

Response to the Social Security Advisory Committee:

Universal Credit and related regulations

July 2012

The National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers (NAWRA) was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

The response has been put together using contributions from our members via social networking methods.

NAWRA is happy to be contacted to provide clarification on anything contained within this document. Contact can be made via the Secretary at the address on the front cover.

Executive Summary

- The suggestion that the families of EU migrant workers will not be eligible for UC raises serious concerns about the effects on people fleeing violence. The application of the Habitual Residence Test will further exacerbate this problem.
- NAWRA is concerned that the time-limit on mortgage support and that no-employment rule will not actually promote a return to work but instead will act as a disincentive.
- Whilst welcoming the the exemption to the minimum income floor NAWRA believes that this should be broader.

- NAWRA is concerned that many people who may need to claim UC will experience difficulties with the move to online claiming. We believe that JobcentrePlus has a vital and important role to play in supporting claiming and maintenance of claims.
- NAWRA is concerned that many people will experience hardship due to the payment and backdating rules.
- The benefit cap will cause hardship to many people, particularly those with larger families. NAWRA is opposed to such a cap.
- The proposed draft regulations will put at risk much delivery of supported housing, including refuges for those fleeing abuse and make it more difficult for those who need such help to receive that help. The regulations do not appear to recognise the unique role this type of housing provides.
- The proposed regulation on temporary absences will be a significant difficulty for those temporarily living away from home and who want to return when they are able to. They may be forced to give up the home, thus experiencing more difficulty during a period of rehabilitation. Local authorities and the voluntary sector will experience challenges in dealing with the problems this will cause.
- Young people, especially those who have been in care, are likely to experience difficulties with resettlement due to the draft regulations restricting accommodation size. Some young people experiencing hardship may also find that they can only get UC if they leave the parental home.
- NAWRA is concerned to note that the proposed regulations appear to remove the “permitted work” rules or else may make them unaligned with other benefits thus causing unnecessary complexity.
- NAWRA takes the view that the proposed rules on elements will adversely affect families with disabled children as well as disabled people who work. NAWRA believes that these groups will be significantly worse off under UC and child poverty will increase and disabled people will continue to be more likely to live in poverty.

- The proposed new “deprivation of capital” test may impact adversely on more vulnerable claimants.

Issues raised by the SSAC

Universal Credit Regulations 2012

a) Rules and arrangements for EU migrants

NAWRA expresses its concern over a potential gap in the draft regulations. Previous members of the families of EU migrants would appear to be not able to qualify for UC. This would include those where a family member has left due to abuse or other breakdown. Without exceptions for people who are not actively seeking work for reasons such as illness, disability or caring responsibilities then people who are already vulnerable will be at greater risk.

For example the partner of an EU worker leaves an abusive relationship with a young child. The draft regulations suggest that a claim for UC will not succeed and there will be no form of support available. The person and young child will find it difficult to seek accommodation in a refuge as they will not be able to claim housing support. This may mean that they stay in a relationship that is dangerous to them and children.

Our members often deal with cases where refuges are already reticent to accommodate EU migrants as they believe (often wrongly) they will not be able to access Housing Benefit (HB).

This scenario could apply to young people, carers or older people and not just those within an abusive or otherwise harmful relationship.

The introduction of the Habitual Residence Test (HRT) would further contribute to such difficulties. In the example above someone fleeing may have an intention to leave the common travel area soon and would therefore not satisfy the HRT.

b) support for mortgage interest

NAWRA is concerned that the regulations introduce a two-year limit on mortgage support for those seeking work. Whilst the government's policy intention is understood, there would appear to be a case for exemptions to this absolute rule. The exemptions could include people who are experiencing illness or disability or categories of people such as veterans or people who have received payments from the London bombings funds. The alternative is that many people who have been able to afford and maintain a mortgage for many years will have to find alternative accommodation when their circumstances change despite continuing to seek work.

