM Memo 15/18 on the meaning of ‘safely’ is available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718722/adm15-18.pdf

ADM Memo 16/18 on the correct interpretation of the Mobility Activity 1 descriptors is available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718724/adm16-18.pdf

Tax Credit Renewals – 31 July deadline approaching

Don’t forget to remind your clients to renew their tax credit claims before the 31 July deadline. If they don’t, payments will stop and they may have to repay some of the tax credits they have already received. However, remember that even if your client’s award is terminated because they miss the deadline, regulations allow the claim to be restored providing they renew within 30 days from the date on their Statement of Account notice.

Claims can be renewed in the following ways:

- online at: www.gov.uk/manage-your-tax-credits. This is the easiest and quickest option as the Tax Credits Helpline gets very busy during this period. Claimants will need a Government Gateway account to use the service. If they don’t already have an account, they will get one once they sign on to the service.
- by posting completed forms they have received to: Tax Credit Office, HM Revenue and Customs, BX9 1LR

- by calling the Tax Credits Helpline on 0345 300 3900 –lines are open Monday to Friday 8am – 8pm; Saturday 8am to 4pm and Sunday 9am-5pm. For the best chance of getting through quickly, claimants should call between 8.30am and 10.30am (avoiding Mondays and Fridays) and Sundays between 2pm and 4pm.

Please warn claimants that it is not possible to save the form and return to it later on, plus it will clear without warning after 30 minutes of inactivity. A virtual assistant has also been introduced to assist claimants.

For further information visit – www.gov.uk/renewing-your-tax-credits-claim

Child remaining in post 16 education or training

Many families miss out on Child Benefit and Child Tax Credit (CTC) once a child turns 16.

Remember that these benefits can continue for children remaining in full-time non-advanced education or approved unwaged training until they reach age 20 (or until the course ends if this is earlier). But CTC will stop automatically on 1 September after the child's 16th birthday unless parents notify the HMRC that the child is remaining in education or training. They will also need to separately notify the Child Benefit Centre.

Remember, if payments are already stopped, or if the child has left school or college but has now returned to education or training, families will need to contact these offices again to get payments reinstated.

Challenging tax credits 'living together' decisions

Decision maker must not rely solely on 'financial footprint' of other person

HMRC has been consistently criticised by the Upper Tribunal for the way in which it makes decisions on whether a female single parent is in fact living with another person as a couple.

Cases coming in to the Welfare Rights Service indicate that there are still problems with the standards of decision making in these cases and that, as a result, there is plenty of scope for challenge, particularly in the following areas –

Burden of proof

Cases we have seen suggest that claimants are being asked to prove that they are not living as part of a couple. This can be very hard to do, particularly where the other person is using the claimant's address for official purposes and has no official tenancy elsewhere. However, it's important to remember that the burden of proof is on HMRC to establish that there are grounds for revising a decision that the claimant is not entitled to tax credits as confirmed by the Upper Tribunal in *NI v HMRC* [2015] UKUT 490 (AAC).

Evidence used to make a decision

It's very important that HMRC does not base its decision entirely on the 'financial footprint of the person the claimant is alleged to be living with. In [2015] UKUT 507 (AAC), Judge Ovey found that

HMRC had not discharged the burden of proof in a case where the claimant's ex-husband still used her address for official purposes and was on the electoral register at that address.

'Financial support may be significant when considering whether an unmarried couple have a relationship akin to that of husband and wife living together. In the converse case of separation between husband and wife, it is very likely that there will have been financial support and dependence or interdependence, taking such forms as a joint mortgage, joint bank accounts, joint names on utility bills and so on. The fact that names may not have been changed may be attributable as much to inertia as to lack of separation, at least where there is no immediate practical consequence. In the case of a joint mortgage, it may well not readily be possible to remove one party from the mortgage. The continued use of the former for official correspondence and other postal purposes may also be explained by practical convenience, especially if... one party has no convenient alternative permanent address.' (paragraph 12)

