

**nawra**

national association of  
welfare rights advisers

# Work and Pensions Committee Inquiry into natural migration

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## NAWRA Response

### February 2019

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## **The National Association of Welfare Rights Advisers**

1. The National Association of Welfare Rights Advisers (NAWRA) was established in 1975 as the Welfare Rights Officers' Group, and then the National Welfare Rights Officers' Group before becoming NAWRA in 1992. It represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations that provide legal advice on social security and tax credits. NAWRA currently has more than 200 member organisations.
2. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.
3. NAWRA holds four 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.
4. 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.
5. NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public.

### **Executive summary**

6. This response is informed by a survey of NAWRA members carried out over just two weeks (due to the short deadline) in January/February 2019 that received 47 responses. It is also informed by the discussion forum on the rightsnet website<sup>1</sup> - used by welfare rights advisers across the UK to get casework support, share the experiences of their claimants, and to network with other advisers – which is an ideal source of contemporaneous evidence.
7. There are many different groups of people who lose out on the transition to universal credit for different reasons including –
  - Disability/health issues
  - Caring responsibilities
  - Employment status
  - Age
  - Number of children
  - Vulnerability – abusive situations, in debt etc
  - Lack of digital access

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<sup>1</sup> <https://www.rightsnet.org.uk/forums>

- Lack of digital literacy
- Bereavement

Many claimants could be affected by more than one of these situations thereby creating a cumulative effect.

8. There are a number of different actions the government could take to avoid the hardship that is being created. While some would require legislative changes (eg providing transitional protection, removing the minimum income floor), others are more about operational practice and carry no budgetary implications. Many of the actions have been suggested by the advice sector already. The Department has talked much recently about its willingness to engage with stakeholders<sup>2</sup> – now is its chance to put that into action.

### **Which groups of people stand to lose out most when they transfer to Universal Credit?**

9. There are many groups of people who lose out on the transfer to universal credit – some financially, and some because of the expectations put upon them which they may not be able to keep to. The following list gives some examples –
  - **Claimants who had a disability premium or disability element in their legacy benefit.** While the government has legislated to prevent those with a severe disability premium from claiming universal credit, there is no such gateway for those in receipt of a disability premium or enhanced disability premium in their legacy benefit, or for those who receive a disabled child element in their child tax credit, or those who receive a disabled worker element in their working tax credit. By far the majority of these will lose on the transition to universal credit.<sup>3</sup>
  - **Disabled students.** Under rules for income-related ESA, students in receipt of DLA/PIP would automatically be treated as having limited capability for work, which gave them disabled student status and access to means-tested benefits. Under universal credit students in receipt of DLA/PIP need to undergo the work capability assessment before they can receive benefit – this could mean many months with no access to means-tested benefits.<sup>4</sup>
  - **Self-employed.** The requirement of the Minimum Income Floor (MIF) puts an unreasonable expectation on self-employed people. Recent analysis by the TUC shows that two million self-employed adults earn less than the minimum wage.<sup>5</sup> These are the very people that are likely to need to claim

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<sup>2</sup> Letter from Permanent Secretary to Public Accounts Committee  
<https://www.parliament.uk/documents/commons-committees/public-accounts/Correspondence/2017-19/Corresp-DWP-Employment-and-Support-Allowance-181221.pdf>

<sup>3</sup> only those who are in receipt of an enhanced disability premium and in the support group for ESA and none of the other conditions apply stand to gain on the move to universal credit

<sup>4</sup> this problem is highlighted on the rightsnet thread at  
<https://www.rightsnet.org.uk/forums/viewthread/11927>

<sup>5</sup> <https://www.tuc.org.uk/news/two-million-self-employed-adults-earn-less-minimum-wage>

universal credit. Furthermore, because the MIF operates on a monthly basis, a self-employed person earning the minimum wage over the course of a year can still be penalised due to fluctuations in income causing the MIF to be applied on some low-income months.

