



Work and Pensions Committee Inquiry into the Welfare Safety Net

NAWRA evidence and case studies on universal credit and the impact on EEA nationals

NAWRA: Secretary - Kelly Smith C/O CPAG, 30 Micawber Street, London N1 7TB Tel: 020 7812 5232 email:
Kelly@nawra.org.uk

web: www.nawra.org.uk

EEA nationals and universal credit

1. NAWRA welcomes the opportunity to provide the Committee with evidence and case studies in relation to the impact of universal credit on EEA nationals. With hundreds of advisers in our membership across the UK we are in an ideal position to inform the Committee of the key problem areas.
2. Unlike British or Irish nationals and many non-EEA nationals who have leave to remain, EEA nationals are not automatically entitled to the major means-tested welfare benefits such as universal credit or other forms of support such as homelessness assistance. Entitlement depends on meeting the rules set out in the relevant legislation¹. These rules are notoriously complex and require decision makers to give in-depth consideration to each case. This introduces a large amount of room for uncertainty, delay and error.
3. NAWRA members have found that these issues have been particularly prevalent when it comes to universal credit. Issues we have experienced include:

Claiming process:

- All EEA claimants are being required to go through a Habitual Residence Test (HRT) to decide if they are eligible. There seems to be no system to use information from legacy systems to fast-track applications.
- There are often delays of 4-8 weeks whilst decisions are made on the HRT. Claimants are not eligible for payments or advances whilst their entitlement is in doubt.
- Difficulties in accessing interpreters for making and managing claims in those cases where they are needed.
- Claimants are given little information about what evidence they ought to provide for their claim to succeed.
- The DWP are prematurely issuing “stop notices” before conducting the HRT meaning that claimants lose legacy benefits whilst their claim is considered. A notice should not be issued where there are doubts about the basic conditions of entitlement²

Decision-making:

- Decisions routinely indicate a poor standard of understanding of the relevant regulations – even compared to decisions made by legacy benefits.
- Relevant evidence is not always collected in HRT appointments and important avenues are not always explored.

¹ Immigration (European Economic Area) Regulations 2016, Directive 2004/38/EC

² Reg [8\(1\)\(b\) of the Universal Credit \(Transitional Provisions\) Regulations 2014](#)

- The process is skewed towards recent events. Claimant’s histories are not always fully considered meaning that alternative rights to reside are missed.
- Evidence which is available to the DWP such as national insurance records and benefit histories are not always considered.
- The “culture of disbelief” – claimants are expected to prove everything with documentary evidence. There is little willingness to accept a claimant’s word even on straightforward matters – e.g. claimants are routinely required to prove that their children are in school.

Disputes/appeals:

- When benefit is refused, the claim is “closed” and the journal becomes read-only and the claimant cannot communicate with the DWP via the journal.
- There is an increasing concern that helpline staff are “deflecting” mandatory reconsideration requests.
- Combined, this makes pursuing disputes unduly difficult.
- Appeals routinely take many months to resolve. Claimants receive no UC at all during the appeal process. Many appeals are conceded by the DWP once the case reaches more senior appeal officers, but this takes an unduly long time due to the quantity of appeals.
- Even once there has been a successful appeal, claimants need to wait for a month or more for their claim to be “rebuilt” and arrears paid. Often there are issues with the arrears payments because changes cannot be reported whilst the claim is closed.

4. Because of the excessive delay, with inability to access any other funds, NAWRA members report that EEA nationals are experiencing extreme hardship including –
 - Having to use foodbanks as only source of food
 - Increasing debt due to the need to borrow – particularly from family or loansharks
 - Inability to pay for gas or electric
 - Threats of, or actual, repossession or loss of home due to lack of means to pay rent
 - Deteriorating physical and mental health. Lack of access to prescriptions
 - Costs to other statutory and local authority services e.g. through rental debts and additional costs to social services.
5. The problems experienced by EEA nationals are additional to the issues which other respondents have discussed. EEA nationals still experience the same difficulties with universal credit as everybody else. Often, they can be more vulnerable to these problems because of factors such as lacking family backing in the UK and language barriers.

6. The following case studies have been compiled to give a flavour of the issues we are coming across. Many of these issues apply equally to a wide number of cases.

Case study 1 – Cancer patient refused subsistence benefits

An A8 national who stopped work following a diagnosis of cancer. He claimed universal credit and was paid for six months on the footing that he was looking for work – his benefit was then stopped. No consideration was given to whether he was a permanent resident in the UK.

Claimant is appealing with help of adviser but is destitute. He is in fragile health with no income with which to feed himself or heat his home. Foodbanks are not easily accessible in his weakened state. Transport to hospital is problematic. His recovery is at risk, as is his accommodation due to rent arrears.

Case study 2 – Wrong decision creates risk to home and health

The claimant had lived in the UK for 15 years and had never worked herself. Her ex-partner had always been the worker but he had left the UK leaving the claimant responsible for their 10 year old son. A claim for universal credit was made but refused because she had never worked. Almost exactly 10 months later, an appeals officer accepted that she had a right to reside because of her responsibility for her son.

In the meantime, the claimant had incurred almost £6,000 in rent arrears to the local authority. They started a claim for possession incurring several hundred pounds of costs. Her wellbeing had deteriorated because of the lack of funds for basic living expenses. Referral was made to social services due to concern for the well-being of the child.

