

ADVICE NI POLICY NEWSLETTER

FEBRUARY 2019



Welcome to the latest in our series of Advice NI policy eNewsletters '... think ...'.

IMPORTANT: In order to receive '...think...' you must click [this link](#).

Amber Rudd has now settled into her role as Secretary of State, and her introductory session with the Work and Pensions Committee is an interesting watch.

This evidence session was swiftly followed by a raft of announcements in relation to the rollout and operational impact of Universal Credit which are outlined in this edition of '...think...'.

Given all the changes in what is a fast-moving environment, Advice NI is delighted to be able to offer FREE Universal Credit and Personal Independence Payment awareness sessions, aimed at groups with 15 or more participants. These sessions are available for a limited period (currently up to the end of March 2019). Contact training@adviceni.net

Please email us at policy@adviceni.net to discuss any policy matters, content, feedback or comments.

We'd be happy to share ideas on areas to focus on, content suggestions and other ways of getting involved.

Best regards,

The Policy Team.

LATEST NEWS

Universal Credit

Government sets out fresh approach to Universal Credit

The Government will:

- seek powers for a DWP managed migration pilot in 2019;
- begin the pilot from July 2019 (will not affect the timeline for delivering Universal Credit, which will be completed in 2023);
- establish a Severe Disability Premium Gateway prevents legacy claimants who are in receipt of the Severe Disability Premium from moving naturally to Universal Credit;
- provide transitional payments to those claimants who were previously in receipt of Severe Disability Premium and have moved to UC before the Gateway came into force;
- scrap plans to extend the two-child limit to new universal credit claimants with children born before April 2017;

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-11/HCWS1243/>

Department for Communities announce delay to Managed Migration of Universal Credit

In Northern Ireland, Managed Migration of legacy benefit claimants to Universal Credit was intended to begin in July 2019. DfC has announced that this will be delayed until 2020, while still intending to complete all migration by 2023.

Note: any claimant who is obliged to 'naturally' migrate from legacy benefits to Universal Credit in the meantime, will NOT receive any transitional protection to mitigate any financial loss incurred.

DfC state:

"...we had previously advised of our plans to start [Managed Migration] in July 2019, however the DWP recently announced that it would commence a pilot in 2019. It was also recently announced that the managed migration phase would now complete in December 2023.

In light of these changes, and to ensure Northern Ireland has the opportunity to consider learning from the pilot in Great Britain, the Department for Communities will not now commence managed migration in July 2019. Instead, we will defer the beginning of this phase until 2020 and aim to complete by the end of 2023. We will monitor progress in DWP

during the pilot phase and keep you updated on the precise arrangements for Northern Ireland Claimants."

Please contact policy@adviceni.net for a copy of the correspondence released by DfC on this issue.

DWP's assessment of income ruled unlawful by High Court

CPAG & Leigh Day sought a judicial review of decisions affecting four lone mothers who suffered financial losses due to the UC income calculation system.

The decisions related to an assessment period when they were treated as receiving two months' salary in that assessment period, but were allowed to retain only one work allowance [£192] from the combined salary for the two months.

The claimants also argued that the method of calculation resulted in fluctuations regarding the amount of universal credit payable.

The High Court declared 'the regulation 54 of the 2013 Regulations provides that -

'(1) The calculation of a person's earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.....

It would be odd in the extreme if the calculation method in regulation 54 meant that a claimant would in respect of one month's salary be prevented from retaining the amount of the work allowance for that month because the salary happened to have been paid in the same assessment period as another month's salary, with the consequence that the two months' salary were combined and only one amount of work allowance could be deducted.'

The DWP had argued that it was up to the employer to alter their payroll systems to accommodate this. The High Court ruled this out, saying that 3 of the claimants had tried this, but were denied by the employers. And, ultimately:

'The Secretary of State must apply the legislation as it currently is and as correctly interpreted. The defendant [DWP], therefore, erred in treating the combined salary for those two months' as earned income in respect of that assessment period for the purposes of calculating the amount of universal credit payable.'