- **Claimants who have both limited capability for work-related activity (LCWRA) and are carers.** Universal credit prevents both these elements from being awarded in respect of the same claimant unlike legacy benefits.
- **Lone parents and those with limited capability for work (LCW) or LCWRA who are under 25, and couples aged between 18 and 25.** They are paid a lower standard allowance under universal credit in contrast to legacy benefits.
- **EEA nationals.** Decision-making on whether EEA nationals have a right to reside is notoriously bad, as NAWRA has already reported to the Committee<sup>6</sup>, causing delays in payments resulting in hardship and destitution.
- **People with health conditions/disabilities/caring responsibilities.** Although there is provision to ease conditionality on these groups, it is only on a discretionary basis unless the claimant has been assessed as having LCW/LCWRA, or the person is caring for a child under 3, or meets the conditions for the carer element.
- **People in an abusive relationship.** The default position of paying the total benefit as a single payment can have a detrimental effect on those in an abusive or controlling relationship – they may be deprived of any independent income or limited to only child benefit.
- **People in debt.** The allowable rate of debt deduction in universal credit – and the tendency of the Department to default to maximum deductions can leave claimant with insufficient to live on and reliant on food banks or loan sharks.
- **People with limited digital access or limited digital literacy.** These groups struggle to complete the claim process or to effectively manage their claim putting them at risk of sanctions or the claim being refused entirely. A FOI response<sup>7</sup> has confirmed that a fifth of claims fail due to ‘non-compliance with the process’ – failure to book an initial interview, failure to attend an initial interview, or claimant commitment not accepted.
- **People affected by a recent bereavement.** Bereavement of a partner or for carers for the person they were caring for can be a situation which may lead claimants to have to apply for universal credit. Protections from rent restrictions (e.g. such as the bedroom tax) which would have existed in Housing Benefit are reduced on universal credit.

## What should the Government be doing to support those groups?

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<sup>6</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/welfare-safety-net-followup/written/96101.html>

<sup>7</sup> [https://www.whatdotheyknow.com/request/reasons\\_for\\_universal\\_credit\\_cla](https://www.whatdotheyknow.com/request/reasons_for_universal_credit_cla) and confirmed in a recent written answer <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-02-08/218740>

10. NAWRA believes that there are a number of things that could be done to support groups who lose on the transition to universal credit. While some of these would require legislative changes, others are about operational practice that could be implemented relatively easily. Actions that NAWRA has identified include –

- **Introduce transitional protection into natural migration.** The High Court has ruled<sup>8</sup> that failing to provide transitional protection for claimants naturally migrating to universal credit from a legacy benefit with a severe disability premium was unlawful. A second case<sup>9</sup> was heard in January 2019 concerning a case where a mother and her disabled daughter were left worse off due to a lower level of support for disabled children in universal credit. NAWRA speculates that it is likely there will be a similar ruling. If the courts are saying transitional protection should be applied, NAWRA calls on the government to take action to do just that.
- **Amend universal credit to reflect the extra costs of disability more fairly.** This could be in a number of ways –
  - extend the disabled work allowance for people with LCW/LCWRA to those receiving PIP/DLA (as the disabled worker element in working tax credit does)
  - allow disabled parents to receive both the disabled work allowance and the work allowance for parents
  - introduce a ‘self-care’ element for disabled claimants that live on their own – at a similar rate to the carer element that would be in their award if they had a partner
- **Abolish the MIF.** It is punitive, unfair, and means that self-employed work all too often does not pay – contrary to the government’s repeated assertions.
- **Reintroduce implicit consent.** The current process of requiring explicit consent to be written in the journal and repeated every two months<sup>10</sup> is unnecessary and hinders advice workers from supporting claimants effectively. There is no reason for the DWP not to adopt the previous guidance for working with representatives<sup>11</sup> that still operates in the legacy system.
- **Develop universal support.** Even the new universal support agreed with Citizens Advice only covers a claimant up to the point when the claim is up and running. For vulnerable people, particularly those lacking digital skills/access, support is needed on a continuing basis.

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<sup>8</sup> TP and AR, R (On the Application Of) v Secretary of State for Work And Pensions[2018] EWHC 1474 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1474.html>

<sup>9</sup> R (TD and AD) v SSWP CO/590/2018

<sup>10</sup> <https://www.gov.uk/government/publications/universal-credit-detailed-information-for-claimants/universal-credit-consent-and-disclosure-of-information>

<sup>11</sup> <https://www.gov.uk/government/publications/working-with-representatives-guidance-for-dwp-staff>

- **Abolish the sanction regime.** NAWRA is aware that the Committee has already raised its substantial concerns with the Department but it is worth reiterating how damaging and unconstructive this regime is. If the Department is genuine about wanting to enable people into employment, it is support that is likely to succeed not driving them into destitution and despair.
- **Talk to claimants about their financial situation before setting up debt deductions.** Or, at least, start at the minimum level possible until the claimant has had an opportunity to set out their situation. Reducing the claimant's standard living allowance to just 60% (or even 70% from October 2019) of what is already a basic level to meet needs is not a situation that is realistic to survive on for any period of time.
- **Bringing in the planned run on of IS, JSA and ESA sooner.** NAWRA welcomes the proposal of a two week run on of these benefits as it will do much to ease the five week wait for a first payment and possibly enabling claimant to avoid having to go into debt by taking out an advance. However, NAWRA would ask that this is implemented as a matter of priority.

