



Social Security Advisory Committee

Universal credit managed migration

NAWRA Response

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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 in July/August 2018 that had 74 individual responses. The survey was structured by asking a number of multiple choice questions and then open questions for further comments. This report is a summary of those responses.
7. Key concerns raised include –
 - The proposal to roll out managed migration before current operational problems are satisfactorily resolved.
 - The requirement to make a claim in order to migrate successfully, and in particular the requirement to get that claim right first time (regulation 48).
 - The rules by which transitional protection are eroded and lost.
 - The limitation of applying gateway conditions to just those with a severe disability premium in their legacy award.
 - The proposed compensation for claimants who have already migrated to universal credit and lost out financially as a result.

The timetable for managed migration

8. NAWRA has grave concerns about the Department pushing ahead with managed migration before serious issues within the operation of universal credit have been resolved satisfactorily. These include –

- **Difficulties making a digital claim.** The Citizens Advice report ‘*Making a Universal Credit claim*’¹ highlights how one in four claimants lost money as they were unable to make their claim in time. Under the managed migration process a claimant is at risk not just of losing benefit for a period of days/weeks but also of losing their transitional protection permanently.
- **Lack of reasonable adjustments.** While accepting that the majority of people may be able to make claims online there is a significant minority who will struggle with this process and would want to make a phone claim. Users of the rightsnet website have identified both difficulties getting through on the universal credit helpline² and also a reluctance from operatives to take a phone claim³. NAWRA is concerned that as universal credit is rolled out – via managed migration – to more disabled claimants there will be a greater need for more and different reasonable adjustments (for example communications by letter or other method, paper claim, waiving the need to attend the first interview in the jobcentre). These processes need to be in place before managed migration takes hold.
- **Insufficient levels of universal support.** The Citizens Advice report above highlights the need for universal support which is only likely to increase as the numbers on universal credit increase and the caseloads of work coaches and case managers are projected to increase more than fourfold⁴. CPAG also documents the difficulties claimants have both establishing and maintaining a claim⁵. The DWP universal credit full service survey⁶ reported that 20 per cent of claimants had help from a work coach to register their claim. As workloads increase it is likely that this support will drop away and need to be replaced by universal support. Rightsnet users have evidenced that those providing universal support have experienced difficulty doing so as they are unable to get through on the helpline⁷.
- **Lack of implicit consent.** The refusal to operate a process of implicit consent – as set out in the government’s *Working with representatives* guide⁸ - within

¹ https://www.citizensadvice.org.uk/Global/CitizensAdvice/welfare_publications/Making_a_Universal_Credit_claim_2018_-_final.pdf

² <https://www.rightsnet.org.uk/forums/viewthread/12843/>

³ <https://www.rightsnet.org.uk/forums/viewthread/13233/>

⁴ <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf>

⁵ <http://www.cpag.org.uk/sites/default/files/uploads/Early%20Warning%20System%20Top%20UC%20Issues%20July%202018.pdf>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714842/universal-credit-full-service-claimant-survey.pdf

⁷ <https://www.rightsnet.org.uk/forums/viewthread/12567/>

⁸ <https://www.gov.uk/government/publications/working-with-representatives-guidance-for-dwp-staff>

universal credit causes delay, hardship and extreme stress as documented by rightsnet users⁹. Not all claimants are able to use the explicit consent process and this number will increase with managed migration. A system must be put in place whereby advisers can contact universal credit to help resolve problems – NAWRA sees no reason why the process in the above guide cannot apply within universal credit.

