

ADVICE NI POLICY NEWSLETTER

SEPTEMBER 2018



Welcome to the fourth in our series of Advice NI policy eNewsletters `... think ...`.

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

You will know by now that Advice NI has taken a keen interest in all things Universal Credit, culminating in the production of our blueprint for making Universal Credit better ... available at <https://www.adviceni.net/blog/advice-ni-blue-print-improving-universal-credit-fears-grow-about-rollout-ni>

This has been sent to our local Department for Communities Permanent Secretary and also of course to the Secretary of State for Work and Pensions, Esther McVey MP. A copy of the response received from our Permanent Secretary is provided in this edition ... we still await a response from the Secretary of State.

In this edition we continue to flag ongoing Universal Credit issues; we also include information on the latest Personal Independence Payment statistics, View magazine's 'Stories from the Frontline' and the Supreme Court Judgement

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

Responses to Advice NI's 'Making UC Better' paper

United Nations:

Following the release of Advice NI's 'Making UC Better' paper, it was submitted to the UN's Special Rapporteur On Extreme Poverty And Human Rights. The response from the UN is as follows:

'Your input, together with that of other NGOs, think tanks, researchers and individuals experiencing hardship, will be taken into account by the Special Rapporteur as he prepares for his visit to the United Kingdom from 5 to 16 November 2018. His country visit will result in a statement at the end of his visit on November 16 and a final report to the UN Human Rights Council in the spring of 2019.'

The UN requested permission to make this paper public, and be uploaded on the Special Rapporteur's UN website after September 14.

<https://www.ohchr.org/EN/Issues/Poverty/Pages/CallforinputUK.aspx>

Permanent Secretary, Department for Communities:

'Thank you for your email dated 9th August 2018 requesting engagement with the Department for Communities on various comments about the operation of Universal Credit. I have noted that you have also sent this material to DWP.'

You will be aware that Universal Credit is being introduced in Northern Ireland in line with the previous decisions of the NI Executive and Assembly and the policy of the UK Government. The role of the Department for Communities in these circumstances is to implement the policy and legislation flowing from these decisions. I have noted that most of the issues identified in your paper would require changes to these policies and legislation and thus would be matters for consideration, if they so wished, by Ministers both here and at Westminster.

In these circumstances, it would not be appropriate for officials here to engage in prior discussion or exploration of the ideas in your paper. We will however ensure your note is brought to the attention of incoming Ministers here when they are available.'

On-line Social Security Hearings

The Senior President of Tribunals Sir Ernest Ryder announced that the first online social security appeal hearings will be trialled in Autumn 2018.

Sir Ernest Ryder stated that, in addition to ongoing trials of an email and text 'Track Your Appeal' system, and online submission of PIP appeals - 'From the autumn we will pilot digital evidence sharing with DWP and asynchronous conversations so that we can conduct some live hearings without the need for a disabled user to face a difficult journey to a hearing room which many say they find threatening.'

It is not known when this will be introduced to The Appeals Service in Northern Ireland.

<https://www.judiciary.uk/announcements/speech-by-sir-ernest-ryder-senior-president-of-tribunals-justice-in-a-modern-way/>

View Magazine: Stories from the Front Line

Advice NI has called on United Nations rapporteur Philip Alston to recommend changes to the controversial welfare benefit Universal Credit which is currently being rolled out in Northern Ireland.

Professor Alston will be visiting the UK in November to find out more about poverty and human rights. Advice NI has responded to his calls for written submissions. The international human rights lawyer is interested in the impact of austerity, Universal Credit and Brexit. He has called for submissions from anyone in the UK to establish "the most significant human rights violations experienced by people living in poverty and extreme poverty in the UK". Submissions can be sent to srextremepoverty@ohchr.org until Friday 14 September.

An edition of VIEW magazine on how austerity has hit Northern Ireland will be launched at Ligoniel in North Belfast on September 6th . Advice NI has sponsored this edition of VIEW.

Mary McManus, the guest editor of this edition of VIEW magazine is manager of East Belfast Independent Advice Centre. She said: "One day a woman came to us who had applied for a benefit but due to an administrative error she had not received any money. Months had gone by; she did not have money for food or to buy school trousers for her son."

Bob Stronge, Chief Executive of Advice NI, has warned that the end of the mitigation package which helps vulnerable low income households in Northern Ireland means "we are now rapidly hurtling towards a welfare reform cliff edge in March 2020."

He added: "The clock is ticking on the expiry of the mitigations package and the savage cuts this will unleash on thousands of unsuspecting low income households. This must focus minds on securing the necessary agreement and resources.

