

Submission to Secondary Legislation Scrutiny Committee regarding The Universal Credit (Managed Migration) Regulations 2018

12 November 2018

Dear Chairman,

We are writing to raise concerns that the managed migration process set out in these regulations will place many thousands of claimants at risk of severe hardship. We acknowledge that moving two million households across to an entirely new benefits system is a complex undertaking, but the process set out in these regulations places disproportionate risk on the shoulders of benefit claimants who are, almost by definition, those least able to bear it. This risk could be greatly reduced by adopting a different process to managed migration.

In this letter we have drawn on our experience and knowledge as the leading provider of second-tier welfare rights expertise in the UK, the caseload of our own advisers and the findings of our Early Warning System which collects information from frontline advisers around the UK.

Risks for benefit claimants created by the proposed regulations

Our concerns centre on two fundamental aspects of the managed migration process set out in these regulations:

- The requirement that people currently receiving other benefits must make a *new claim* to universal credit by a 'deadline day', of which they will be informed in a notification ('migration notice') from the Department for Work and Pensions (regulation 44); and
- The provision that if people have not claimed by their deadline day, their other benefits will be terminated (regulation 46). For people who are not working, this could mean a complete loss of income which would rapidly push people into destitution and debt.

We know that many people will struggle to make a successful universal credit by their deadline day, even with the minimum three months' notice set out in these regulations (although a three-month minimum is preferable to a one-month minimum as proposed in a previous set of draft regulations).

Groups who may struggle to make a successful claim include:

- People with learning disabilities who may not understand what is required of them or may be unable to manage the claim process;
- People with severe mental or physical illness who may be unable to cope with the requirement to claim;
- People with physical disabilities which make reading letters or using a computer difficult;
- People without digital literacy or with no computer/internet access at home, especially those living in remote areas far from libraries and advice services; and
- People dealing with overwhelming personal circumstances such as domestic abuse.

These groups are all disproportionately represented among the population claiming benefits.

The process of claiming universal credit is not simple or quick. It requires completion of a lengthy online form and (usually) at least one appointment at the jobcentre. Currently, 1 in 5 universal credit claims fails due to difficulties people have with the process of claiming. If the same proportion struggle during the managed migration, around 400,000 people will be at risk of losing critical benefit income.

We also know, from our frontline experience and reports to our Early Warning System, that support for people struggling to claim universal credit is inadequate even for existing numbers of claimants. Access to home visiting and telephone support is patchy and can involve long waiting times.

This is illustrated by the following cases from our Early Warning System:

A single mother with learning disabilities and no computer access received no universal credit for four months because of difficulties arranging a home visit.

A terminally ill man could not make a universal credit claim because his medication caused confusion. His family tried to claim on his behalf, but universal credit officers refused to take their calls or offer support. Only after the intervention of a support worker did the DWP send a representative to visit him and finalise the claim.

A woman living in a rural area put in a claim for universal credit and was given an identity verification interview a two-hour train ride away. She cannot afford the cost of a ticket, but will only be reimbursed if she can get there. She asked to have the interview rearranged or carried out over the phone but this was refused.

The DWP has told us that they intend to move 100% of claimants safely across to universal credit, and have explained that they wish to work with stakeholders to test different approaches to communication and support to ensure that this happens. However these assurances have no legal force, and we are very worried that the regulations provide no guarantee that this will happen. We also have serious concerns about the department's ability to correctly identify vulnerable individuals and support them through the process, as discussed below.

We do not understand why, given the stated commitment to move all claimants across safely, no backstop has been introduced into the regulations to prevent people's benefits being terminated before they have successfully claimed universal credit (or confirmed to the DWP that they do not wish to claim as they have other sources of income e.g. they have found well-paid employment). Indeed the regulations as drafted currently *require* benefits to be terminated on the deadline day.

Possible alternatives

The department has the ability to take a very different approach to managed migration which would dramatically reduce the risks set out above. It could adopt an approach of creating universal credit claims itself, using existing benefit information, and moving people across seamlessly. This would prevent any claimant seeing their income terminated and is the obvious way to achieve the 100% safe transfer which the government has stated it wishes to achieve.

The proposed regulations set out a requirement on the department to calculate an indicative universal credit award for all people going through the managed migration, in order to calculate the level of transitional protection they will receive (as set out in regulation 54) There is no reason that this amount could not be made as a first universal credit payment while the department collects further information to update the claim, fills any gaps in information and ensures that the data it is using is accurate.

We understand that any claims set up in this way would be estimates, and that the department is opposed to this approach because it wishes to ensure that information used in universal credit claims is fully accurate and up to date. However this information could be collected from claimants without the need to stop their existing benefits. Current proposals expect all claimants to eventually engage with the DWP by making a new universal credit claim; in our view any claimants who engage in this way will be equally likely to engage by providing any additional information required to bring their information up to date. It is also our view that the risk of any under-payments arising through this process (which has been one of the main arguments levelled against it by the government) is far less of a risk for claimants than the risk that thousands will simply see their benefits stopped.