- **Inadequate appointee process.** There remain significant hurdles within the appointee process, particularly for corporate appointees, including the need for a separate email address for each claimant and problems identifying benefit payments in a corporate appointee account¹⁰. The number of universal credit claimants requiring an appointee will increase substantially as managed migration rolls out and it is essential these issues are resolved first.
- **Insufficient resources to respond timeously to requests on journal.** The CPAG Early Warnings report above also highlights that communications on the journal may go unanswered. Rightsnet users document that mandatory reconsideration requests put through the journal are not reliably processed¹¹. If the main option for communication is online then there must be systems in place to ensure that queries and information are responded to timeously. With the workload of both case managers and work coaches to increase significantly, NAWRA has grave concerns about the impact on journal communications.
- **Inappropriate use of sanctions.** Recent DWP statistics¹² show that 71% of sanctions under universal credit are for failing to attend or participate in a work-focused interview (as compared to 14.7% for JSA claimants and 6.6% for ESA claimants). Vulnerable claimants are far more likely to have difficulties attending work-focused interviews, and therefore are at high risk of sanction under universal credit leading to hardship and a risk of a deterioration in their health.

9. NAWRA believes that it is essential the government takes heed of its ‘test and learn’ process and ensures the above problems are resolved before managed migration commences. Most of the issues identified are those that will particularly affect vulnerable people who currently represent only a very small proportion of universal credit claimants. As managed migration rolls out the proportion of vulnerable claimants will increase substantially and claimants who have been on legacy benefits for possibly years will be expected to adapt to a very different process. It is of paramount importance that the system is working smoothly and effectively before this happens.

⁹ <https://www.rightsnet.org.uk/forums/viewthread/11063>

¹⁰ <https://www.rightsnet.org.uk/forums/viewthread/13021/> particularly at post 12 - <https://www.rightsnet.org.uk/forums/viewthread/13021/#60725>

¹¹ <https://www.rightsnet.org.uk/forums/viewthread/12947/>

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733642/benefit-sanctions-statistics-to-april-2018.pdf

The managed migration process – regulations 44 to 47

10. In the NAWRA survey, 78% of respondents disagreed with the proposal that legacy benefit claimants should have to make a claim for universal credit as opposed to being automatically transferred. NAWRA members felt that significant numbers would be unable to comply with the claim requirements leading to loss of benefit and loss of transitional protection if there was a gap in claim. Indeed a recent FOI request¹³ showed that 20% of claims were closed due to non-compliance with the process. This figures is only likely to rise among the more vulnerable claimant group. Difficulties raised by NAWRA members include –

- Some claimants may not open or understand the letters and what they are required to do, for example those with mental health problems or a learning disability.
- Many claimants will not have the digital skills and/or will not have digital access or the required assistive technology, and will need support to manage the claim process, which may not be available/accessible. Members reported advice and support organisations already at capacity for universal credit support.
- Some claimants may have difficulty making/attending an appointment at the jobcentre due to physical or mental health issues.
- Difficulties keeping to the very short timescales. A month is very little time for a person to understand what they need to do, obtain the digital access or support required to make a claim, provide the required evidence, make and attend an appointment at the jobcentre.

11. If there is to be a requirement to claim, which NAWRA strongly opposes, then it is essential that safeguards are put in place. Suggestions from members include –

- The time limit in which to make a claim after the migration notice has been sent should be at least three months with multiple reminders sent in different formats (letter, text, phone call, visits). Extension of the deadline day should be granted on request where the claimant has indicated they need support, lack digital access, or any other reason that prevents them from making a claim. The DWP should ensure that the required support/access is made available and the time extension should be sufficient for them to use that. Where circumstances still prevent them making the claim (eg ill health), there should be no limit on further extensions.
- Home visits, and other forms of contact, should be attempted in order to establish contact, and support given to make a claim to universal credit.
- If legacy benefits are stopped due to a failure to claim there should be far wider grounds for backdating the universal credit award put into the regulations (including a lack of understanding of the requirements to claim, or a lack of support to make the

¹³ [https://www.whatdotheyknow.com/request/479176/response/1153572/attach/2/FoI 2025 reply.pdf?cookie_passthrough=1](https://www.whatdotheyknow.com/request/479176/response/1153572/attach/2/FoI%2025%20reply.pdf?cookie_passthrough=1)

claim) and the maximum period of backdating should be extended to at least three months with provision for further backdating in exceptional circumstances.