"Advice NI is delighted to sponsor this edition of VIEW Magazine which focuses on 'stories from the frontline'. I want to pay particular thanks to our chair Mary

McManus who took on the role of guest editor and to all the other contributors and especially to those who agreed to share their particular stories. I hope you will agree that this edition highlights, very effectively, the reality of the lives facing some of our most vulnerable people and communities and the tremendous but often overlooked interventions and support provided by advice agencies and many others. I hope you will read with interest and compassion."

Brian Pelan editor of VIEW magazine said: "We have seen a rise in hardship, especially from those who have moved from Disability Living Allowance (DLA) to Personal Independence Payment (PIP). This is evident by the amount of PIP personal stories in this issue."

<http://viewdigital.org/2018/07/31/latest-issue-of-view-stories-from-the-frontline/>

Treatment of arrears of legacy benefits paid as a result of an error of law in Northern Ireland

New statutory rule

New regulations have been issued in Northern Ireland in relation to the treatment of arrears of legacy benefits paid as a result of an error of law.

In force from 11 September 2018, the Social Security (Treatment of Arrears of Benefit) Regulations (Northern Ireland) 2018 (SR.No.150/2018) make corresponding provision in Northern Ireland to that in Great Britain in relation to capital disregards in legacy income-related benefits (income support, jobseeker's allowance, employment and support allowance, housing benefit and pension credit) provided for by SI.No.932/2018.

<http://www.legislation.gov.uk/nisr/2018/150/made>

UK Supreme Court rules that refusing widowed parent's allowance to unmarried partner is incompatible with article 14 of ECHR (Siobhan McLaughlin Supreme Court case)

In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018] UKSC 48 On appeal from: [2016] NICA 53

BACKGROUND TO THE APPEAL Widowed parent's allowance ('WPA') is a contributory, non-means-tested, social security benefit payable to men and women with dependent children, who were widowed before March 2017. Under s 39A Social Security Contributions and Benefits (Northern Ireland) Act 1992 ('s 39A') the widowed parent can only claim the allowance if he or she was married to or the civil partner of the deceased. The issue in this appeal is whether this requirement

unjustifiably discriminates against the survivor and/or the children on the basis of their marital or birth status, contrary to article 14 of the European Convention on Human Rights (ECHR) when read with either the right to respect for family life under article 8, or the protection of property rights in Article 1 of the First Protocol (A1P1).

Ms McLaughlin's partner, John Adams, died on 28 January 2014. They were not married but had lived together for 23 years. They had four children, aged 19, 17, 13 and 11 years when their father died. He had made sufficient contributions for Ms McLaughlin to be able to claim WPA, had she been married to him. Her claims were refused by the Northern Ireland Department of Communities. She applied for judicial review of that decision on the ground that s 39A was incompatible with the ECHR. The judge in the High Court agreed and made a declaration that s 39A was incompatible with article 14 read with article 8. The Court of Appeal, however, unanimously held that the legislation was not incompatible with article 14, read with either article 8 or A1P1. Ms McLaughlin therefore appealed to the Supreme Court.

JUDGMENT The Supreme Court by a majority of 4 to 1 (Lord Hodge dissenting) allows the appeal and makes a declaration that s 39A is incompatible with article 14 of the ECHR read with article 8, insofar as it precludes any entitlement to WPA by a surviving unmarried partner of the deceased. Lady Hale, with whom Lord Mance, Lord Kerr and Lady Black agree, gives the substantive judgment of the majority. Lord Mance, with whom Lady Hale, Lord Kerr and Lady Black agree, gives a short concurring judgment. Lord Hodge gives a dissenting judgment.

<https://www.supremecourt.uk/cases/uksc-2017-0035.html>

Personal Independence Payment Statistics

Latest summary statistics on Personal Independence Payment (PIP) in Northern Ireland

This latest statistical release covers the period from June 2016 to May 2018.

<https://www.communities-ni.gov.uk/publications/personal-independence-payment-statistics-may-2018>

Personal Independence Payment duration of award

Government to end unnecessary PIP reviews for people with most severe health conditions

DfC Update: Since June 2018 we have been further developing the process and guidance changes, in conjunction with colleagues in DWP, which have the aim of ensuring that those receiving the highest level of support, who have needs which are unlikely to change, or may even get worse, will now receive an ongoing award with a "light touch" review at the 10 year point.

I can now confirm that the revised guidance is in place and will be used by PIP Case Managers in the Department immediately. Going forward in conjunction with DWP we will be looking to see what opportunities there are to ensure that those who are already in receipt of PIP at the top level, and who have a time-limited award, are provided with an ongoing award to avoid a potentially unnecessary further face-to-face assessment.

Furthermore, once the light touch review has been developed we will also be looking to see what we can do about communicating these reviews to give customers a better sense of what that will involve compared to the usual review processes and we will be engaging with you on that through the regular quarterly meetings.