Should the government not wish to adopt this approach for all claimants, the regulations could still have been designed to require (or at least permit) them to do so in cases where no universal credit claim has been made by the deadline day – i.e. where all the department’s best efforts to support people through the process have failed. Instead the proposed regulations exclude the possibility of the DWP creating claims, and instead leave claimants at risk of a complete stop to their income.

DWP officials have told stakeholders that they intend to carefully identify and support vulnerable claimants through the managed migration process. They have explained to us that the regulations have been deliberately written broadly to allow them to design tailored support for different groups and to test different approaches. However there is no reason that the regulations could not still provide a backstop for people who reach their deadline day without having successfully claimed universal credit, while allowing the department flexibility to offer different forms of support *before* the deadline day.

Concerns about the department’s ability to identify and support vulnerable claimants

Our experience of the DWP’s ability to identify and support people in vulnerable circumstances does not give us confidence that this will be done effectively. Indeed the department’s failure to appropriately identify and respond to vulnerability in its dealings with claimants has been raised a number of times in DWP Peer Reviews which are carried out after a serious incident or death.¹ It is particularly risky that the proposed arrangements to identify and support vulnerable claimants have not been published to date so cannot be scrutinised, and that once developed they will be included in guidance without the force of law.

The current universal credit system relies on judgements in certain areas which used to have more protection in law, for example setting work search conditions for claimants with children or

¹ See documents 1, 6, 14, 15, 26, 27, 32, 36, 38, and 48 in redacted peer reviews <https://www.gov.uk/government/publications/dwp-foi-releases-for-may-2016>

disabilities, and our experience is that this shift has reduced protections for claimants. Protections need to be enshrined in law to be meaningful and effective.

The National Audit Office in its report on universal credit in June 2018 noted that the department 'lacks the ability to monitor the treatment of vulnerable claimants nationally' and that 'some staff found it difficult to support claimants because they:

- lacked the time and ability to identify claimants who needed additional support;
- lacked the confidence to apply processes flexibly and make appropriate adjustments; and
- felt overwhelmed by the volume of claimants reporting health problems.²

While the report notes that the DWP has plans to improve its approach to identifying and supporting vulnerable claimants, our discussions with the department suggest that this is very much still a work in progress.

The following examples from our own caseload demonstrate the DWP's failure to adequately identify vulnerability and follow its own guidance appropriately:

Client A has PTSD and cannot go out on her own, she is living in emergency temporary accommodation along with her two children.

A friend had already accompanied her to a Work Capability Assessment as part of her claim for Employment and Support Allowance, but on arriving at the assessment centre she had been informed that the assessment had been cancelled (DWP's appeal submission later stated that she had failed to attend on this occasion).

She had arranged to be accompanied to her rescheduled assessment but the person who had been due to accompany her cancelled at the last minute, which meant she was unable to attend. She called the Health Assessment Advisory Service (contracted by DWP to carry out the assessment) to let them know.

Her benefit was then stopped, and the DWP decision letter stated that she had failed to return the form explaining why she had failed to attend the WCA.

If a client with a mental health condition has not returned the form, has not had a phone conversation with the DWP benefit centre or Jobcentre Plus, or has not already had a home visit, then DWP guidance states that two visits to the client must be attempted to make sure they understand their responsibilities before making any decision to stop benefit. It does not appear that DWP attempted to visit this client.

7 months later the decision to stop her ESA was overturned by an appeal tribunal on the basis that she had good cause for failing to attend.

² See sections 2.5 – 2.7 of 'Rolling out Universal Credit', NAO, June 2018.
<https://www.nao.org.uk/report/rolling-out-universal-credit/>

Client B is claiming universal credit and in the 'all work-related requirements' group meaning she is expected to look for work. She has children aged 5 and 12, one of whom has behavioural problems. She herself suffers from anxiety and depression and had been providing sick notes to Jobcentre Plus. Her depression deteriorated and she was unable to attend a meeting, after which she was sanctioned.

Universal Credit Home Visits guidance states that a sanction referral for customers with complex needs should not be considered until at least two attempts have been made to complete a home visit, and until all other attempts to contact the claimant have failed to identify reasons for them failing to attend. This process does not appear to have been followed.

This client attended a foodbank after being sanctioned and received help from an adviser to request a mandatory reconsideration. She was then called into a meeting at the Jobcentre where she was told she had to provide further reasons for her failure to attend. She told her adviser that she felt bullied and intimidated by this meeting and was left tearful. Following a complaint about this experience she was offered an apology and her work coach was changed but her sanction was not overturned.