- If there is an appointee in place for any of the legacy benefits contact should be made with them – but problems around appointeeship need to be resolved – see 8 above.
- If there is ongoing involvement of a third party – eg advice agency – in any of the legacy benefits then contact should be made with them.
- Resources need to be put in place for universal support that is available and accessible, and clear and specific information about it must be provided in the warm-up letters, the migration notices and the subsequent reminders.

12. NAWRA welcomes the provision for a migration notice to be cancelled where there are complex needs but there needs to be a clear process by which this can be requested by either claimants or a person acting on their behalf. Migration notices should include information about the possibility of, and requirements for, having the notice cancelled. Legacy benefits should not be terminated while any request for cancellation is being considered, or any decision not to cancel the notice is being challenged.

Transitional protection – regulations 48 to 55

13. NAWRA vehemently objects to the provision in regulation 48 that where a claimant receives a migration notice and then makes a defective claim or fails to provide evidence in support of a claim, then any subsequent claim does not count as a 'qualifying claim' even if made before the deadline day. This removes entitlement to transitional protection to any claimant who has difficulty making a claim and needs more than one attempt. The DWP's own survey found that just 51% of those who claimed online completed their application on the first attempt, and this was reduced to 46% if they had a long-term health condition¹⁴. This provision comes across as an underhand method of depriving vulnerable claimants of the transitional protection to which they should be entitled!

14. NAWRA welcomes the provision of the transitional capital disregard but felt there should be an easement to the notional capital rules to allow claimants to make decisions about the best way forward. Members also felt that consideration needed to be given to families with disabled children who may have been saving to ensure there is provision for their children when they are older and suggested increasing the period of the capital disregard for families with disabled children.

15. NAWRA has concerns that transitional protection can be very easily eroded for reasons outside of the claimant's control. NAWRA welcomes the fact that changes in the

¹⁴ Paragraph 4.1.1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714842/universal-credit-full-service-claimant-survey.pdf

childcare element will not affect transitional protection, but argues that the same should apply to the housing element. For many benefit claimants housing is insecure and as a result housing costs may change substantially due to rent increases or having to move. Claimants should not be penalised and suffer a drop in income in what is already a difficult situation.

Ending of transitional protection – regulations 56 to 57

16. 78% of NAWRA members disagreed with the proposals for when transitional protection comes to an end. Often ceasing work may not be the claimant's choice, for example it could be the end of a temporary contract or a redundancy situation, or because they are unwell or need to take up a caring role. NAWRA believes there is no reasonable rationale for this proposal, and indeed, reducing a claimant's income is only going to make it harder to find more work, or to manage in what is already a difficult situation.
17. Additionally, NAWRA does not agree with the proposal to end transitional protection on becoming or ceasing to be a couple. This could cause additional stress and anxiety in a situation where a relationship has come to an end, particularly where there are elements of abuse in a relationship. Conversely, it could dissuade two people benefitting from forming a couple. NAWRA recognises that working out the transitional protection element is more complex in these situations but suggests the following –
- Where a couple forms and only one member has a transitional protection element, that is carried forward into the couple award.
 - Where a couple forms and both members have a transitional protection element, the higher element is carried forward into the couple award.
 - Where a couple separates, and the transitional protection element is present because of disability (because of the lack of disability premium equivalents in universal credit), the element is carried forward in the award of the person whose new household includes the person with the disability. Where there is more than one person with a disability the transitional protection element is applied pro rata in the relevant person's award.
18. While NAWRA welcomes the proposal to allow transitional protection to continue if a claimant's earnings take them outside universal credit for a period but suggests that this period should be 12 months rather than 3 months so that seasonal workers are not discriminated against.

