

Beyond UC migration – current challenges and future changes

Issues at migration to UC

Mark Willis, CPAG in Scotland | 27 November 2025



Introduction

This opening session covers some of the issues that arise or affect the first assessment period after migrating to universal credit (UC).

Missed final deadline

The final deadline is the last day of a UC assessment period that would have started on the deadline day.¹ For example, for a migration notice with a deadline of 28 October, the final deadline is 27 November. Claimants are notified of the deadline day on the migration notice, and of a new deadline day if an extension is granted but are not notified of the final deadline. The final deadline cannot be extended. A claim made *on or before* the final deadline is a qualifying claim for transitional protection.² A claim made *after* the final deadline is not a qualifying claim for transitional protection.

If a claimant has missed the final deadline, their legacy benefits have already been terminated for over two weeks. In practice, there is no other option to receive means-tested benefits other than claiming UC as soon as possible. The UC claim can be backdated up to one month only on the following grounds:³

- disability;
- medical evidence of illness preventing a claim;
- notification of expiry of entitlement to legacy benefit was not sent to the claimant before the date it expired (arguable if migration notice sent to wrong address?); or
- DWP computer system inoperative

and in all the above:

- as a result of those circumstances the claimant could not reasonably have been expected to make the claim earlier.

The circumstances must have continued up to the date of UC claim and for joint claims, must apply to both members of a couple.

Even if the UC claim is backdated to before the final deadline, it is not a qualifying claim and cannot qualify for a transitional element under managed migration (technically backdating for UC means the time for claiming is extended, it is not treated as made on an earlier date). However, it may allow the claimant to qualify for the **transitional SDP element** instead:⁴

(a) was entitled (or was a member of a couple the other member of which was entitled) to an award of income support (IS), income-based jobseeker's allowance (JSA) or income-related employment and support allowance (ESA) that included a severe disability premium (SDP) within the month immediately preceding the first day of the award of UC; and

(b) continued to satisfy the SDP conditions up to and including the first day of that award (entitled to relevant disability benefit, living alone, no-one receiving a carer's benefit).

¹ [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 46(4)

² [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 48

³ [The Universal Credit, etc \(Claims and Payments\) Regulations 2013](#) Reg 26

⁴ [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Schedule 2

Example

- Claimant receives a migration notice with a deadline of 28 October.
- The final deadline is 27 November.
- The last day of the two-week run-on of ESA is 10 November.
- A UC claim made on 9 January is backdated to 10 December, which is the first day of the UC award.

Claimant was entitled to ESA with SDP within the month immediately preceding the first day of UC award (10 November to 9 December) and continued to meet the conditions for the SDP up to and including 10 December.

A claimant who first qualifies for the transitional SDP element may also qualify for additional amounts to make up for the disability premium in IS/JSA, the enhanced disability premium in IS/JSA/ESA or the disabled child element lower rate in child tax credit (CTC).

Lost income/transitional protection due to gap between legacy benefits and UC?

- *Revision of decision to terminate ESA?*
The mandatory reconsideration of the decision to terminate ESA would be on the grounds that the deadline can still be extended on the Secretary of State's own initiative, as the regulations do not stipulate this can only be done before it has passed. If successful, a new deadline applied retrospectively would allow ESA/housing benefit (HB) to be reinstated up to end of the two-week run-on from the new date, which may then allow transitional protection.
- *Judicial review against refusal/failure to extend deadline further?*
The deprivation of possessions (ESA/HB) amounts to a breach of human rights and unjustifiable discrimination against disabled people.
- *Complaint re failure of enhanced support journey?*
The Independent Complaints Examiner considered a complaint from a tax credits claimant who applied for UC after hearing a radio advert and seeing a leaflet.⁵ This was before receiving a migration notice, thereby missing out on transitional protection. It was found that DWP staff had not followed guidance or given correct information and recommended that DWP calculate and make a payment for the transitional protection lost; £11,000, with ongoing payments. Similar complaints may be made for clients who have been failed by the enhanced support journey.

UC claim 'closed'?

If a UC claim was submitted before the final deadline, it is a qualifying claim for transitional protection and the DWP must decide on entitlement. Caselaw has clarified that there is no legal concept of 'closing' claims and found:⁶

- Suspension and termination cannot logically be invoked as a means of disallowing a new claim for benefit.

⁵ [Independent Case Examiner Annual Report 2024/25](#) case study, page 20

⁶ [PHC \(formerly HCU\) v Secretary of State for Work and Pensions \(UC\): \[2024\] UKUT 340 \(AAC\)](#)

- Failure to provide evidence in response to a request is not, in and of itself, a sufficient reason for disallowing a claim for benefit.
- The ID check is not strictly part of the process of making a claim at all.