*HMRC is also under a duty to put any inferences it has made as a result of documentary evidence to the claimant and take her evidence into account when making its decision. In *AK v HMRC* [2016] UKUT 98 (AAC), Judge Rowland considers a case where the decision that a*

claimant was living with someone was based largely on the 'financial footprint' of the other person which was provided by the credit reference agency Equifax. Judge Rowland comments that, while the evidence raised a number of questions for the claimant to answer: *'... what is striking about this case is the complete failure of HMRC to ask the necessary questions before making its decision. Realistically, that probably required HMRC to interview the claimant and put to her the inferences it drew from the Equifax reports, rather than ask questions in writing, but it scarcely attempted even the latter, seemingly expecting all the material answers to emerge from documentary evidence. As is now conceded, HMRC had an obligation to ask the material questions. This is clear from what Baroness Hale of Richmond, with whom the other members of the House of Lords agreed, said in Kerr v Department for Social Development [2004] UKHL 23...'* (paragraph 6)

Late mandatory reconsiderations

It is worth requesting a late mandatory reconsideration of a tax credit decision if the client is outside the one month deadline and there are good reasons for the delay. If HMRC refuses to accept the late request where there are good reasons for the delay, you should consider a judicial review challenge to the refusal. The Child Poverty Action Group or the Public Law Project may be able to assist with this.

Get help with the case

If you have a case where you think the client has been wrongly found to be living with someone else as part of a couple and you would like some help with it, contact the Welfare Rights Service for advice.

Government extends exceptions to two-child limit for children who are adopted or in kinship care arrangements

On 20 April 2018, the High Court decided that, whilst the two-child limit as a whole was compatible with the European Convention on Human Rights, the ordering rules relating to the exception to the limit for children in kinship care arrangements was unlawful because it was dependent on whether a child joined the family before or after a second child was born to the family. This led to the unfairness that someone who had already had their own children before taking on a child through a kinship care arrangement would be granted an exception for that child whereas someone who had taken on children under a kinship care arrangement before having their own child would not receive any benefit for that child.

Following the High Court decision, Work and Pensions Secretary Esther McVey announced, on 27 April 2018, that it would be implementing the High Court's decision in relation to children being looked after in a kinship care arrangement and would also extend the change to children who are adopted. This means that an exception to the limit will apply to those children no matter what their order in the family so that people who have their own children after taking on other children through kinship care and adoption will no longer be penalised.

Announcing the change to parliament, Work and Pensions Secretary Esther McVey said – *'The Government recognises the immense value of the care that non-parental carers and adoptive parents provide. The role that those parents and carers play in helping to bring children up who could otherwise find themselves in local authority care is vital. It is for this reason that we are ensuring that they are supported by enabling them to access benefit entitlement in the same way as birth parents.'*

What to do if you have a claimant who is affected

The government has not given any further information about how the new policy will be administered but, in the meantime, claimants who are affected should ask for a mandatory reconsideration of the decision not to award an exception on the basis of the decision of the High Court SC & Ors v Secretary of State for Work And Pensions & Ors [2018] EWHC 864 (Admin) paragraphs 215-217 which found the ordering rule was “unlawful” and Esther McVey’s statement which accepted the judgment.

Ms McVey’s statement is available at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-04-27/HCWS653>

Please contact the Welfare Rights Service if you would like help with a particular case.

Greenwich Advice Network (GAN)

Greenwich Advice Network (GAN) meets twice a year and is open to all local providers of free legal information and advice, any sector. It focuses on advice issues in the field of social welfare and aims to cover one key topic/advice area at each meeting, with speakers and then an information exchange. There is only a light touch on welfare benefit issues, although this is included where relevant to the topic under discussion.

The date for the next GAN meeting has not yet been scheduled, please join our mailing list if you would like to receive these details.

Greenwich Advisers Forum (GRAF)

Greenwich Advisers Forum (GRAF) usually meets twice a year and has a focus on welfare benefits. The meetings provide an opportunity for local advisers to meet to discuss benefit issues and share knowledge and experience. Attendees are typically people whose work includes a significant amount of welfare benefits or benefits related advice. There are guest speakers plus updates about recent/forthcoming benefit changes, an information exchange and liaison with Greenwich Advice and Benefits Service (about Housing Benefit and Council Tax Support issues). Our last meeting on 20 March focused on the Work and Health Programme – our guest speaker was Fiona Apio-Matanda (Greenwich Local Labour and Business).