We are also concerned that any work carried out will mean that support ceases immediately thus disincentivising owner occupiers from taking a part time job as the loss of mortgage interest will far offset the gain from earnings. The effect will be that an owner occupier has to earn more than the mortgage interest in order for it to be financially viable. Although they benefit from the larger earnings disregards it is as yet unclear where they will be set and whether owner occupiers will only benefit when they get close to earning the disregard level.

c) self employment and the minimum income floor

NAWRA welcomes the availability of an exemption from the minimum income floor (mif) as this will be very helpful to people starting out in self-employment. However it may be useful to permit more than one exemption from mif in a lifetime – particularly given the current economic situation – which would encourage an entrepreneur to start again in a new business where trading had been difficult or exceptional circumstances had affected the viability of the business. An example of this would be people working in agriculture who were adversely affected by Foot and Mouth disease in 2001.

Universal Credit, Personal Independence Payment and Working Age Benefits (Claims and Payments) Regulations 2012

d) implication of a substantial shift to online claiming

NAWRA welcomes a wide range of opportunities for claimants to apply for and maintain their claims. This reflects how people manage their other financial dealings. But a significant minority of claimants may be unable, or find it difficult, to claim online or manage their account online because they do not have access (or have only limited access) to a computer or the internet.

Whilst local authorities and the third sector will be able to provide further support to many this is at a time when frontline services are already under pressure. In many areas public transport has become more expensive and less frequent and libraries are open for fewer hours or have closed. This reduces the availability of support to those without online access.

Among those who are able to access the internet, many will not have the skills or confidence to set up or manage an account online.

Additionally NAWRA is concerned about the reporting of changes of circumstances. The online system must enable a claimant to be able to report a change they consider to be relevant – whether or not it is actually relevant – and the regulations should confirm that they are able to do this. However the regulations do not provide sufficient assurance as to this.

JobcentrePlus offices should also continue to play a major role in enabling people to make and maintain their claims.

The risk, of course, is that claimants will struggle to understand what they need to report and may report everything or alternatively not enough. This will mean that overpayments are likely to increase.

e) the date of claim and backdating

NAWRA considers the draft regulations that relate to backdating to be unnecessarily restrictive . We note that the existing ground of “misadvice” has been excluded and fail to see any justification for this.

NAWRA is also concerned about the limitations for one month backdating. For example when a mother has a first child and becomes entitled to UC the draft regulations suggest that there will be no automatic backdating as there is with Tax Credits at present. A mother who becomes entitled when baby born has to claim on that day unless can provide medical evidence to show she was unable to otherwise unable to do so (reg 24 Claims and Payments Regs).

f) the payment period

NAWRA takes the view that the monthly period will normally be a useful and acceptable frequency of payment that reflects a norm in the world of work, however there needs to be an exception for the start of period (which is also common in workplaces). This should enable claimants to be paid for less than a month when they first make a claim.

NAWRA members would also suggest that there needs to be a method of having payments made on a weekly basis for those who have consistent and ongoing problems with budgeting. This should be at the discretion of a local decision maker and be responsive enough to ensure that a request could be made by an advocate or representative.

Housing Benefit (benefit Cap) Regulations 2012

g) the links with in-work rules

See comments below

h) the potential impact of the cap across a range of policy areas other than social security

Please see the comments below.

i) Implications for the monitoring and evaluation of the impact of the cap and any necessary areas for mitigation

NAWRA would welcome a full discussion about developing an ongoing monitoring and evaluation programme based on evidence taken from local authorities and the business and charitable sector.

Other areas:

Benefit Cap

NAWRA has previously expressed its concerns over about the benefit cap – basically it puts people in large families in a position where they cannot rent anywhere in the UK because their JSA/ESA, CTC and CB takes them close to or even in excess of £500. NAWRA is gravely concerned about what will happen to these families and also questions the sincerity of stated government aims to reduce child poverty since it appears families affected will have generally 3+ children.