<https://www.bailii.org/ew/cases/EWHC/Admin/2019/23.html>

Also see Advice NI coverage on this issue <https://www.bbc.co.uk/news/uk-northern-ireland-44131317>

Change to benefits for mixed-age (over & under retirement age) couples

Previously, when one of a mixed-age couple reached state retirement age before their partner, they could claim means tested Pension Credit as a couple. An example is a low-income couple choosing to claim Pension Credit as opposed to Employment & Support Allowance. Pension Credit is usually much more financially generous, so is the better financial option (depending on individual circumstances).

As a result of changes announced by the Government, this will no longer be an option, both members of the couple must have reached state retirement age in order to claim pension-age benefits. This change will come into force from 15 May 2019. The DWP states:

'Mixed age couples with a partner under State Pension age already in receipt of Pension Credit or pension-age Housing Benefit at the point of change will be unaffected while they remain entitled to either benefit.'

'If a mixed age couple claim working age benefits, the pensioner partner will not be subject to work-based conditionality. Any work-based conditionality for the younger partner will be tailored to meet their circumstances.'

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-14/HCWS1249/>

Families with three or more children making a new claim for Universal Credit from 1 February 2019

From 1 February 2019, families will be able to make a claim for Universal Credit if they have three or more children. Up until this point families with three or more children had to claim tax credits.

In a partial U-turn, Government has scrapped plans to extend the two-child limit to new universal credit claimants with children born before April 2017; meaning that families will be entitled to support for any children born before 6 April 2017.

Payment can be made for a third or subsequent child born after 6 April 2017, if any of the special circumstances apply. These include:

- multiple births: This relates to all third or subsequent children in a household born as part of a multiple birth, apart from one child in that birth;
- adopted children: This relates to all third or subsequent children in your household born on or after 6 April 2017 who are adopted through the Health and Social Care Trust;
- children living with family, friends or in non-parental caring arrangements: This applies where you have a formal caring arrangement in place, such as where you have been appointed by a court as legally responsible for the child or young person; **or** where a child under 16 you are responsible for becomes the parent of a child;

- children likely to have been conceived from a non-consensual sexual act: The so-called rape clause;

Consideration of special circumstances are based on individual circumstances.

Work & Pensions Committee: Introductory session with Amber Rudd, new Secretary of State (December 2018)

Frank Field chairs this session, covering topics including Universal Credit, the rape clause and NI processes. Selected parts of the discussion are highlighted below, while a link to the session is at the end of this article

Amber Rudd: On PIP I announced last week that people on the highest disability would not have to be regularly re-assessed every two years. Instead there would be a light-touch reassessment every ten years....I also think that we could do better on the waiting time for assessment.

Rosie Duffield: We are going to move on to split payments. Professor Alston found that women are particularly affected by poverty generally. What can you do to ensure that the benefit system does not contribute to or exacerbate that?

Amber Rudd: Roughly 60% of payments to couples are made to women, but I think we can do better than that by ensuring that the payment is made to the main carer.

Ruth George: ...In Northern Ireland they have been offered for payments to be split already. Where there are children involved the child element goes directly to the main carer....Is that a model that could be used elsewhere in the UK?

Amber Rudd: I would be looking at the main carer element. I am interested in that as a potential change of direction.

Ruth George: It is 282,000 potential Universal Credit claimants in Northern Ireland so it is just quite staggering that the amount is going to be done by hand and that there has not been investment in the past in getting the computers to manage to work out those split payments.

Peter Schofield:You can ask for split payments in England as well....When they are done, they are done through manual payments.

Heidi Allen: Is it all being done manually?

Peter Schofield: They are....Where things are done manually, they cost more money to

deliver and we need more staff to do it. Automation is the right solution for any of these different methods of payments...

Amber Rudd:The split payments should be available when there is a particular need but not as the normal principle.

