**Please read before using this template:**

* Use this template if:
	+ your client received Child Tax Credit including an element for a Qualifying Young Person (QYP) and has been migrated to Universal Credit (UC), and
	+ Your client’s QYP’s education has been interrupted temporarily due to illness / disability, and
	+ Your client is receiving less in UC than they did in legacy benefits before migration because their child does not count as a QYP for UC (and their UC transitional element does not account for this).
* To complete this template, replace any text in [square brackets]including where that text is in [CAPSLOCK], then return the text to lower case, without brackets.
* Consider, address and then delete all prompts before posting. If you have deleted paragraphs that do not apply in your case, check numbering is still sequential.

**Delete box before posting**

|  |  |
| --- | --- |
| **First-tier Tribunal (Social Entitlement Chamber)** | **Tribunal Ref: [REFERENCE]** |

**BETWEEN**

|  |  |
| --- | --- |
| **[NAME]** | **Appellant** |
| **-and-** |  |
| **Secretary of State for Work and Pensions** | **Respondent** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Reply for appellant**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Decision appealed and outcome sought**

1. [NAME] challenges the decision dated [DATE] awarding [her/him] benefit after managed migrating onto Universal Credit (‘UC’) on the ground that the transitional element has been incorrectly calculated.

**Background – managed migration transitional protection**

1. The Secretary of State for Work and Pensions (‘SSWP’) is in the process of ending income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Child Tax Credit and Working Tax Credit (collectively referred to as ‘legacy benefits’) and replacing these with UC. The process by which a recipient of legacy benefits is, at the instigation of the SSWP, moved to UC is referred to as ‘managed migration’[[1]](#footnote-1).
2. The SSWP has committed, on multiple occasions, to ensuring that nobody is worse off in cash terms at the point of transfer to UC[[2]](#footnote-2). To this end, the SSWP has made provision for a managed migration transitional element.
3. In this case [NAME] has found [her/him]self worse off in cash terms at the point of transfer to UC. This is due to the SSWP not correctly calculating the transitional element.

**Summary of the issue**

1. In broad terms, the way that the managed migration transitional element is calculated involves comparing a ‘total legacy amount’ (representing the amount of legacy benefits a claimant had been entitled to) with an ‘indicative UC amount’ (representing the amount of UC a claimant will be entitled to). Where the indicative UC amount is lower than the total legacy amount, the SSWP awards a transitional element equal to the amount by which the total legacy amount exceeded the indicative UC amount.
2. The rules for this are set out at regs 53-55 of the Universal Credit (Transitional Provisions) Regulations 2014 (‘the TP Regs’).
3. These regulations require various assumptions to be made when determining the indicative UC amount. If the application of those assumptions means that the indicative amount of UC calculated is higher than the actual UC award which will result from the UC claim, then that has the effect that the transitional element does not actually compensate the claimant for the loss that moving to UC causes, leaving the claimant worse off in cash terms at the point of transfer.
4. That is what has happened in the present case; however, it has only happened because the SSWP has incorrectly applied an assumption when calculating the indicative UC amount. The specific assumption that is wrongly applied is at reg. 54(2)(a) TP Regs - the SSWP calculated the indicative UC amount as if the claimant would get an element for the young person that they got a Child Tax Credit (‘CTC’) amount for, when that is not permitted under UC.
5. Properly understood, reg.54(2)(a) TP Regs provides that a person who gets an award of CTC that includes a CTC element in respect of a young person who counts as a qualifying young person for UC, should have their indicative UC amount calculated as if they will get a child element in their UC for that young person.
6. However, in this case the young person counts as a qualifying young person for CTC but not for UC- the indicative UC amount, under the relevant assumption, should not include a child element in respect of the young person.
7. The SSWP has therefore incorrectly included a child element in the indicative UC amount when she should not have done. The SSWP then awarded UC but, correctly, did not include an amount for the child element in the actual UC award resulting from the UC claim. The result is that the transitional element does not make up the shortfall between what the claimant gets on UC and what they used to have on legacy benefits, leaving the claimant worse off in cash terms at the point of transfer.

**Relevant Facts**

1. [NAME] is a parent to [CHILD’S NAME] who had turned 16 in [MONTH AND YEAR].
2. [NAME] had been receiving Child Tax Credit [SPECIFY ANY OTHER LEGACY BENEFITS].
3. [DATE]: [CHILD’S NAME] enrolled on a [SPECIFY COURSE OF EDUCATION], though [s/he] was unable to attend due to ill health.
4. [DATE]: [NAME] was issued with a migration notice providing [her/him] with a deadline to make a claim for UC.
5. [DATE]: This was the day before [NAME] made [her/his] claim for UC. On this day [CHILD’S NAME] was aged 16 and was no longer enrolled on a course of education. [NAME] continued to be entitled to CTC while [CHILD’S NAME]’s education was interrupted due to illness or disability.
6. [DATE]: [NAME] made a claim for UC. This claim was made before [her/his] deadline for claiming UC as part of the managed migration process.
7. [DATE]: the SSWP made a decision on [NAME]’s UC claim and awarded UC. The calculation of the award included a transitional element.
8. [DATE]: [NAME] requested a mandatory reconsideration.
9. [DATE]: the SSWP refused to revise the award.
10. [DATE]: [NAME] submitted an appeal.

