

Benefits Bulletin

Benefits Update...

31st January 2022

Issue **1** [2022]

1. Introduction

This Benefits Bulletin brings news of:

- a recent High Court ruling on a challenge to the rule change regarding disabled students and Universal Credit
- a recent High Court ruling that could have implications for those who in making the move on to Universal Credit from 'legacy benefits' find that they are significantly worse off in overall benefit income; and
- the announcement by the Department for Work and Pensions (DWP) surrounding the 'Way to Work' campaign which is focused on getting 'job-ready people' off Universal Credit and into work.

It also brings further news / a reminder about the closure of Post Office Card Accounts (POCA) for DWP benefits from November 2022. These accounts have already closed for the payment of benefits from Her Majesty's Revenues and Customs (HMRC) - namely Working Tax Credit, Child Tax Credit and Child Benefit from 30th November 2021. See this [LINK](#).



2. Disabled Students and Universal Credit

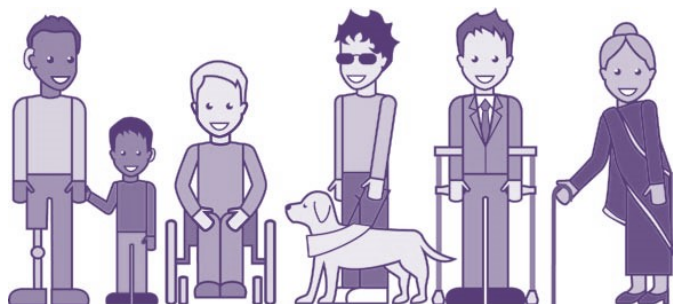
We have been bringing you news of the various rule changes to Universal Credit which have affected the circumstances in which disabled students can access this benefit.

See [Benefits Bulletin Issue 8 \[2021\]](#) (dated 14th December 2021) which confirms that the DWP have now twice changed the rules. First from **5th August 2020** and again from **15th December 2021**.



It now means that a disabled young person in education or mature disabled student cannot seek to apply for Universal Credit during their studies, irrespective of how disabled they are or what financial misfortune they experience.

In order to now be able to apply for Universal Credit whilst studying, a disabled person must be assessed as having 'limited capability for work' (with or without an assessment of 'limited capability for work-related activity') under Universal Credit or Employment and Support Allowance prior to starting their course of education and be getting Personal Independence Payment (PIP) or Disability Living Allowance (DLA) or Attendance Allowance (AA) at the material time.



The further news on this is that we can now report that in [Flinn Kays v Secretary of State for Work and Pensions](#) (judgement dated 28.1.2022) the High Court has ruled that the rule change of the **5th August 2020** was, despite all arguments to the contrary, lawful.

The case concerned a young man who was studying at Bath Spa University and whilst getting PIP he did not apply for Universal Credit until 13th October 2020. This was after he had started his studies. Because the High Court ruled that the rule change was lawful the young man's challenge to the decision that he was not entitled to Universal Credit was dismissed.

This judgement is another damning blow to disabled people who wish to attend education but need financial support from the benefit system to do so.

It is not sure whether there will be an appeal against this judgement to the Court of Appeal, but we will seek to bring you news of any developments.



3. Universal Credit: Unlawful Discrimination

A new High Court ruling in [\[2022\] EWHC 123](#) (Judgement dated 21.1.2022) has held that the overall loss of benefit income experienced by disabled claimants and claimants with disabled children when moving from 'legacy benefits' to Universal Credit under 'natural migration', is unlawful discrimination.

The claimants involved in this case were:

- disabled claimants who under the 'legacy benefit' system received the 'severe disability premium' (SDP) and the 'enhanced disability premium' (EDP) but in transferring on to Universal Credit had only received compensation designed to compensate them for the loss of the SDP not the EDP; and
- a parent who under the 'legacy benefit' system received a much greater amount in Child Tax Credit for her two disabled children than she did under Universal Credit.

To understand what has happened in these cases and what is happening more widely you need to appreciate that when Universal Credit was introduced, it was introduced for new claimants only. There was no, so called 'big bang' whereby all existing claimants of the benefits Universal Credit was set to replace (the so called 'legacy benefits') would be overnight transferred onto Universal Credit.



Instead, there exists a system of 'natural migration' and a system of 'managed migration'.