NAWRA feels that the cap is likely to increase family break-up. For example there will be pressure on an affected family to separate as it makes “more sense” for them to separate taking half children each as then can become below benefit cap.

Temporary absence

NAWRA is concerned at the reduction of the time permitted for temporary absences in particular when due to a temporary stay in hospital or residential accommodation due to illness or injury. It is our experience that periods of treatment or rehabilitation can at times exceed the 12 months (plus additional period) temporary absence allowed under HB and it is the loss of housing support which is the most concerning.

As these absences are by their nature temporary, existing housing tenure will be at risk which undermines rehabilitation. The claimant will be likely to have to relinquish their tenancy as they will be unlikely to be able to maintain this after 6 months has passed.

This will create further difficulties – the local authority or NHS will be faced with having to subsidise the costs of the existing accommodation or to ensure that suitable accommodation is available at the end of the treatment or rehabilitation. The patient may require further support in dealing with the issues that this raises including the recovery of belongings where the admission was not expected.

We are concerned that this is likely to place further barriers in the rehabilitation process and may well move someone further away from being able to return to work.

Supported Housing

NAWRA has a number of concerns over how the draft regulations appear to impact on supported housing and the people who use it. A number of our members practice within this sector and thus we are well placed to comment. Some of these concerns cut across a number of areas of the regulations.

The regulations as drafted will have major consequences for women and children fleeing violence, and cause difficulties and costs for local authorities who have a duty under Section 17 of the Children Act to house children.

Currently 2-3 women a week lose their lives as a result of domestic violence and 34% of Serious Case Reviews reveal a context of Domestic Violence – and this is on the basis of there being a network of refuges available for women and children to escape to.

Refuges are currently grouped under the category of “supported housing”, but differ from all other types of supported housing for the following reasons.

Refuges provide emergency services with women and children entering 24 hours a day – this differs from other types of supported housing where entry to the accommodation comes at the end of period of assessment and intervention, which enables the provider to plan admission. Under the proposals refuges may well lose substantial sums of rental income because, unlike other housing providers, admissions are not usually able to be planned.

Our members advise that a large number of women and children accommodated in a refuge stay for a short period whilst making arrangements to move, e.g. to relocate to another part of the country where they have family and the regulations suggest that short-term housing costs such as these will not be able to be met.

Furthermore the proposed assessment and payment cycle appears to suggest that women who stay longer, and for whom housing costs will be paid, will not receive sufficient rent, in at least the first month of a stay to meet the refuge rent. This means that users will inevitably go into arrears, be expected to take on debt or pay the rent from other monies which have been allocated to meet the other basic needs of her family. This will also be an issue in other supported housing situations as well.

The draft regulations do not recognise that some supported housing such as refuges cater for families – and therefore need to provide space for families – play rooms, gardens, family lounges etc. The draft regulations do not appear to allow for rents to reflect the costs of providing for family accommodation such as this.

The draft regulations allow for a woman fleeing domestic violence to have benefits to pay rents on both the refuge and an existing tenancy to which she might be able to return once legal and protection measures are in place. However the draft regulations in relation to the benefit cap appear to mean that in reality many women with children in this position would be likely to be subject to the cap.

Often people using supported housing have little or no furniture or other goods to bring to a tenancy – when fleeing abuse for example or at the end of a long term hospital stay. Basic furniture is often provided with the cost being recovered through rental charges. The draft regulations suggest that such costs will not be met. This would have the result that an additional charge would need to be levied on tenants/residents which would need to be met from other income.

A similar position arises with the support provided to vulnerable young people in social and private rented accommodation. In some areas local councils and housing providers promote schemes whereby a “furniture package” is made available without which the young people would unlikely to sustain the tenancy. The existing Social Fund does not meet these needs and its replacement by a localised scheme is unlikely to alter that position. Whilst it recognises that there needs to be a balance between protecting young people and encouraging them to be less financially dependent NAWRA is concerned that the proposed regulation will mean that vulnerable young people will be unable to maintain tenancies – they will have no furniture – and hardship and further vulnerability will continue. Such a situation is unlikely to provide circumstances where they will enter sustainable work and leave the benefits system.