8 months later the sanction was overturned at appeal.

Client C was claiming Employment and Support Allowance as he experiences severe mental health difficulties (for which is supported by his local Community Mental Health Team). His payments were stopped after he failed to send a medical certificate to the DWP. When he met our adviser, his benefit had not been in payment for a year. He had been unable to address the problem himself, and was suicidal and at risk of eviction.

DWP guidance states that when someone with a mental health condition fails to provide a medical certificate, their ESA should not be stopped. It appears that DWP had not recorded his mental health condition as this guidance had not been followed.

We are particularly worried about people with fluctuating levels of vulnerability (e.g. fluctuating illnesses), those who have not disclosed highly personal information to the department (e.g. about domestic violence or mental illness) meaning their vulnerable circumstances would be missed in any assessment, and people who claim jobseeker's allowance - so might not be regarded as disabled - but who in fact have disabilities.

It is our understanding from multiple conversations with the DWP that they intend to work with the voluntary sector and other third parties to identify and support vulnerable people. However we are worried that the most vulnerable individuals will not necessarily be in contact with any form of support service. In many areas voluntary services have themselves seen cuts and their reach to vulnerable people and families has been greatly reduced. It is not yet clear what further resources if any are being offered to enable them to play this role.

DWP officials have also repeatedly referred to 'complex needs plans' as a tool for them to identify vulnerability at local level.³ However it is our experience that the current complex needs plans are often little more than signposting tools to local support services, and are inadequate as tools to identify and support vulnerable claimants.

³ For example in the NAO report referred to earlier, see footnote 2.

Other concerns about the proposed regulations: transitional protection and transitional payments

Finally we are concerned about some aspects of the transitional protection provisions and the transitional payments set out in the proposed regulations.

Firstly, the government has stated that everybody moving on to universal credit through the managed migration will have their awards protected. However this is not the case for one key group: claimants affected by the benefit cap. In universal credit some families will have their income reduced further by the benefit cap than they would have in legacy benefits (because in the legacy system only housing benefit can be reduced by the cap, while in universal credit the whole award can be reduced). This group will not have their existing benefit receipt protected and will become worse off overnight. (See regulation 53 (11)).

Secondly, while we welcome the decision to make transitional payments to people eligible for the Severe Disability Premium in legacy benefits who have already migrated on to universal credit (and to suspend natural migration for this group), the amount proposed is grossly inadequate for people not receiving the Limited Capability for Work-Related Activity, who are the most severely disabled group (just £80 per month compared with a loss in the move to universal credit of £183.48 per month). This is against the spirit of the decision to award this group transitional protection as their losses are not fully compensated (see Schedule 2 of regulation 64).

We also note with concern that no equivalent protections and transitional payments are being made available for those families with disabled children who stand to be systematically worse off on universal credit to the tune of approximately £30 per week. We do not understand the logic for compensating disabled adults for financial losses and protecting them against future losses, while allowing disabled children to go unprotected.

Finally we are concerned about the ways in which transitional protection can be so easily lost due to commonplace changes of circumstances, and eroded by increases in costs (such as rent increases or the birth of a child). In particular we are worried that people who go through a separation or who are widowed, and find themselves single parents for the first time, will lose their transitional protection precisely at the time they need it most. The regulations provide no protection to prevent people in this situation losing all their transitional protection, even if they are plunged into serious hardship as a result or if they face extremely difficult circumstances such as having fled domestic abuse or having to care for a disabled child on their own.

Conclusion

Child Poverty Action Group cannot support the regulations as they now stand. We are calling for improvements to the regulations so that they guarantee that no benefit claimants will see their benefit payments stop until they have successfully claimed universal credit (whether through a process of the government creating claims for all claimants going through managed migration, or a legal backstop to protect those who fail to claim by their deadline day).

We understand that further revisions to these regulations could lead to a delay in managed migration starting, with the risk that more people will move across to universal credit through natural migration (due to changes of circumstances) rather than through the managed migration process, therefore missing out on eligibility for transitional protection. For this reason we are also calling for a

suspension of new claims to universal credit until a safe managed migration process is in place which can move all existing claimants across, so that *all* are entitled to this protection. As the managed migration is not due to start at full pace until 2020, however, it is not clear whether taking time to improve regulations would in fact cause a delay.

We also wish to see equivalent protections to those offered to people receiving the Severe Disability Premium extended to those disabled children who stand to lose out under universal credit. There should also be protection against the loss of transitional protection when a family has a new child, or when a universal credit claimant who is part of a couple becomes a single parent.

We thank the committee for considering our submission. Please do not hesitate to contact us for any more information you require, by email jtucker@cpag.org.uk or phone 020 7812 5205.

Child Poverty Action Group