

The Rt Hon Amber Rudd MP
Secretary of State for Work and Pensions
4th Floor
Caxton House
Tothill Street
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12 December 2018

Dear Secretary of State,

The Universal Credit (Managed Migration) Regulations 2018

We were pleased that the Government's response to our earlier advice on the Universal Credit (Managed Migration) Regulations 2018 was positive, and that the majority of our recommendations were accepted thereby reducing the risk for millions of existing claimants. We particularly welcomed the Chancellor of the Exchequer's recent Budget announcement that acted on our recommendation that out of work claimants who are currently reliant on fortnightly benefits should receive a two week run on of benefit.

As you know, the Social Security Advisory Committee considered the original draft of these regulations over the summer and, following a public consultation which attracted 455 submissions, provided its advice to your predecessor on 5 October. This advice, and the Government's response, was presented to Parliament on 5 November alongside the amended regulations. The Committee's statutory role in scrutinising this draft legislation ended at that point.

The original proposals have been subject to considerable amendments – some of which are a consequence of our advice, but not all. While we have no locus in formally engaging with the amended legislation, we do have a legitimate ongoing interest and thought it may be helpful to let you have our advice on the revised proposals as presented to Parliament.

This further advice aims to continue to build on the constructive two-way engagement that has already taken place between the Committee and Department on these proposals, and to highlight areas where we think the proposals can be further strengthened.

Minimising the risk for claimants

Transferring claims

Our report made clear the Committee's view that risk associated with Universal Credit managed migration should rest with the state rather than with the individuals affected. The Government's response committed to taking a number of positive steps to reduce the level of risk in some aspects of the proposals, including a commitment to take claims over the phone and during home visits where appropriate, and we welcome that. However, we remain concerned about one particularly significant risk that persists: the Government's expectation that everyone must make a claim to Universal Credit in order to be migrated to it.

We remain unconvinced that it is necessary to ask all claimants on legacy benefits to make a claim for Universal Credit, and to produce the necessary supporting evidence – especially in those circumstances where ID has already been verified by the Department.

We accept that automatic migration is not without its challenges. There will inevitably be some groups of claimants for whom a claim would be necessary as additional information is likely to be required, for example claimants only currently in receipt of tax credits. However, it does not follow that a new claim is necessary in all cases, and the feasibility of automatic migration should be considered, in particular, for those claimants on out of work benefits whose circumstances remain unchanged.

The Department has highlighted a number of other challenges:

- The process of making a claim provides an opportunity to 'cleanse' the personal data held by the Department.
- Universal Credit represents an entirely new approach to benefit entitlement which needs to be discussed during a face to face conversation with a work coach.
- Some existing claimants may be migrated to Universal Credit against their will if they do not wish to make a claim.

Our original report (pages 43-47) sets out why we do not believe these challenges represent a compelling case against automatic migration for all claimants and offers ideas on how to address some of these concerns. For example, there could be a requirement for claimants to have a post-migration face-to-face discussion with work coaches (within a prescribed period) during which data held can be reviewed, and the conditions of Universal Credit discussed. This would address some of the Department's concerns, but continue to safeguard the position of the claimant against a number of risks – including the risk that claimants migrate too early after

receiving a warm-up letter, and so losing transitional protection. We understand that it is already the case that some individuals are moving onto Universal Credit by mistake, without realising that they may be financially worse off.

In those cases where a claim is simply unavoidable, we believe a more collaborative approach between the claimant and the Department is appropriate with claim forms being pre-populated with verified information already held by the Government.

The Government's response to our original recommendation commits to 'exploring options'.¹ In taking this commitment forward, we would urge you to consider what is possible for each segmented claimant group, rather than defaulting to one solution for all based on aspects that may be challenging in relation to certain groups.

Defective claims

We are pleased that, in response to our earlier advice, the Department has amended the draft regulations by removing regulation 48(2) which means that as long as an effective claim is made before the deadline day, they will be eligible for transitional protection. The Department accepted this recommendation because in their view, due to the digital nature of the process, "*it is almost impossible to make a defective claim on Universal Credit because the system does not allow the claim to be submitted until relevant fields have been populated*".

This digital process does not advise an individual what is wrong with a claim, and what they need to do to put it right. The consequences of not managing the Universal Credit claims process are significant, therefore we believe the Department should consider what more can be done to reduce the risk of claimants falling out of the system. In particular, we suggest that DWP should undertake some urgent work to understand how many people start to make an online claim but fail to submit it, the reasons behind the failure to claim, and whether they go on to make a valid claim (and, if so, in what timescale). The findings, which should be published, should then be used to help design an approach that is more tailored to individuals.