Chair: Do you disagree with the Northern Ireland model?

Amber Rudd: Northern Ireland has a certain amount – they have the right to make that decision.

Chair: I was following your wish to have a single payment as the norm. If we are having the single payment as the norm, could that go to the women – and normally the woman is looking after the children – and the allowances, if there is a split payment it has to be....the man that requests it?

Amber Rudd: ...I am thinking exactly about that for the same reason that the Committee has raised it.

Heidi Allen:what century are we living in where we say a man and a woman's income is all the same in one lump in a household?...Single payments suggest that you do not have your own identity.

Amber Rudd: The principle of a single payment is also...to protect the taxpayer so that people who are funding it know that it is fair.

Heidi Allen:there is still some nervousness...about the lack of detail for how migration will happen....Can you talk to us about your plans as to how you will present those regs when they come to the House?

Amber Rudd: I will be bringing forward proposals in January that will address some of the concerns you have raised.

Neil Coyle: You have been very clear that you want claimants to get their entitlements in good time. Are you agreeing that waiting five weeks is too long?

Amber Rudd: Waiting five weeks without getting an advance is too long....We have a number of other proposals...to help people with that five-week wait....The advance payments being paid over 12 months is helpful so that people can gently pay it back. We can do more to communicate that it is an advance payment not a loan.

Neil Coyle: ...foodbank demand and 50,000 people who are turning up to Citizens Advice every quarter, that demand outside the system. You said the system is coping. I would suggest that the system is only coping with a massive army of volunteers in foodbanks. Are you saying that will reduce?

Peter Schofield: I think there are two things to that. One is that, as we said at the time the NAO produced their report, usage of foodbanks relates to a whole range of different factors.

Neil Coyle: Yes, primarily Universal Credit and no recourse to public funds. That is what foodbanks have said.

Heidi Allen: There is a connection. When UC rolls out in a town foodbank usage goes up.

Amber Rudd: That is why we need to do better with both our advance payments and the legacy payments being paid for two weeks, and also the rent....I do acknowledge the issue of foodbanks and I do not want people to have to go to foodbanks.

Ruth George: ...Your predecessor Secretary of State admitted that 3.2 million families under Universal Credit would be worse off by £2,500 a year....These are low-income families already who are struggling to get by. Was this the Department's intention? Is it your intention as Secretary of State to make 10% of the country's families that much worse off?

Amber Rudd: By 2020 we will be spending £2 billion more than we would have been spending under previous legacy benefits....The point about Universal Credit is to try to protect the vulnerable, make sure they are looked after, but also at the core of it is this plan to try to make sure that people can get into work and have the additional money without having the terrible cliff edge along the way.

Chris Stephens: ...An impact of the Department's decision is to sanction people in Universal Credit if they refuse a zero-hour contract job, but if they are on legacy benefits they would not be sanctioned if they refused a zero-hour contract job.

Amber Rudd: People should go into work. The principles of sanctions is that there was a conditionality.

Chris Stephens: 'People should just go on to zero-hour contracts'. Is that what you are seriously telling us, Secretary of State?

Amber Rudd: I would say yes, if people are offered work they should take it.

Chair: ..are you saying that taking a zero-hour contract, Universal Credit will nevertheless ensure them a stable and appropriate income via whatever the scale rates for Universal Credit are?

Amber Rudd: For some people zero-hour contracts work well.

Chris Stephens: Why did the Department take the decision under Universal Credit to sanction an individual if they report that they have refused a zero-hour contract?

Peter Schofield: ..the reality is what goes on in the conversation and the relationship between the work coach and the claimant.

Steve McCabe: I want to ask you a little bit about the two-child policy....If it is about trying to change behaviour and make people think about family planning, how do you justify applying it retrospectively to people who have already made the decision?

Amber Rudd:...I do share your concerns and I am considering carefully what action to take going forward. As you rightly say, I support the policy that people need to consider their income when they are having a third child, as people in work do, but I share your concerns about the retrospective element.