**Argument in summary**

1. [NAME] submits:
	1. First, that although [NAME]’s child – [CHILD’S NAME] – is a ‘QYP’ under the definition used for tax credits, [s/he] is not a ‘QYP’ under the definition used for UC;
	2. Second, that the definition of ‘QYP’ is important to the calculation of the managed migration transitional element;
	3. Third, that the SSWP has wrongly used the tax credits definition of ‘QYP’, rather than the UC definition, when calculating [NAME]’s transitional element. The consequence of the SSWP’s mistaken approach is that the SSWP wrongly determined [THAT NAME DID NOT QUALIFY FOR THE TRANSITIONAL ELEMENT / THE AMOUNT OF TRANSITIONAL ELEMENT NAME QUALIFIED FOR]. When understood correctly [NAME QUALIFIED FOR A TRANSITIONAL ELEMENT / QUALIFIED FOR A GREATER AMOUNT OF THE TRANSITIONAL ELEMENT].
2. It should be noted that both regulations 53 & 54 TP Regs refer to the migration day. ‘Migration day’ is defined, at reg 49, as follows: ““Migration day”, in relation to a qualifying claim, means the day before the first day on which the claimant is entitled to universal credit in connection with that claim” i.e. the day before the first day of the UC award. Regs 53(1), and reg.54(1) TP Regs, both make clear that the transitional element is to be calculated by reference to the claimant’s circumstances on the migration day.

*First - qualifying young person*

1. The definition of QYP in the UC Regs differs from the definition used in the Child Tax Credit Regulations 2002 (‘the CTC Regs’). On the migration day (the day prior to the first day of the UC award) [CHILD’S NAME] was a QYP for the purposes of tax credits. This is because the CTC Regs disregard any interruption to a full-time course of education or approved training for any period due to illness or disability provided that the Commissioners consider it reasonable to do so (reg.5(7) CTC Regs).
2. Whereas, reg 5 of the UC Regs defines qualifying young person as follows:

***Meaning of “qualifying young person”***

***5****.—(1) A person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of Part 1 of the Act and these Regulations—*

*(a) up to, but not including, the 1st September following their 16th birthday; and*

*(b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled on, or accepted for, approved training or a course of education—*

*(i) which is not a course of advanced education,*

*(ii) which is provided at a school or college or provided elsewhere but approved by the Secretary of State, and*

*(iii) where the average time spent during term time in receiving tuition, engaging in practical work or supervised study or taking examinations exceeds 12 hours per week.*

*(2) Where the young person is aged 19, they must have started the education or training or been enrolled on or accepted for it before reaching that age.*

*(3) The education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.*

*(4) “Approved training” means training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 which is approved by the Secretary of State for the purposes of this regulation.*

*(5) A person who is receiving universal credit, an employment and support allowance or a jobseeker's allowance is not a qualifying young person.*

1. Applying that to this case then on the migration day [CHILD’S NAME] did not fall into the UC definition of ‘QYP’. This is because the UC rules do not disregard interruptions in education when determining whether a young person is in full time education.

*Second – ‘qualifying young person’ and the transitional element*

1. Regulation 52 TP Regs states that a transitional element is to be included in the calculation of an award if ‘the total legacy amount’ (the amount determined in accordance with reg 53 TP Regs) is greater than ‘the indicative UC amount’ (the amount determined in accordance with reg 54).
2. The relevant parts of regulation 54 are as follows:

***The transitional element - indicative UC amount***

***54****.—(1) The indicative UC amount is the amount to which a claimant would be entitled if an award of universal credit were calculated in accordance with section 8 of the Act by reference to the claimant’s circumstances on the migration day, applying the assumptions in paragraph (2).*

*(2) The assumptions are—*

*(a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person in respect of whom the individual element of child tax credit is payable;*

*[…]*

*(7) The calculation of the indicative UC amount is to be based on the information that is used for the purposes of calculating the total legacy amount, supplemented as necessary by such further information or evidence as the Secretary of State requires.*

1. Regulation 54(2)(a) TP Regs requires that, in determining the indicative UC amount, the SSWP make the assumption that the claimant is responsible for specified qualifying young persons. The consequence of this assumption is that, where the assumption applies and a claimant is assumed to be responsible for a specified qualifying young person, the claimant will – when the SSWP calculates the amount to which the claimant would be entitled if an award of UC were calculated in accordance with section 8 of the Welfare Reform Act 2012 (per reg 54(1) TP Regs) – have a child element included in the calculation in respect of the specified qualifying young person (per reg 24(1) UC Regs).
2. If a child element is included in the calculation of the indicative UC amount in respect of a particular qualifying young person then that will increase the amount of the indicative UC amount relative to the total legacy amount, making it less likely that the claimant qualifies for a transitional element (or, if they do qualify for a transitional element, the amount that they qualify for will be much lower than it would have been were the child element not included in the calculation).