The minimum income floor – regulation 59

19. 75% of NAWRA members disagreed with the proposals in respect of the minimum income floor (MIF). NAWRA strongly opposes the imposition of the MIF at all as it discriminates against self-employed people compared to employed people. However, if

it is to be implemented then NAWRA believes that claimants who are migrated should be exempt for the full 12 months that applies to new claimants.

Claimants in receipt of the severe disability premium – regulation 63

20. While NAWRA welcomes the proposal to prevent natural migration of those in receipt of the severe disability premium, it believes this should be extended to other people with disabilities who stand to lose substantially on the move to universal credit. Most households that have a disabled person in them are likely to be worse off under universal credit because –

- The lower disabled child element is only £126.11 whereas the equivalent child disability element in tax credits equates to £272.92 per month – a loss of £146.81 per month.
- There is no equivalent of the disability element or severe disability element that currently exists in working tax credit.
- Under legacy benefits a jobseeker in receipt of PIP/DLA receives at least the disability premium equivalent to £145.38 (and possibly also the severe disability premium and enhanced disability premium) – there is no equivalent in universal credit.

21. NAWRA proposes that a more fair system would be to say that any households where there is PIP or DLA in payment should be prevented from naturally migrating so that they can be assessed for transitional protection on managed migration. This would also be a much simpler system to operate and for claimants to understand.

22. Regulation 63(2) retrospectively protects those in receipt of the severe disability premium who naturally migrated before the date the regulations come into force. This does not protect those who slip through the net and end up on universal credit as a result of natural migration after the regulations come into force. NAWRA recommends amending this so that any claimant who naturally migrates is covered.

23. Additionally, in line with our proposal at 21 above NAWRA believes that the retrospective protection should apply to any household, where there is PIP/DLA in payment, which has naturally migrated.

24. Regulation 63(2) also prevents transitional payments to claimants who naturally migrated when a severe disability premium was included in their legacy benefits but who no longer would qualify – either because the relevant rate of PIP/DLA is no longer payable or because they now have a carer. While accepting that the transitional protection should cease once the qualifying conditions for the severe disability premium no longer applies, NAWRA believes that the transitional payment should be made from

the date of migration up to that date. This would be in the spirit of *TP and AR, R (On the Application Of) v Secretary of State for Work And Pensions* [2018] EWHC 1474 (Admin)¹⁵.

25.NAWRA strongly disagrees with the figures provided in regulation 63(3) which do not represent the losses experienced – see table below -

	ESA	UC	Difference
1. Single claimants – with LCWRA	37.65 support cpnt 16.40 edp <u>64.30 sdp</u> 118.35 = 512.85/mth	328.32 LCWRA	£184.53
2. Single claimant - LCW	29.05 WRA cpnt <u>64.30 sdp</u> 93.35 = 404.52/mth	126.11 LCW	£278.41
3. Couple – 2 sdps, LCW	29.05 WRA cpnt <u>128.60 sdp</u> 157.65 = 683.13/mth	126.11 LCW	£557.02
4. Couple – 2 sdps, LCWRA	37.65 support cpnt 23.55 edp <u>128.60sdp</u> 189.80 = 822.47/mth	328.32 LCWRA	£494.15
5. Couple – 1 sdp, LCW	29.05 WRA cpnt <u>64.30 sdp</u> 93.35 = 404.52/mth	126.11 LCW	£278.41
6. Couple – 1 sdp, LCWRA	37.65 support cpnt 23.55 edp <u>64.30 sdp</u> 125.50 = 543.83/mth	328.32 LCWRA	£215.51

¹⁵ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1474.html>

26. While the scenario in (2) above is equivalent to 63(3)(a)(ii) and is a similar amount, the situation in (1) is equivalent to 63(3)(a)(i) yet there is a shortfall in the proposal of over £100/month. It is worth noting that the claimants in *TP and AR* were both awarded compensation equivalent to around £170 per month¹⁶.