Under 'natural migration' those on legacy benefits were expected to switch over to Universal Credit upon a relevant change if their circumstances required it. Whereas 'managed migration' is the system under which those on 'legacy benefits' will, from some point in between 2022 and 2026, be selected by the DWP to make the move onto Universal Credit. The key difference between the two systems has been that under 'natural migration' there has been no promise of compensating claimants who find that the level of their Universal Credit is less than the amount they formally received in 'legacy benefits'. Whereas those moving from 'legacy benefits' to Universal Credit are entitled to an amount of 'transitional protection' to protect them against any shortfall between what they formerly received under 'legacy benefits' and what they are awarded under Universal Credit.

The High Court could not see any justifiable reason for treating those who are required to migrate on to Universal Credit from the 'legacy benefit' system differently. There was, in effect, no justifiable reason as to why those who make the move under 'natural migration' should not get any transitional protection to compensate them for the loss in overall benefit income, whilst those who move / will eventually move under 'managed migration' will.

In the High Court cases the disabled claimants triggered 'natural migration' when moving home from one local authority area to another. In the case of the mother who has two disabled children she triggered 'natural migration' when she and her boyfriend moved into the same household.



In the case of the mother of the two disabled children it was said that her loss between the two systems was c£314.00 per month for her disabled children and c£421.00 per month overall, given that both she and her partner were also disabled.

Since the Summer of 2018 we have been reporting on the ongoing saga which has evolved around people who have been in receipt of 'legacy benefits' which have included the SDP being migrated onto Universal Credit at great financial cost because the amount of Universal Credit awarded was substantially less than the amount they had previously been getting in 'legacy benefits'.



In [Benefits Bulletin: Issue 17 \[2018\]](#) (dated 21st June 2018) we reported on how the High Court in [R\(TP and AR\) v Secretary of State for Work and Pensions](#) (Judgement dated 14.6.2018) had ruled that the DWP were acting unlawfully in expecting people with the SDP to move on to Universal Credit because there was no justification for the financial loss then incurred by the claimants involved.

Then in [Benefits Bulletin Issue 1 \[2019\]](#) (dated 21st January 2019) we reported how in consequence of the ruling in the High Court, new regulations ([Statutory Instrument 2019 No. 10](#)) were introduced from **16th January 2019** which meant that those who received the SDP as part of their 'legacy benefits' were exempt from the 'natural migration' rules. This meant that even if such a person incurred a change of circumstances which would otherwise have required them to apply for Universal Credit, they did not need to do so. They could, in effect, continue to receive their 'legacy benefits'. The system of preventing SDP claimants from needing to apply for Universal Credit was known as the 'SDP Gateway'.



A year after the introduction of the 'SDP Gateway' the ruling in the High Court (and another High Court ruling in [TP, AR and SXC v Secretary of State for Work and Pensions](#) dated 3.5.2019 to a similar effect) was, upon appeal, upheld in the Court of Appeal in [R\(TP, AR and SXC\) v Secretary of State for Work and Pensions](#) (Judgement dated 29.1.2020).



What followed, as we reported in [Benefits Bulletin 1 \[2021\]](#) (dated 7th January 2021), was that further new rules ([Statutory Instrument 2019 No. 1152](#)) were introduced from **27th January 2020** which then removed the 'SDP Gateway' but in doing so introduced a system designed to ensure that those who were getting the SDP but were required to move onto Universal Credit under 'natural migration', would receive a form of transitional payment designed to buffer the loss of the SDP and therefore reduce any potential overall financial loss.

Whilst all this has all been taking place the DWP have sought to identify those cases where people getting the SDP were migrated on to Universal Credit prior to **16th January 2019** (i.e. before the introduction of the 'SDP Gateway'), in order to compensate them for the historical and ongoing loss of the SDP. It is understood that in all, 16,000 such claimants have been identified.

It is difficult to predict what the DWP's response will be to the latest ruling in the High Court. It may introduce a revised transitional protection scheme similar to the one it did following the judgements in relation to the loss of the SDP but this time make it more broader to embrace the loss of the EDP and/or disabled child amounts.

If it were to do so, then it will surely seek to identify those groups already affected and offer them some form of compensation / transitional protection payment. We will seek to bring you news either way.



Moreover, it is difficult to know what to advise claimants who have similarly been affected. The best advice to anyone who feels that they have been treated unlawfully due to the overall loss in benefit income they have incurred moving from 'legacy benefits' to Universal Credit is to ask for a Mandatory Reconsideration / appeal of the decision that has left them worse off. In doing so they should then perhaps be advised to seek expert support in seeking legal representation in the matter.

4. Way to Work Campaign and Sanctions...

On the 27th January 2022 the DWP announced details of its [Way to Work campaign](#). The aim behind this initiative is to 'support people back into work faster than ever before' and filling vacancies more quickly.