The next GRAF meeting will be on **Tuesday 25 September** and will be a slightly longer session from **1pm to 4pm**. The meeting will focus solely on the rollout of Universal Credit full service in the borough, and the agenda will include speakers from Child Poverty Action Group who have been invited to talk about their Early Warning System. This will be a key event for advisers to be able to learn more and discuss the imminent roll out of UC Full Service. A more detailed agenda will be circulated soon.

Are you interested in getting details of and attending GRAF or GAN meetings? Please contact the Welfare Rights Service on 020 8921 6376 (option 2) or email WRS.Training@royalgreenwich.gov.uk.

Training News

The Autumn training programme is currently being put together. Keep an eye out for an update from us when this is announced. The new programme will include dates for Universal Credit, Introduction to Benefits, and several more of our popular courses. If you would like to attend any of our courses you can send your completed booking forms directly to us at wrs.training@royalgreenwich.gov.uk.

If you have any questions regarding any of our courses, contact us on 020 8921 6376 (and select option 2). Please note that attending the course may be free, depending on your organisation. There is a charge however if you do not attend or leave early, please check out the terms and conditions before you apply for a place.

Changes to social fund funeral payments from April 2018

From April 2018, the DWP has made changes to social fund funeral payments including that –

- the time limit for making a claim has been extended from three to six months from the date of death of the deceased;
- supporting evidence for funeral expenses claims can now be given electronically;
- the definition of funeral is removed so that funerals are eligible where there is no body or remains of the deceased;
- residents of care establishments whose expenses are met wholly or in part by a local authority are added to the list of people who are not taken into account in determining whether a claimant is responsible for the funeral costs;
- the necessary costs of obtaining a burial plot, with a right of burial in that plot is covered, whether or not that right is exclusive; and
- contributions from charities, friends and relatives towards the cost of the funeral are allowed without such contributions being deducted from the funeral payment.

The changes are introduced through the Social Fund Funeral Expenses Amendment Regulations 2018 (SI.No.61/2018) which are available from legislation.gov.uk

Guidance on ‘Windrush Generation’ claimants

The government has given clear instructions to decision makers on how existing awards and new claims for ‘Windrush Generation’ people should be treated in cases where the claimant is unable to prove residency and immigration status.

Firstly, in relation to existing benefit claimants, Home Secretary Amber Rudd told the House of Commons on 24 April 2018 that–

‘I have already put in place instructions to be sent to jobcentres to ensure that they also have an awareness of this cohort, so that when they might have been considering stopping people’s benefits because they do not have the papers, that is changed.’

Ms Rudd also told MPs that the Home Office will setting up a scheme to compensate people who have suffered loss including cuts to benefits.

On 4 May 2018, the DWP sent out an Urgent Bulletin to Housing Benefit departments saying that – *‘Should local authorities identify any housing benefit cases where the claimant is unable to evidence their immigration status to allow access to housing benefit, but indicates they are from the ‘Windrush generation’, local authorities are urged to apply extreme caution and refer the claimant, or their representative, to the Home Office dedicated taskforce team [\[commonwealthtaskforce@homeoffice.gsi.gov.uk\]](mailto:commonwealthtaskforce@homeoffice.gsi.gov.uk) to allow them to undertake necessary action.’*

In relation to means-tested benefits, the DWP issued guidance to decision makers of means-tested benefits (ADM Memo 14/18 and DMG Memo 8/18) on 24 May 2018, stating that it is working closely with the Home Office to help claimants get documents to confirm their right of residence and that, where the evidence of nationality indicates that the balance of probabilities is that the claimant is likely to have legal and habitual residence, a claim can be assessed for entitlement.