**What does the lack of a comprehensive list of 'triggers' that can transfer people to Universal Credit mean in practice for claimants and the groups who support them?**

**Should the Government produce a full list?**

**Are the existing 'triggers' for natural migration appropriate?**

**If not, how should they be changed?**

11. NAWRA believes that use of the word 'triggers' can be misleading and, in part, has led to confusion and misadvice. The one situation that forces a move to universal credit is if a person would have had to make a new claim for a legacy benefit (excluding those who come under the severe disability premium gateway). However, it is not always clear when this is the case and every claimant's situation is different. Advice agencies have drawn up lists of situations when claimants might be forced to claiming universal credit and when they may have a choice – inevitably they are very complex.<sup>12</sup>
12. Because of the complexity of the system as set out above there are countless examples of inaccurate advice causing people to migrate when they do not need to and experiencing hardship as a result. Once on universal credit there is no way back – the 'lobster pot' as it is sometimes referred to!

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<sup>12</sup> Example list of universal credit 'triggers' from Newcastle City Council  
[https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/benefits-and-council-tax/welfare-rights-and-money-advice/what\\_triggers\\_a\\_claim\\_for\\_universal\\_credit\\_in\\_a\\_full\\_service\\_area\\_1.pdf](https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/benefits-and-council-tax/welfare-rights-and-money-advice/what_triggers_a_claim_for_universal_credit_in_a_full_service_area_1.pdf)

13. Not only this, but advisers on rightsnet have documented<sup>13</sup> jobcentres attempting to block move JSA claimants over to universal credit even when there is no change of circumstances.
14. NAWRA believes that rather than focus on the 'triggers', it would be easier if claimants were simply allowed to return to legacy benefits if they had been misadvised and migrated in error. Alternatively, if transitional protection was applied to the universal credit claim then the resulting hardship would be minimised.

**Has the Department for Work and Pensions done enough to help people to understand what changes in their circumstances might cause them to have to transfer to Universal Credit, and what that might mean for them? What more could it do?**

15. No. Not only do claimants not understand when they should or shouldn't claim universal credit, neither do jobcentre staff or local authority staff. As demonstrated at paragraph 11 above the situation is so complex that it is very difficult to set down clear guidance.
16. Advisers on rightsnet have documented jobcentres attempting to block move JSA claimants over to universal credit even when there is not change of circumstances.
17. Unfortunately the complexities involved in establishing whether a person has no choice but to naturally migrate are such that staff within the Department do not understand it. It seems unlikely therefore that they are going to be able to explain it to claimants.

**Conclusion and recommendations**

18. In conclusion, many people are experiencing extreme hardship as they naturally migrate to universal credit, which occurs often as a result of misadvice.
19. As the Department is unable to give accurate advice to claimants about when they have to migrate, claimants should be able to return to legacy benefits if migration has happened when it was not required.
20. The Department should take action on the High Court ruling in TP and AR, and either bring in transitional protection for natural migration or introduce gateway conditions for all circumstances where claimants lose out, not just severe disability premium cases.

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<sup>13</sup> <https://www.rightsnet.org.uk/forums/viewthread/12851/>

21. The Department should listen to stakeholders as it has promised and either implement the recommendations set out at paragraph 10 or at least provide justification for why it chooses not to. There is little point in holding stakeholder events if no actions are going to be taken as a result of them.

## **Appendix – case studies**

### **Case study 1 – misadvised to claim universal credit – reduced income ongoing**

A woman with two children under 10, who was working part time and claiming working tax credit, was told by her tenancy officer (employed by her housing association) to claim universal credit to get her housing costs paid because the local authority is taking no more housing benefit claims. The woman claimed universal credit on the understanding that it would not affect her working tax credit. Her working tax credit was stopped and replaced with UC. She is so much worse off on UC that she is struggling to afford the rent and essential bills. On working tax credit, she was managing. She is not in a position to increase her hours of work due to having two children to look after, one of whom is disabled.

### **Case study 2 – misadvised – loss of support for qualifying young person**

Family on ESA/CTC moves home, within the same local authority area. Told by DWP to claim UC, even though this advice is incorrect - DWP sticks stubbornly to defending this decision for months, before finally admitting they got it wrong. Family includes a young person who is in full time non-advanced education. Young person turns 19 in June 2018. UC element for the young person stops 31/8/18. CTC would have carried on to age 20.