We also note that the Department's response draws a distinction between a 'defective claim' and 'failed claim'.² Respondents to our consultation were concerned that where someone fails to book an interview to verify their identity or agree a claimant commitment or does so but then fails to attend, the claim will be closed (a failed claim). In those cases, individuals are often advised to submit a new claim if they want to receive benefit rather than seek to have the original decision revised. We are pleased that the Department intends to keep options open with a view to

¹ We recommend that the Department conduct a careful segmented analysis of the claimant groups who will be managed migrated so that any scope for dispensing with the need for a claim can be identified and acted upon. This analysis should be published. Where a claim for Universal Credit is unavoidable, we recommend that the Department pre-populates as much of the digital claim form as possible. Claimants should not be expected to produce data that the Department already holds, particularly if it is information that has been verified and is unlikely to have changed.

² This is sometimes also referred to as a 'closed' claim.

smooth transition and uninterrupted support. We suggest that this part of the process needs to be simpler to avoid failed claims e.g. by allowing digital acceptance of the claimant commitment in all cases, with details added at a later stage once the claim has been successfully transferred. We are also of the view that an individual who makes a successful second claim within the deadline should have a transitional element included in their award despite an initial failed claim. In their current form, the regulations appear to prevent this.

Two-week benefit run-on

The Committee welcomes the introduction of a two-week run-on of benefit for out-of-work claimants migrating to Universal Credit – regardless of whether that migration is natural or managed – from July 2020.

Those claimants subject to managed migration from the start of the trial in July 2019, who appear to be in hardship, may also be offered some support via a discretionary hardship payment. It is not yet clear whether this fund will be used to ‘mimic’ run-on payments during the test period or applied in some other way. It would be useful to know what consideration the Department has given to whether, and to what degree, the absence of the run-on payments being available during the testing period will invalidate the test and learn outcomes.

However, no additional support will be made available to claimants migrating naturally prior to July 2020. We would question the rationale for such an inconsistent approach to the introduction of the run-on. The financial challenges that will exist at the start of a claim following migration from July 2020 are no less for claimants who migrate prior to that date. Nor are the challenges significantly different between individuals subject to natural or managed migration before that date.

We recommend that the Government reconsider its proposed implementation date for this otherwise welcome policy.

Claimant safeguards

While the capacity of the Department to respond flexibly and with discretion is welcome, we remain concerned by the degree to which the safeguards in the migration process depend on the Secretary of State's discretion and administrative practice, rather than as rights that claimants can exercise. For example, none of the following is included in the legislation:

- a requirement to provide a warm-up notification;
- the need for a reminder letter before the deadline;
- protection against the risk that claimants will claim too early thereby losing entitlement to transitional protection;
- the circumstances in which DWP will cancel notices;

- discretionary nature of deadline extension (with no right of appeal and no requirement for a notice to be issued confirming that decision);
- the commitment to check if an individual has a vulnerability or other support needs before terminating legacy benefits;
- information on ‘good reason’ in respect of requesting a change of deadline;
- requirement for DWP to explain transitional protection calculation or notify the person separately about how it was calculated and how to challenge the amount.

We ask the Department to review that position and would also welcome the inclusion within the regulations of a right to access and/or be directed towards independent advice as is the case in Scotland and Northern Ireland.

Equality Assessment

Our earlier advice recommended that the Department should, by March 2019, publish a detailed impact assessment of the migration plans.³ In response to that recommendation the Department has committed to publish an assessment an assessment of the impacts “*prior to increasing the scaling of managed migration*” (currently scheduled for July 2020).

At the same time, the Department’s Explanatory Memorandum, published alongside the draft regulations, states:

There is no impact on business, civil society organisations or the public sector. However, the Department will be working with a number of civil society organisations in order to identify and support those claimants who might need extra help. The Department has concluded that no benefit recipient with a protected characteristic will be affected because there are no adverse or disproportionate negative impact on equality and the Decision Makers are content that the need to advance equality has been considered appropriately.