The decision on the claim is subject to mandatory reconsideration and appeal, at any stage of which it is open to the claimant to prove their identity.⁷ If the decision on the qualifying claim is that there is no entitlement to UC, transitional protection does not apply to any subsequent award.⁸ DWP guidance says if a claim is 'closed' due to verification failures, a subsequent claim by the final deadline is treated as a qualifying claim and backdated to the start date of the original claim.⁹ If the final deadline has passed, a new claim is advisable, as well as a mandatory reconsideration/appeal against the decision to 'close' the qualifying claim, ie, on the grounds that the claimant was entitled to UC.

LCW/LCWRA element missing?

Transitional protection for ESA claimants includes being treated as having limited capability for work (LCW) / limited capability for work-related activity (LCWRA) as assessed for ESA.¹⁰ This means for claimants with LCW only, being in the work preparation group, and for people who were assessed before 3 April 2017 the LCW element is included from the start of the UC award if it was included in their ESA.¹¹ For claimants with LCWRA, it means no work-related requirements and the LCWRA element is included from the start of the UC award.

If ESA has ended and the claimant has missed their final deadline, the new claim should still include transitional protection as above, on the basis that the claimant is still entitled to NI credits on the basis of the assessment of LCW/LCWRA.¹²

For all new claims, the DWP arranges a face-to-face interview with a work coach at a Jobcentre office, to verify ID and accept the claimant commitment. This can be done by home visit, or in a hospital or care home, or by telephone, but the DWP no longer uses Government Gateway or GOV.UK Verify for online verification.¹³ The DWP has acknowledged problems with information from ESA coming through to UC systems and work coaches but claimed to have introduced a fix so that this happens automatically.¹⁴

The DWP may reassess claimants to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition.¹⁵ The LCW/LCWRA status cannot be removed without a new determination of capability for work.

Transitional element too high?

⁷ See [Welfare Rights | UC claims 'closed' due to failure to establish ID](#)

⁸ Reg 57, UC(TP) Regs

⁹ [whatdotheyknow.com/request/managed_migration_guidance_may_2#incoming-2682842](#) 14. Move to UC – overview - specialist teams V9

¹⁰ [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 19

¹¹ [The Employment and Support Allowance and Universal Credit \(Miscellaneous Amendments and Transitional and Savings Provisions\) Regulations 2017](#) Sch 2 para 13

¹² [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 21

¹³ [How to verify your identity for Universal Credit - GOV.UK](#)

¹⁴ [Neil Couling on X: " So we deployed the new feature \(fix\) on Monday to allocate people, who declare as formerly in receipt of ESA, to the correct conditionality group \(after a check they were on ESA\). It's a "fix forward" so cases were already in the system they will need the manual correction." / X](#)

¹⁵ [The Universal Credit Regulations 2013](#) Reg 41

If the claimant's transitional element is higher than expected, there is a risk that the DWP may revise this decision in future and seek to recover an overpayment. For example, the DWP may change its policy about not including a housing costs element in the indicative UC amount if no HB is in payment. However, it may only do this if it is satisfied that the information held on migration day was inaccurate or incomplete due to claimant misrepresentation, failure to disclose or official error.¹⁶

Advisers can request a breakdown of how the DWP calculated the transitional element using a tool on CPAG website, but in practice detailed explanations are rare.¹⁷ The claimant can confirm circumstances/income have been declared correctly and ask the DWP to confirm that the amount is correct according to its interpretation of the legislation ie, to state that it has not made an error. Arguably, any future change in the DWP's interpretation does not mean that the original decision was inaccurate due to official error, so the DWP has no grounds to revise the decision. Alternatively, if the DWP carries out a revision generating an overpayment, there is a defence of 'legitimate expectation' to argue that the DWP should exercise its discretion not to recover.¹⁸

No SDP in payment on migration day?

Claimants moving from ESA in the support group who are not in receipt of the severe disability premium (SDP) on migration day will usually be better off on UC. However, if it later emerges that they met the conditions for the SDP before claiming UC, (eg, because of an award of adult disability payment) they are worse off compared to how much they should have been getting on ESA. In this case:

1. Request a supersession of income-related ESA from the date the client first met conditions of entitlement to SDP. This can be backdated to the date of change if reported within 13 months of the change and good reason for late notification is accepted, or backdated without limit if it is due to a qualifying benefit award. This can still be actioned even though ESA has now ended, so that the client was entitled to ESA including SDP on migration day.
2. When ESA has been superseded to include the SDP, request the UC entitlement decision in the first assessment period is revised, (with reason for lateness):
 - a. If there was a transitional element in the original decision, request that this is revised to reflect the SDP in payment on migration day. The rule says the ESA supersession should have been requested *before migration day*.¹⁹ However, the DWP has said in stakeholder meetings²⁰ they would still revise in similar situation, and there is a general right of MR/appeal against the decision anyway, which has been shown to be wrong due to retrospective award of SDP.²¹

¹⁶ Reg 62, UC(TP) Regs

¹⁷ [Welfare Rights | Request a breakdown of the calculation of a universal credit transit...](#)

¹⁸ askcpag.org.uk/content/209502/overpayments-legitimate-expectation-human-rights

¹⁹ [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 62 (1)(b)

²⁰ [Universal_Credit_Transitional_Protection_Jan_24.pdf](#)

²¹ [MW v Secretary of State for Work and Pensions \(IS\): \[2022\] UKUT 59 \(AAC\)](#) para 30: "Such entitlement may be conferred by a decision made retrospectively."