In the announcement the DWP confirmed that:

- those who are deemed capable of work 'will be expected to search more widely for available jobs from the fourth week of their claim, rather than from three months as is currently the case'
- the focus would be to 'ensure that, if people are not able to find work in their previous occupation or sector', that they will be expected to look for work in another sector and that this would be part of their requirement for receiving their benefit payment

- for the ‘small minority who do not engage, the sanctions regime will operate as usual’.

It therefore seems clear that claimants of Universal Credit who have previous work experience and who are expected to look for work as part of their ‘work-related requirements’ will be expected to broaden their choice of employment beyond that in which they are experienced after a potential one-month grace period.



When advising people in this area it is important to know that the provision under Universal Credit for this measure falls under [Regulation 97 of the Universal Credit Regulations 2013](#) (Statutory Instrument 2013 No. 376).

This regulation provides (paragraphs 4 and 5) that where a person has previously carried out work of a particular nature, or at a particular level of remuneration, a work search requirement and a work availability requirement must be limited to work of a similar nature, or level of remuneration, for a period of no more than 3 months from the date of claim providing that the claimant will have reasonable prospects of obtaining paid work in spite of any such limitations.



Moreover, it provides (paragraph 6) that where the person concerned has a physical or mental impairment that would have a ‘substantial adverse effect’ on their ability to carry out work of a particular nature, or in a particular location, any work search or work availability requirement must not relate to work of in such a nature or in such location.

Therefore, when advising people in relation to this issue please bear in mind that even if a person has previous work experience, the time they will be given to look for work may be less than a month if despite their experience it is considered that they do not have a ‘reasonable prospect’ of obtaining paid work employment in that area.

Moreover, where a claimant has poor physical or mental health which may be considered to have a ‘substantial adverse effect’ on their ability to carry out work of a particular nature, or in a particular location, then they should not be expected to have to undertake work of such nature or in such a location.



The Universal Credit (and NEW Style JSA / Jobseeker’s Allowance) rules enable a person to be sanctioned if it is considered that without ‘**good reason**’ they have failed to apply for a particular vacancy, attend an interview for a particular vacancy or have failed to take up a genuine offer of paid employment.

What may constitute ‘good reason’ is not defined in the regulations. In [CS/371/1949](#) it was held that ‘good cause’ (the predecessor of ‘good reason’) means:

“... some fact which, having regard to all the circumstances (including the claimant’s state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did.”

In [R\(JSA\)7/03](#) it was confirmed that a person may have ‘good cause’ if their failure is connected to a conviction or belief which formed part of a recognisable religious, ethical or moral code. The decision held that, for example, a person may have objections to employment involving the handling of tobacco or alcohol, religious objections to Sabbath working, objections to working with equipment which could be used to destroy animal or human life and religious objections and to working with employees of the opposite sex.

See [ADM Chapter K2: Good Reason](#) (and in particular paragraphs K2115 to K2300) which contains the advice given by the DWP to its staff on what things may amount to 'good reason' when considering Universal Credit sanctions.



Please see our [Information Guide 3 - Universal Credit: The Claimant Commitment](#) for more information about the 'work-related requirements that can apply as part of a person's Universal Credit claim.

Note: The provisions for New Style JSA are identical. See [Regulation 14 of the Jobseeker's Allowance Regulations 2013](#) for more information. However, the provisions relating to people who are getting Income-based Jobseeker's Allowance have some differences. So, in this situation do seek further information and advice as necessary.

5. POCA...

As already reported in our [Benefits Bulletin Issue 5 \[2021\]](#) (dated 10.10.2021) Post Office Card Accounts (POCA) are due to close for the payment of DWP benefits from 30th November this year.

You should know that the DWP has started sending letters to customers who are receiving benefits or pensions payments via a POCA to advise them of the closure and asking them for details of their bank account / credit union account so their benefits and pensions can be paid into that alternative account.



It is understood that for those who do not have a bank account, then they will, at some point automatically be moved over to the new Payment Exception Service (PES) which will deliver the payment of benefits using a digital voucher.

People can choose whether they receive the voucher via a text message, an email or a re-useable plastic card. See our Benefits Bulletin Issue 5 [2021] for further details.

Whilst it is understood that the POCA deadline is 30.11.2022 the DWP have committed to moving everyone off the POCA system by this Summer.

There is a dedicated DWP customer service centre helpline for those who need help and guidance on this matter. The number to contact is 0800 085 7133 (or Textphone: 0800 085 7146).

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