We accept the Department’s assertion that an impact assessment should be an iterative process, and be updated to reflect experience and learning. However, it is also important to have an initial understanding of whether, and the degree to which, proposals will impact on specific groups and whether any mitigations need to be put in place. Such an assessment is critical in avoiding a discriminatory and disproportionate impact. Therefore the Department should publish its initial equality assessment before testing commences in 2019, updating it as appropriate both

³ We recommend that, by the end of March 2019, the Department publish a detailed impact assessment of the migration plans, setting out the ways in which, and the extent to which, they may have an impact on claimants and/or their family members. We believe that such an assessment should be conducted by segmenting those migrated on the basis of protected characteristics, as well as by other key experiences such as homelessness, lone parenthood and existing legacy benefit entitlement. The assessment should extend to any impact on local authorities and third sector bodies. An action plan for mitigating the effects of any adverse impacts identified should be published alongside the assessment.

during and after the testing period. Greater transparency of the Department's equality assessment to date will help build and maintain public trust and confidence in the managed migration process.

Severe Disability Premium

The Committee's earlier advice highlighted the views of respondents about the level of transitional payments being offered following natural migration for those who were previously entitled to a legacy benefit which included the Severe Disability Premium. This payment falls short of that offered to those in the same position who lose the premium following managed migration. Neither does it include the loss of the Enhanced Disability Premium.

The Government's commitment to enable former tax credit claimants with capital over £16,000 to receive a higher amount temporarily under Universal Credit than was the case on tax credits has given us cause to reflect further on this issue. We had recommended that, whilst transitional protection should ensure claimants do not receive less under Universal Credit than they received under legacy benefits, it was equally the case that it should not lead to individuals receiving a higher amount than they would have done on a legacy benefit. Your predecessor made clear to Parliament on 5 November that she had rejected our recommendation as the Government wanted to be "more generous".

We would argue that there are a number of contradictory principles emerging in the Department's approach to certain groups. This letter has already addressed the inconsistent approach being adopted for the two week run-on of out-of-work benefits. This is another example of where two groups, who could both be described as being in a 'unique position' are being treated differently. We understand that there are other factors at play here,⁴ but feel there is a strong case for the Department to show a similar spirit of generosity towards the transitional payments available to those disabled people whose legacy benefit included the Severe Disability Premium and/or the Enhanced Disability Premium. Transitional protection for this group of claimants might usefully provide the focus of one of the Department's stakeholder engagements, bringing together organisations and individuals who have particular insight of the potential impact the current proposals.

Operational readiness

The Department has agreed with this Committee's recommendation that it should publicly define what it considers good operational readiness to be, however has stated that it intends to do so in 2020 rather than ahead of testing as we had

⁴ Developing a different entitlement assessment rules for former tax credit claimants with capital over £16,000 would require a separate administrative system giving rise to value for money considerations.

requested.⁵ Up to 10,000 people will be migrated during the testing period. We therefore consider it important that they, their advocates and DWP's delivery partners have a clear understanding of the criteria considered by the Department when determining what 'good' looks like and when making decisions about scaling up. We therefore consider 2020 to be too late.

We are pleased to note that, as part of the Department's test and learn approach, there are plans for detailed user testing which will help "*define the optimal delivery approach, with the claimant needs at the heart*" of what the Department does. It would be helpful to have some clarity about the timetable, what the testing will cover, and how claimants will be engaged in a low risk way in order to elicit meaningful results. We would hope that the findings of the research will be available in good time to inform the testing phase next year.

In conclusion, we welcome the positive steps taken by the Government in response to our report. But there is more that the Department could do to achieve a better balance of risk between the claimant and the Department. We also are concerned that it will not be possible to manage the migration successfully if the Department does not assess in advance who will be affected – and in what way – in order that potential mitigations can be put in place.

We do not under-estimate the logistical challenges faced by the Department in the period leading up to 2020 when managed migration is scheduled to be scaled up. This Committee stands ready to help support the Department where that would be helpful and is appropriate. In particular, we have already given a commitment to consider and provide feedback on DWP's communication strategy when it is ready,⁶ and to help explore options for improving the process of implicit consent in relation to Universal Credit. We are also committed to participating in the Department's ongoing stakeholder engagement activity, during which we hope the Department will take the opportunity to consult stakeholders on operational readiness.

Sir Ian Diamond
Chair

⁵ We recommend that, before the testing phase of the managed migration process commences, the Department should publicly define what it considers good operational readiness to be. It should then undertake a rigorous and transparent assessment of whether it has met those criteria (and, if not, what challenges remain). In undertaking this assessment, due consideration should be given to how effectively Universal Credit is currently operating, taking account of the evidence available after the completion of the first phase of the roll-out programme at the end of this calendar year.

⁶ Including the Department's proposals for ensuring that claimants receive communications in an accessible format, and for addressing the challenge of ensuring that communications are received by people living in vulnerable situations.