These examples show that there is a need to have an exemption for vulnerable people who require either “supported housing” or other types of support in relation to housing.

The draft regulations suggest that the default position will always be that the claimant receives the amount in UC for housing costs. We would question whether that proposition will ensure that people who do require help with housing will be able to maintain their tenancies. Whilst many who receive support with housing are able to manage their finances there is a minority who will struggle to budget under UC payments. There is of course a balance to be made between promoting independence and a move away from benefit dependency and in ensuring that the tenancy is adequately maintained. We would suggest that further consideration is required in this respect.

Young People and Housing Costs

NAWRA is aware that local authorities have statutory responsibility towards young people who are leaving care until they are 21 years of age in circumstances.

NAWRA members inform us that councils and partners use a number of strategies when working with these young people including using a mix of different housing types including social housing. This tends to be more stable and is more sustainable for this group overall. The draft regulations limiting accommodation size will affect these young people and will risk making their tenancies unsustainable despite the encouragement and support that they receive.

At present these young people are exempt from the “shared accommodation” restriction as they are vulnerable.

Young People and entitlement

NAWRA notes with concern that for 16/17 year olds who are unemployed who currently may be able to receive benefit on severe hardship grounds or via the CBEP will only be able to receive UC via the estrangement route. The test for this assumes that the young person is not living with anyone who could be classed as having a parental role. It is our view that this draft regulation could increase the number of young people who seek accommodation and present as homeless to local authorities as parents may decide to ask their children to leave.

Permitted work

The draft regulations and Memorandum suggest that the existing rules for means-tested benefits regarding permitted work will disappear. Without knowing the earnings disregards it's unclear how people also claiming other benefits (for example ESA) which have permitted work rules will be affected. When ESA was introduced there were a number of anomalies which meant that some claimants were faced with different earnings rules for different benefits. This issue will be amplified as there will of course be different payment and assessment periods.

Permitted work rules are a useful way to assist disabled and sick people to try out work and its important to ensure that simple and easy to understand rules continue to apply.

Deprivation of capital (Reg 47)

NAWRA is interested to note that Universal Credit introduces a new test of “reasonable expenditure” to be used when considering whether a claimant has deliberately deprived themselves of capital. Whilst “reasonableness” may be part of the consideration required when reaching a decision about the purpose of deprivation of capital, the addition of this new test will bring further difficulty to this area of law and may contribute to poor decision making.

We are particularly concerned that people who may have spent money inappropriately due for example to a mental health condition or a learning disability, but without a purposive intent under draft reg 47(1) may be caught by draft reg 47 (2) (b), and experience hardship.

Of course a person in that position will have a right to appeal, but this may take several months to be resolved and during this period benefit including housing costs will not be paid.

Elements

Disabled children

NAWRA is very concerned about what appears to be potential large loss of income to people with disabled children. Under the current arrangements such a situation would see elements/ premiums of £56.63 in HB for disabled child and £2950 per year in Child Tax Credit. The draft regulations seem to reduce to WRAG level - currently £28.15 – which represent a huge loss of income to parents with disabled children and will be particularly detrimental to those with more than one disabled child.

Disabled adults

NAWRA is also concerned to note that the extra allowance for disability only applies to those with limited capability for work and so discriminates heavily against those with disabilities

who do work. We estimate that this could mean a loss of at least £2790 per year compared to tax credits and possibly £58.20 for someone in receipt of DLA care component paid at the middle rate.

NAWRA suggests that this will be a disincentive for disabled people to work and will serve to increase reliance on DLA (and PIP) in order to help manage the extra costs of disability in work.

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