Steve McCabe: The current estimate is that at least 700,000 families will be affected by the two-child policy you have introduced....When you introduce a policy like this, do you do any estimate on the likely effects of it in terms of numbers or do you just wait and see what happens?

Peter Schofield: No, we do an impact assessment.

Steve McCabe: You must have a figure then?

Peter Schofield: I do not have a figure with me here.

Steve McCabe: I accept that....would it be possible to send that to us? The figure of 700,000 strikes me as remarkably high and if it is accurate I am amazed that you are not slightly more concerned about it.

Peter Schofield: Do you want a quality impact assessment for that policy?

Steve McCabe: Yes, that would be helpful.

<https://parliamentlive.tv/event/index/3c6433a1-7bfc-44cf-9ba4-40ebe456654a?in=09:35:55>

Welfare Reforms in Northern Ireland

NI Audit Office produces report focussing on some of the key welfare reforms and local mitigation measures and assesses their impact

The report sets out the background and rationale behind the extensive programme of welfare reforms introduced by the Westminster Government; examines the key changes to benefit rates and entitlements; looks at Personal Independence Payment and Universal Credit; highlights the issues which emerged from engagement with the Third Sector and deals with expenditure, outcomes measurement and the impact on social housing providers, particularly NIHE.

<https://www.niauditoffice.gov.uk/publications/welfare-reforms-northern-ireland-0>

Welfare Reform (NI) Claimant Baseline Surveys

Department for Communities publish findings on the experiences and attitudes of claimants with regards to the welfare changes

The first phase of Welfare Reform research with claimants took place between November 2017 and July 2018. Telephone surveys were conducted with claimants by staff from the Analytical Services Unit on behalf of DfC.

<https://www.communities-ni.gov.uk/publications/welfare-reform-ni-claimant-baseline-surveys-report-january-2019>

POLICY UPDATES

Advice NI: re: DWP Committee evidence session with Amber Rudd, I noted in particular the reference to the impact of Universal Credit on women, including steps that could be taken to protect women. There was some discussion about access to the Universal Credit money and plans to ensure that the main payment is made to the primary carer. There was considerable discussion about Scotland wanting to introduce split payments. Ruth George highlighted the position in Northern Ireland: that agreement was secured by the NI Assembly for:

- **Split payments;**
- **Fortnightly payments;**
- **Direct payment of housing costs to landlords;**

The Secretary of State confirmed that these arrangements are “done by hand”; the Permanent Secretary confirmed that they are “done by hand”. Can you please confirm that all these alternative arrangements secured by the Social Development Minister back in 2012 re Universal Credit are actually performed by hand and not by any technological / system / automation. Can you please provide information on how this is done, the staff numbers involved, ability to do this effectively as numbers rise, the cost, monitoring of reliability and timeliness?

DfC response:

Split Payments – This would require UC Agent intervention on every application, however, to date, there have been no applications in Northern Ireland for split payments. I cannot therefore give you any indication on staff numbers, costs, or timeliness.

Fortnightly Payments – I must emphasise that payments in NI are twice monthly . Twice monthly payments do not require UC Agent intervention or manual workarounds as the UC computer system ‘recognises’ Northern Ireland postcodes and automatically defaults to twice-monthly payments.

Direct Payment of Housing Costs to Landlords;

- In relation to the Social Housing Sector – Once the claim has been processed payment is automated and does not require any further UC Agent intervention;
- In relation to Private Landlords – Work is on-going to automate this process but currently all payments to private landlords are processed manually. Unfortunately I cannot give you a breakdown of staff numbers or the costs etc involved in

processing individual payments to private landlords as this information is not available.

Advice NI: @AmberRuddHR says "there will be a 10,000 person #UniversalCredit pilot this summer" ... Can @CommunitiesNI clarify whether or not NI claimants will be part of this pilot? If the answer is yes, can I ask who has given permission for involvement, given social security is a devolved matter in NI?