Spotlight on Universal Credit... Sanctions

Levels

Universal Credit sanctions have four different levels and the length of the sanction period depends on the level of the sanction. The sanction period also increases for second or subsequent sanctions. The length of the sanction will only increase if the second or subsequent sanction was applied more than 14 days before the last one and less than a year before the last one.

Sanction level	Length of sanction
High level Applied for - <ul style="list-style-type: none"> • Failing to apply for or accept paid work • Leaving a job or losing pay 	91, 182 or 1,095 days depending on whether is 1st, 2nd or 3rd sanction
Medium level Applied for failing to be available for paid work or take all reasonable steps to get paid work	28 or 91 days depending on whether is 1st or second sanction
Low level Applied for - <ul style="list-style-type: none"> • Failing to meet a work-focused interview requirement • Failing to meet a work preparation or work-related requirement • Failing to take an action to get paid work 	Open-ended sanction period until requirement is complied with followed by fixed period of 14 or 28 days depending on whether is 1st or 2nd sanction
Lowest level Applied for failing to meet a work-focused interview requirement	Open-ended sanction until requirement is complied with.

Amount of sanction

During the period of a sanction, Universal Credit will be generally be reduced by 100% of the daily rate of the personal allowance but this will be reduced to 40% if the claimant –

- is responsible for a child under the age of one
- is pregnant and the baby is due within 11 weeks
- had a baby less within the last 15 weeks
- is in the first year of adopting a child
- is only expected to meet the work-focussed interview requirement
- is 16 or 17 years old.

If the claimant has multiple sanctions, the sanction periods run consecutively so, for example, the sanction period on a second sanction will begin when the sanction period on a first sanction has ended.

The claimant commitment

The level of work-related activity the claimant is expected to carry out is set out in the claimant commitment which is required as part of a valid claim for Universal Credit. To help avoid being sanctioned it's very important that the DWP knows about any limitations the claimant has from the outset. For example, the DWP will expect most people to look for work for 35 hours a week but this should be reduced if the claimant has caring or childcare responsibilities or health problems.

If the claimant is not happy with the claimant commitment, they can talk to their work coach about getting the requirements changed or set out their concerns in writing or in their Universal Credit online journal. It's a good idea to get supportive evidence, for example from a social worker or doctor, to back up what the claimant is saying. If the DWP won't change the requirements set out in the claimant commitment, there is no right of appeal but the claimant can make a complaint.

Challenging sanction decisions

To successfully challenge a sanction decision, the claimant has to show that they had 'good reason' for not carrying out the work-related requirement. Examples of what could be a 'good reason' include –

- they should not have been subject to the requirement because of their circumstances
- they weren't given adequate information or notice about the requirement and so either weren't clear about what was expected or didn't have time to arrange to carry out the requirement
- there was a reason why they couldn't carry out the activity to do with your health, caring commitments or other personal circumstances
- they did actually carry out the activity

If a sanction has been applied unfairly, the claimant can challenge it by requesting a mandatory reconsideration of the sanction decision. There is no time limit for requesting a mandatory reconsideration of a Universal Credit sanction and, if the claimant has a number of sanctions that were unreasonable, it is important to challenge all of them. This is because, as stated above, sanctions increase in length if there are more than one and so a successful challenge to an earlier challenge can lead to the length of a later sanction being reduced.

If the request for a mandatory reconsideration is refused, the claimant has the right to appeal to an independent tribunal. The time limit for this is one month from the date of the mandatory reconsideration decision but this can be extended for up to 13 months if the claimant has a good reason for not being able to appeal in time. If the mandatory reconsideration is refused on the grounds of lateness, the claimant still has the right to appeal a tribunal.

It is always worth considering an appeal if the request for a mandatory reconsideration is refused because the success rate for appeals against Universal Credit sanctions decisions is very high, with statistics showing that four out of five appeals were successful.

For further information or if you need advice about a family you are working with:

- Contact our Advisers and staff helpline on 020 8921 6376 (weekdays during normal office hours) or email wrs.ce@royalgreenwich.gov.uk. Royal Greenwich residents wishing to contact us direct can call our Public Advice Line (020 8921 6375, Mondays, Wednesdays and Thursdays; 10am to 1pm) or visit www.royalgreenwich.gov.uk to send us an online enquiry.
- Use the order form included with this mailing to request our 'Universal Credit' factsheet.