*Third – SSWP has used wrong definition of ‘qualifying young person’ when calculating the transitional element*

1. References to ‘qualifying young person’ in the TP Regs, as defined by reg 2 TP Regs, have “the same meaning as in the Universal Credit Regulations, but see also regulation 28” (regulation 28 is not relevant in this case). ‘The Universal Credit Regulations’ are defined by reg 2 TP Regs as “the Universal Credit Regulations 2013” (‘the UC Regs’).
2. However, the phrase ‘qualifying young person’ in reg 54(2)(a) TP Regs has the meaning set out at reg 2 TP Regs i.e. the meaning set out in the UC Regs. [CHILD’S NAME] does not fall within that definition. This can be made clearer by incorporating the definition of qualifying young person into reg 54(2)(a) TP Regs as follows:
	1. The correct reading of reg 54(2)(a) is as follows:

*(2) The assumptions are –*

*(a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person [****as defined in the UC Regs]*** *in respect of whom the individual element of child tax credit is payable;*

* 1. The incorrect reading of reg 54(2)(a) (which has been wrongly applied by the SSWP in this case) is as follows:

*(2) The assumptions are –*

*(a) if the claimant is entitled to an award of child tax credit, the claimant is responsible for any child or qualifying young person [****as defined in the CTC Regs]*** *in respect of whom the individual element of child tax credit is payable;*

1. [CHILD’S NAME] is not a QYP (as defined in the UC Regs) in respect of whom the individual element of child tax credit is payable. As such, the indicative UC amount should be calculated in accordance with reg.54(1) and the assumption at reg.54(2)(a) is irrelevant to the calculation.
2. Were the indicative UC amount to be calculated without the inclusion of a child element then [NAME] would qualify for a higher transitional element ensuring that she is no worse off in cash terms at the point of transfer.

**Conclusion**

1. The SSWP included a child element in respect of [CHILD’S NAME] in the indicative UC amount when she should not have done. The assumption at reg.54(2)(a) TP Regs applies only where the young person for whom the claimant gets a CTC child element is a QYP as defined in the UC Regs. [NAME]’s child, [CHILD’S NAME], is not a QYP as defined in the UC Regs. The SSWP correctly worked out they were not a QYP for the purposes of the UC award when it came to actually calculating the award (as opposed to the indicative amount).
2. The result of that error is that [NAME]’s transitional element does not make up the shortfall between what she gets on UC and what they used to have on legacy benefits, thus – contrary to the longstanding policy intent - leaving her worse off in cash terms at the point of transfer.
3. The tribunal must decide that the indicative UC amount was, by including a child element in the indicative UC amount in respect of [CHILD’S NAME], incorrectly calculated. Instead, the indicative UC amount must be calculated without the inclusion of a child element in [NAME]’s indicative UC amount in respect of [CHILD’S NAME]. Such an approach will ensure an outcome consistent with the longstanding policy intent.

[REPRESENTATIVE’S NAME AND ORGANISATION]

04/10/2024

1. The process is set out in Part 4 of the Universal Credit (Transitional Provisions) Regulations 2014 and is briefly summarised in this article: [askcpag.org.uk/content/209694/managed-migration-moving-to-universal-credit](https://askcpag.org.uk/content/209694/managed-migration-moving-to-universal-credit) [↑](#footnote-ref-1)
2. For example:

“No-one will experience a reduction in the benefit they are receiving as a result of the introduction of Universal Credit. At the point of transition onto the new system, those households whose circumstances remain unchanged and who would otherwise experience a reduction in income will receive cash protection” [gov.uk/government/publications/universal-credit-welfare-that-works](https://www.gov.uk/government/publications/universal-credit-welfare-that-works)

“At the point of moving over to Universal Credit (for those claimants moving through the managed migration process), legacy benefit claimants will be assessed for transitional protection and paid where appropriate. The aim of this temporary payment is to maintain benefit entitlement at the point of transition […]” [gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022](https://www.gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022)

“The Government has given a commitment that, at the point of transition, no eligible customers who are invited to ‘Move to Universal Credit’ and whose circumstances remain the same will have a lower entitlement to Universal Credit than they had to legacy benefits. Where necessary, eligible customers will be awarded Transitional Protection.” [questions-statements.parliament.uk/written-statements/detail/2024-05-21/hcws485](https://questions-statements.parliament.uk/written-statements/detail/2024-05-21/hcws485) [↑](#footnote-ref-2)