Case study 3 – DWP issuing premature ‘stop notice’

Claimant was in receipt of tax credits and housing benefit. She had a second child and was not working and needed to claim universal credit. It was refused on the basis that she did not have a right to reside yet the DWP sent a stop notice to housing benefit. Therefore, not only was universal credit not paid but the claimant’s entitlement to housing benefit was terminated incorrectly causing further hardship.

(Housing benefit should not be terminated until the Secretary of State is satisfied that the claimant meets the basic conditions set out in Section 4(1)(a) to (d) of the Welfare Reform Act 2012 which includes presence in Great Britain – those without a right to reside are treated as not being in Great Britain).

Case study 4 – Refusal to accept relevant evidence

The claimant was working full time in a restaurant. He did not bring his payslips with him to the HRT interview because he had not been told that they were relevant. His claim was refused because he had no right of residence.

He requested a reconsideration and booked a number of appointments at the Jobcentre to drop in his payslips, however the staff members he spoke to told him that they would not take copies of the evidence. As there is no way of uploading documents to a closed claim and no reliable postal service, he could not get the documents to the decision maker and his reconsideration also failed. It was only possible to send in the payslips as part of the appeal process at which point the decision was changed.

Case study 5 – *Zambrano* carer accommodated by local authority

The claimant came from a non-EEA state and was waiting for a decision from the Home Office about their status. However, they were responsible for a British child. EU law gives them a right to reside as a *Zambrano* carer.

The DWP excludes entitlement to benefit for these individuals so universal credit was refused - however this group cannot be removed from the UK. So, the local authority's children's services department has needed to indefinitely fund a tenancy for this claimant without any prospect of being reimbursed by central government.

Case study 6 – Disbelieving claimants

This couple had lived in the UK for many years and had received legacy benefits without issue. The husband had worked for about five years in different jobs before his wife was diagnosed with a debilitating illness and the husband became her carer. They moved to a full-service area and claimed universal credit which was refused.

The husband was only asked about his last job and therefore the original decision maker did not know about his work history which made him a permanent resident. Once the information was available, he was criticised because he could not provide documentary proof of the work he had done at the time. When the case went to Tribunal, the Judge accepted that he was giving an honest account of his work history which stood up to scrutiny on the available evidence. He won his appeal but the DWP still suspended payment whilst it asked for written reasons for the decision. The couple were forced to survive on disability benefits only for nearly a year and fell into £4000 of rent arrears which they were fortunately able to clear in full once the benefit was finally paid.

Case study 7 – Unable to access legacy benefit decisions

The claimant had been living in the UK since 2005 and had successfully claimed legacy benefits in 2016. When he made his claim for universal credit, his claim needed to be decided afresh because the DWP had destroyed their records from his previous claim and did not know why it had succeeded. The claimant therefore needed to provide his records to the DWP for a second time.

The case is still pending appeal. The appeal was lodged in August 2018 and it was not until January 2019 that the DWP provided its appeal response (the statutory time limit for responding is 28 days).

Case study 8 – Potential victim of trafficking

The claimant had significant health issues and had come from an Eastern European state to the UK about 1 year prior and had been found by police working for a business for very low wages and living in their premises. He had been moved for his own protection and spent a number of months living in a police safehouse. When he left that accommodation, he claimed universal credit and it was refused on the basis that there had been an unreasonable delay in claiming after his work had ended whilst he had been accommodated by the police. The decision was changed on reconsideration.

Case study 9 – Incorrect legal test for “Genuine Prospects of Work”

The claimant had been getting universal credit on the grounds first that she was a worker and then that she had lost her job but was looking for work. After six months, her claim was suspended and she was sent for a “Genuine Prospects of Work” assessment. She provided evidence that she had “genuine prospects of work” because she had A level qualifications, a history of having a number of jobs and that she had a number of interviews within the six months she had been looking for work.

The DWP said “You cannot retain worker status for more than 6 months, unless you are about to take up employment. The information you have provided does not show that you are about to take up employment”. This is not what the law requires.

She won her appeal.

7. Recommendations:

Our experience has been that poverty is experienced not only by new EEA migrants or jobseekers but also by those who have been established in the UK for many years. The failure of the safety net is all the more shocking in these cases where these individuals have established and long-standing ties to the UK.

Whilst the system set out in the legislation can be harsh in some edge cases, what we find is that, in far too many cases, the main source of difficulty is decisions that are either straightforwardly wrong or the result of incuriousness on the part of the Department.

To the extent that the existing system will carry forward³, we would recommend:

- (1) Decision makers need to be appropriately specialist in this area. The approach needs to be inquisitorial and appropriate weight ought to be given to plausible statements by the claimant rather than just documentary evidence.
- (2) Clear advice needs to be available to claimants about what evidence and information is relevant and ought to be provided.
- (3) Consideration ought to be given to a scheme of interim payments pending a decision or appeal to mitigate against the hardship caused by losing all of one's income at once.
- (4) Decisions made for the purposes of legacy benefits should carry forward to UC unless there are good reasons to doubt that decision or show things have changed
- (5) Interpretation facilities ought to be more widely available.

³ There is almost no clarity as to what the position will be post-Brexit and how the "settled status" scheme which is being piloted is intended to interact with the social security system.