DfC: The Department can confirm that Northern Ireland claimants will not be involved in the Managed Migration pilot operated by the Department for Work and Pensions.

Universal Credit: caseload in NI

Advice NI: sought the latest figures regarding the Universal Credit caseload in NI

DfC response:

At 19th January 2019, total claimants: 31,348;

Universal Credit: work allowances

Advice NI: clarification re the work allowances from April 2019

Neil Couling (UC Director General) response:

The work allowances from April 2019:

£287 (previously £198) £503 (previously £409) Incorporating the £1,000 announced in the Budget and inflation increase

Universal Credit: payment errors and delays

Advice NI sought an update in relation to payment errors and delays for people attempting to claim Universal Credit ... in particular what consideration is given to ex-gratia payments as set out by the Work & Pensions Minister in GB.

DfC response:

The Department for Communities (DfC) Financial Redress for Maladministration is considered for all social security benefits and was last updated in September 2017.

A copy of the guide is available on the DfC internet:

“The Department aims to provide a good level of service to its customers but sometimes things do go wrong. When that happens, we should put matters right as quickly as possible. As part of that process, we should consider redress. Redress might include any of the following: a sincere apology; an explanation of what happened and what has been done to rectify matters; corrective action. However, if our action/inaction was sufficient to be considered maladministration and it had a negative impact on the customer we can also consider financial redress (special payments).”

<https://www.communities-ni.gov.uk/publications/financial-redress-maladministration>

PIP: Informal Observations by the Capita Health Professional

Advice NI sought confirmation (based on the PIP Assessment Guide) regarding the limitations of informal observations that can be used as evidence.

The [Assessment Guide](#) states the following:

Informal observations

1.6.31 Informal observations are part of the suite of evidence used by CMs to help them determine entitlement to benefit. Informal observations are of importance to the consultation, as they can reveal abilities and limitations not mentioned in the claimant questionnaire, supporting evidence or during the history taking for the face-to-face consultation. They may also show discrepancies between the reported need and the actual needs of the claimant. However it is important to balance informal observations with evidence from professionals who may have observed the claimant more regularly.

1.6.32 The HP should be making informal observations and evaluating any functional limitations described by the claimant from the start of the consultation. The HP cannot document any observations made outwith the consultation. The consultation starts at the point the claimant enters the assessment centre or is met at their home and concludes when the claimant leaves the premises of the assessment or the HP leaves the claimant's residence. HPs may be able to observe relevant aspects of the claimant's appearance for example how well kempt they are and whether they look under or over weight. This would be considered together with other factors such as their manner, hearing ability, walking ability during the history taking, through to the conclusion of the consultation. Informal observations should be recorded in the

report, for example: 'I observed them... and they appeared to have no difficulty with...'; 'I saw him lean heavily on a walking stick when entering the consulting room'.

1.6.33 HPs need be aware that it is possible that the assessment room may, for some claimants, provide an environment that appears to artificially enhance functional ability, for example for some claimants with hearing impairments. A home environment may also provide either an ideal, good or a very poor environment for testing functional ability, for example, depending on the level of background noise. HPs need to ensure that they explore claimants' functional ability in everyday life and in a variety of environments/situations that may not be ideal.

1.6.34 The HP's informal observations will also help check the consistency of evidence on the claimant's functional ability. For example, there is an inconsistency of evidence if a claimant bends down to retrieve a handbag from the floor but then later during formal assessment of the spine, declines to bend at all on the grounds of pain, or if the claimant states that they have no mobility problems but they appear to struggle to walk to the consulting room. In deciding their advice, the HP will need to weigh this inconsistency and decide, with full reasoning, which descriptor is most likely to apply.

1.6.35 HPs must also take into consideration the invisible nature of some symptoms such as fatigue and pain which may be less easy to identify and explore through observation of the claimant.

DfC response:

This interpretation is 100% correct.

USEFUL INFORMATION

Independent welfare changes Helpline 0808 802 0020