27. The scenario in (5) in the table equates to that in 63(3)(b)(iii) and the amounts are approximately the same. However, the scenario in (4) equates to that in 63(3)(b)(i) (presuming LCWRA included although it does not specify this) and there is a shortfall in the proposal of around £135/month, and the scenario in (6) equates to that in 63(3)(b)(ii) and there is a shortfall in the proposal of around £135 per month. The scenario in (3) does not appear to have been addressed in the draft regulations.

28. The regulations also do not address the losses of jobseekers that have both a severe disability premium and disability premium in their award. Their losses on migration to universal credit would be equivalent to £424 per month.

29. NAWRA members have also seen disabled jobseekers who have found work of 16 hours per week who found that they did not qualify for universal credit as income was too high but would have qualified for working tax credit under the legacy system.

30. NAWRA calls on the government to fully compensate those who have naturally migrated using a formula equivalent to that in the managed migration proposals.

Conclusion and recommendations

In conclusion NAWRA has concerns about both the timetable for migration and proposals within the draft regulations. Accordingly NAWRA recommends that –

- a) A hold is put on managed migration until ongoing operational problems are resolved including -
 - sufficient support to enable people to make a digital claim;
 - reasonable adjustments in place for those who can't;
 - a process for advisers to communicate with DWP on behalf of claimants;
 - clear and workable processes in place for both personal and corporate appointees;
 - sufficient resources for communications via the online journal to be responded to timeously – same day or next day;
 - a hold on sanctions for failing to attend or participate in a work-focused interview unless there is clear evidence that the failure is wilful.

- b) There is no requirement to claim in order to migrate. The Department uses the information available to it to make a provisional award of universal credit and clarifies information with the claimant once the claim is up and running.

¹⁶ <https://www.leighday.co.uk/News/News-2018/July-2018/Men-with-severe-disabilities-win-compensation-fo>

- c) If this is not accepted, then clear safeguards are put in place including –
- A time limit of at least three months for deadline day from the date of the migration notice;
 - Multiple reminders to be sent in different formats (letter, text, phone call, visits);
 - Extension of the deadline day to be granted on requests where the claimant has indicated that they need support, lack digital access, or any other reason that prevents them from making a claim, and the DWP should ensure that the appropriate support is put in place. Further extensions should be permitted for good reasons;
 - Grounds for backdating should be much wider and include a lack of understanding of the requirements to claim, or a lack of support to make the claim;
 - The period of backdating should be at least three months with provision for further backdating in exceptional circumstances;
 - Where there is an appointee in place for any of the legacy benefits contact should be made with them;
 - Universal support must be sufficiently resourced, available and accessible, and clear and specific information about it must be provided in the warm-up letters, the migration notices and the subsequent reminders.
- d) Regulation 48(2)(a) and (b) should be removed.
- e) Notional capital rules should be eased in relation to the transitional capital regard and the period of disregard increased for families with disabled children.
- f) Changes to the housing element in a person's award should not impact on the amount of transitional protection element, as with the childcare element.
- g) Ceasing work should not be a reason for transitional protection to come to an end, nor should becoming or ceasing to be a couple.
- h) Where earnings take a claimant outside universal credit, transitional protection should be reinstated if they come back on to universal credit within 12 months, as opposed to the proposed 3 months.
- i) The MIF is discriminatory and should not be applied at all. If it is applied, then there should be an exemption of 12 months for migrated claimants on a par with new claimants.
- j) Gateway conditions should be put in place to prevent any households with PIP/DLA in payment from migrating naturally, not just those where there is a severe disability premium.

- k) For those in receipt of PIP/DLA who have already migrated there should be retrospective transitional protection as with the severe disability premium.
- l) Compensation should still be paid for losses for those who had a severe disability premium in their legacy benefits at the point of migration but no longer meet the qualifying conditions.
- m) The monthly figures to compensate for loss of benefit on migration to universal credit set out in regulation 63(3) should be recalculated to reflect the actual losses that claimants will have experienced, including for those who may have migrated from benefits other than ESA, and also those who were overscale for universal credit.