Project Updates

“Thank you for all your help and kindness. I wouldn't know where to start without you.”

Social Prescribing Pilot, Live Well Project

Over the course of 2018/19 WRS has advised over 150 residents and confirmed gains of over £145,000 (this figure will rise as cases progress). Some of these cases involve continuing support being provided to client referred during 2017/18.

Emergency Support Project

Over the course of 2018/19 WRS have advised 88 people and confirmed gains of over £75,000 as a result of the advice provided (this figure will rise as cases progress). Some of these cases involve continuing support being provided to client referred during 2017/18.

Welfare Rights empowers residents to resolve issues themselves. Many residents supported through the Emergency Support project find themselves unable to resolve their problems themselves, either due to their vulnerability or the complexity of the problem. The project funding enables the Welfare Rights Service to provide more intensive support to these residents to avoid them being left without an income and the knock on impact this can have on housing, health, and a range of linked issues.

“I do not know how to thank you, I had given up all hope. I am so grateful, thank you.”

Using the RBG Benefit Safeguarding Alert

Royal Greenwich is promoting a 'benefit safeguarding' system to support benefit claimants with mental health problems, learning difficulties, and conditions affecting cognition (such as autism and addiction).

Royal Greenwich aims to help avoid destitution caused by benefit problems by:

- ensuring that Jobcentre Plus and DWP are aware of health conditions so that they can adjust conditionality and put extra protections in place; and
- ensuring that the claimant (who may be experiencing a mental health crisis or similar problem) can be supported to access advice by ensuring that a support worker (or competent family member or friend) is notified of problems with the claim; and
- ensuring that appropriate organisations (including a health professional) are authorised to share relevant information about a claimant.

Claimants can complete a 'benefit safeguarding alert' form and return it to Royal Greenwich Advice and Benefits section to ensure that their condition is recorded by Royal Greenwich, who will then pass on the information to DWP and Jobcentre Plus. If a problem arises with a claim then RBG will attempt to notify the relevant support worker, family member or friend.

To ensure that the system works as effectively as possible the claimant should try to complete all sections of the benefit safeguarding alert.

Benefit Safeguarding Alerts can be submitted to Royal Greenwich Advice and Benefit section by post, dropping them into an RBG service centre, or by emailing a scanned copy to benefits@royalgreenwich.gov.uk.

Publicity update

Benefit Rates cards

Our Benefits Rates cards are now available, please complete the order form attached to order stocks for your team or organisation. Council staff based in the Woolwich Centre will be able to collect their orders direct from Sherry Ainza on 2nd floor, Woolwich Centre (Tesco side), Monday to Friday from 9am to 3pm.

Factsheet updates

All of our factsheets have now been updated for 2018/19 – most of these are now available.

Council staff can access our factsheets on the intranet via the following link:

<http://home.greenwich.gov.uk/dirs/CED/ce/socialinclusion/welfareightshome.htm> and a limited selection are available on the council website www.royalgreenwich.gov.uk/downloads/189/welfare_rights_-_advice.

As part of the update of the RBG website, it is hoped that more of our factsheets will be available, which should hopefully assist in making them more easily available.

Remember – if you:

- need advice about a resident or family you are working with, call our dedicated advice line for advisers and staff on 020 8921 6376 (Monday to Friday, anytime during usual office hours).
- would like us to give a talk or attend an event you are planning – please contact Corin Hammersley on 020 8921 3453 or email corin.hammersley@royalgreenwich.gov.uk

If you would like this information in another format (for example in large print), please contact Pansy Turpin on 020 8921 6376 (or 18001 020 8921 6375 for textphone users).

Next issue: October 2018

Royal Greenwich's Welfare Rights Service produces 'Benefit Matters'. If you would like to contribute in any way, please contact Sandra Pierre on 020 8921 6378.



Welfare Rights Service

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www.royalgreenwich.gov.uk/benefits