- b. If there was no transitional element in the original decision, the client now meets the conditions for the 'transitional SDP element' under [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Sch 2.

However, a claimant who was entitled to the SDP in ESA but was not receiving it on migration day because they were temporarily in hospital or a care home for over 28 days will not be able to qualify for transitional protection to make up for the loss of the SDP when they return home. In this case, there may be an argument that depriving of possessions (ESA) amounts to unjustifiable discrimination against disabled people.

Capital

Some ESA claimants might only disclose that their capital has exceeded £16,000 when they claim UC. On the face of it, this means that they have been overpaid ESA/HB and are not entitled to UC. However, it is important to check whether some of the capital can be disregarded to bring the total below £16,000:

- Cost of living payments £650 in 2022/23 and £900 in 2023/24 plus disability payments of £150 in both years (total £1,850 or £2,150 if couple both qualified for disability payments) if remain unspent are disregarded indefinitely.²²
- Arrears of benefits received within 12 months are disregarded.²³
- Arrears or concessionary payments over £5,000 made by DWP due to official error or error of law are disregarded for legacy benefits and a UC award beginning within one month, until end of UC award.²⁴
- Compensation for personal injury disregarded for 12 months or if held in trust or used to buy an annuity.²⁵
- Payments from special compensation schemes listed in the regulations are disregarded indefinitely.²⁶ These include payments relating to Windrush, Post Office Horizon scandal, historical institutional child abuse, infected blood, LGBT armed forces, Grenfell, and certain terrorist attacks.

If the claimant seeks to spend the capital, this may be considered deprivation of capital (not if used to repay debts or on reasonable goods and services) and does not change the past period of overpayment on income-related ESA/HB.

Housing benefit and UC housing costs element discrepancies?

Moving from HB to UC housing costs element should usually mean the same amount is payable. However, there are potential discrepancies as the DWP decision maker is not bound to follow the previous HB decision made by the local authority. For example, the claimant may have had HB reduced due to the bedroom tax with a discretionary housing payment (DHP) to make up the shortfall. But the DWP may decide that the claimant meets the criteria for an additional bedroom. This means a higher housing costs element and no need for a DHP. The transitional element is based on a comparison of legacy benefits (not including DHP) and UC, so the claimant is left worse off by the amount of the DHP. One option is to request a late review of the HB decision, so that an additional bedroom is included. Or, if there has been a

²² [ADM Chapter H1: Capital](#) paras H1766-7

²³ [The Universal Credit Regulations 2013](#) Sch 10 para 18

²⁴ [The Universal Credit \(Transitional Provisions\) Regulations 2014](#) Reg 10A

²⁵ [The Universal Credit Regulations 2013](#) Reg 75

²⁶ [The Universal Credit Regulations 2013](#) Reg 76

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change in the first assessment period which happened after migration day, the transitional element is not reduced or revised.

Example

Client on ESA and HB. Rent on 2-bedroom housing association property is £120 pw = £520 pcm. Local authority has applied the bedroom tax.

ESA support + SDP + enhanced disability premium = £244.65 pw x 52/12 = £1,060.15 a month

HB £103.20 pw (bedroom tax 14% deduction) x 52/12 = £447.20

Total legacy benefit = £1,507.35

+ DHP £16.80 pw to mitigate bedroom tax (= £72.80 pcm)

Client applies for UC, providing information on need for overnight carer. The UC decision-maker allows two bedrooms.

UC with LCWRA element = £823.41

+ housing costs element £520 (no bedroom tax)

Indicative UC amount = £1,343.41

Transitional element = £163.94

DHP stops - client worse off by £72.80 pcm

The advice in this case is to query why HB had not allowed an additional bedroom – the client requests a late review with information on need for overnight carer and reason why this change was not reported earlier. HB is revised to allow an additional bedroom. The transitional element may then be revised because the total legacy amount has increased as follows:

ESA support + SDP + enhanced disability premium = £244.65 pw x 52/12 = £1,060.15

HB £120 pw (no bedroom tax) x 52/12 = £520

Total legacy benefit = £1,580.15

UC with LCWRA element = £823.41

+ housing costs element £520 (no bedroom tax)

Indicative UC amount = £1,343.41

Transitional element = £236.74

The claimant may be entitled to arrears of HB but would also be asked to repay the DHP.

As covered in the next session, if the housing costs element is changed to allow an additional bedroom in the second or subsequent assessment period, the transitional element is reduced, the DHP stops and the claimant is worse off by the amount of the DHP.