### **Case study 3 – misadvised to claim UC – unable to return to ESA – loss of severe disability premium**

Claimant who fails ESA work capability assessment and rang by DWP- told that they need to make a claim for UC which is not accurate – won appeal but as they had transferred to UC already they were unable to return to ESA with severe disability premium

### **Case study 4 – misadvised to claim UC – self employed**

Client lives in council tenancy. She was in receipt of working tax credit and housing benefit as self employed, and received £46 and £50 respectively from legacy benefits. Although her circumstances had not changed she claimed UC. Due to the minimum income floor rules she is not entitled to any UC, and her rent arrears are increasing. She is needing to give up her self employment.

### **Case study 5 – Client is EEA national**

Client is a lone parent an EEA national, who is studying to be a nurse. She previously received legacy benefits (housing benefit and tax credits), and satisfied the habitual residence tests due to her work history and having permanent residence. Due to moving address to a different authority she needed to claim UC. The decision is made that she did not meet the right to reside test, despite this previously being

satisfied. She has currently been waiting at least two months for the challenge to be reconsidered, and the client is relying on food banks and crisis funds.

#### **Case study 6 – Disabled student**

Client is a young person who was previously living with parents. Parents move abroad for work and the young person moves to attend college. No student finance available. Student receives PIP but no means-tested benefit. Is unable to qualify for housing benefit or ESA so will face significant financial hardship. Client has to claim UC and wait to be assessed as having LCW in order to qualify for UC and housing costs in turn.

#### **Case study 7 – Childcare costs**

Client was working and claimed UC as she moved into a full service area. She was previously claiming CTC/WTC/CB and HB. She is working 16 hours/week and receiving childcare costs through WTC. After moving house, she was not able to provide the money upfront for the childcare provider and therefore her childcare costs were reported late and refused on these grounds. This led to a shortfall with her childcare provider, and her child could no longer receive childcare. Client had to stop work until she was able to afford another upfront payment of childcare.

#### **Case study 8 - Bereavement**

Client is 52 and part of a couple in a 2 bed property and is a joint claimant for housing benefit. They are a mixed age couple on pension credit and have been awarded 2 bedrooms under housing benefit due to being unable to share a bedroom due to disability. Client's partner dies and therefore client has to claim UC. Client loses out on 9 months protection from the bedroom tax, as well as significant loss of income. She receives lighter conditionality due to the bereavement for 6 months, but then is subject to full conditionality.

#### **Case study 9 – Bereavement and deductions.**

Client's husband passed away, who had been the main claimant for housing benefit and ESA. She had to claim universal credit when her husband passed away. Her husband had dealt with her affairs previously and due to dealing with the loss of her husband this led to a delay in her making the claim, leading to rent and council tax arrears. Since claiming universal credit she has been subject to a claimant commitment which she struggled to keep up with. As she is not earning a sufficient amount she is being pressured by DWP to look for full time employment which pays a sufficient amount. However, she is still mourning her husband's death. A large amount was deducted from her first UC award leaving her with little to live off in the first month. They DWP have agreed to reduce the amount being deducted but only from March 2019 onwards. She has also asked DWP to backdate her UC claim by one month. However, she is still awaiting the outcome of this request.

### **Case study 10 – limited digital skills**

Client was released from prison after a number of years. He has no digital skills, and no previous experience of using a computer. He has memory issues due to Alcohol Misuse / brain damage which lead to a severe difficulty retaining information, taking on new information. He had been assisted to set up a UC account previously but could not remember passwords or email details, he failed to correctly answer the security question, was then asked alternative questions about previous address, he got confused and was unable to pass security. Client has required on-going input to set up/sustain his claim/avoid sanctions.

### **Client 11 – limited digital skills**

Client is 63. She made a UC claim following a marriage break up. Had not worked for many years (husband support family), and had no computer experience at all. She is experiencing depression and anxiety, which has badly affected her confidence, and concentration. She has found it very difficult to learn IT skills - especially in her recent mental state. She has been helped to set up her claim and sustain it by council support services. She was also supported to challenge an incorrect housing payment. Claimant herself initially had no idea how to log on or how her assessment had been calculated, without support she would have probably missed her work coach appointments and been sanctioned.

### **Client 12 – limited digital skills**

Client is unable to learn the digital skills required to manage his UC claim due to cognitive impairment as a result of his previous stroke, but he is currently in a position of having to 'prove' why the digital nature of UC is so difficult for him. He brought a fit note to his work coach interview, but was told 'until its entered on your UC account, I have not really seen it'. Work coach had to be persuaded to enter it by proxy. Client is unlikely to ever be able to re acquire the digital skills needed to sustain his claim independently (he did have some digital skills prior to his stroke). Client is currently seeing his GP about his medical problems.