<https://www.gov.uk/government/news/government-to-end-unnecessary-pip-reviews-for-people-with-most-severe-health-conditions>

Also see the following Research Briefing which looks at the rules on reassessment of existing Employment and Support Allowance and Personal Independence Payment claimants.

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7820#fullreport>

Universal Credit Rollout Schedule

The final phase of Universal Credit rollout begins in NI, the schedule is as follows:

05/09/2018	Hollywood Road, Ballynahinch
19/09/2018	Newtownabbey, Newtownards
03/10/2018	Shaftesbury Sq, Carrickfergus
17/10/2018	Knockbreda, Bangor
31/10/2018	Lisburn, Larne
14/11/2018	North Belfast, Cookstown
05/12/2018	Ballymena, Antrim

<https://www.nidirect.gov.uk/articles/universal-credit>

POLICY UPDATES

Kevin Higgins, Head of Policy has been seeking clarification on new and existing matters. Below is a list of the matters which he feels are most prevalent at this time. If you have any further comments or feedback please contact Kevin on policy@adviceni.net.

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.

Department for Communities:

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>

Universal Credit: deductions

Advice NI sought more information on UC deductions; specifically the list of what 'debt' comes within the 40% deduction cap; the list of what 'debt' comes within the additional 'third party' excess; what is the cap for that additional excess; how are deductions prioritised within both the 40% cap and the excess?

DfC:

The priority order for deductions in DfC mirrors the priority order of DWP with some exceptions. Northern Ireland do not have civil penalties or eligible loans and it would

be rates rather than council tax for us. Also note that gas and electric are together as 'fuel costs', water charges and fines recovery do not currently apply. [Also note that the deduction rate for rent arrears is only 5% in NI].

DfC have parity legislation with DWP and, apart from the minor variations in priority order, a different rate for rent arrears recovery and some mitigations with regard to size criteria etc, the policy regarding recovery of debt and other liabilities from deductions from benefits is essentially identical.

Rates of Recovery

The provisions regarding the rates of recovery by deduction from Universal Credit are set out in Part 5 of the Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016. Regulations 10 and 11 set out the variations in rates of deduction for certain circumstances and are subject to paragraphs 4 and 5 of Schedule 5 to the UC, PIP, JSA and ESA (Claims and Payments) Regulations (Northern Ireland) 2016

Deductions from Universal Credit

First tier deductions are

- Fraud Penalties
- Conditionality Sanctions
- Short-Term Advances (Universal Credit Advance (New Claim or Change of Circ))
- First Month Advances (Universal Credit Advance (Benefit Transfer))
- Budgeting Advances

After these deductions are applied, and only after, the Universal Credit 'priority order' (Paragraph 5 of Schedule 5 to 2016 Claims and Payments Regulations) for other deductions would be initiated. But only if there is sufficient Universal Credit in receipt.

Sanctions

However these rules would apply after a sanction has been initiated. [Sanctions, rates of reduction etc. are set out in the Universal Credit Regulations (Northern Ireland) 2016 – Regulations 98 to 110]

It is feasible that a sanction could be up to 100% of standard allowance and therefore there would be insufficient award in payment to add any further deductions. The Universal Credit sanction falls outside the restrictions preventing more than a 40% deduction. However, if the sanction was, for example, less than 40% of the overall standard allowance, then there may be ability to recover other liabilities up to the 40%.

These Regulations provide for deductions to be made from income support, state pension credit, jobseeker's allowance or employment and support allowance and do

not relate to Universal Credit.

Universal Credit: postal address

Advice NI sought clarification on the Universal Credit postal address, following concerns in relation to problems with delivery of post.

DfC:

We are not aware of any issues with the address. The correct format to ensure that the Royal Mail can identify the address as Freepost is:

FREEPOST Universal Credit

Northern Ireland

Universal Credit: moving from ESA to UCESA

Advice NI asked:

- 1. In relation to a current ESA WRAG claimant ... If the claimant had either taken up a tenancy for the first time or had their first child and had to claim Universal Credit because of this, will the WCA (medical assessment) be carried out again under UC/ will they be treated as not having LCW until the UC50 and new WCA is carried out and therefore would not receive the LCW (WRAG) amount which is designated for those claiming prior to April 17? ... Basically will people on ESA WRAG who claim / naturally migrate to UC lose the additional WRAG amount which was paid to them within ESA?**
- 2. Similarly, if a claimant is in receipt of ESA Support Group (potentially assessed as chronic lifelong condition and so no need for further reassessment), who claim / naturally migrate to UC, will they have to have a WCA under UC or will their LCWRA carry across to UC? ... Basically do they have to undergo assessment and so potentially lose their SG status?**

DfC: When any claimant, no matter what their circumstances, claims Universal Credit after a previous claim to ESA where they were found to have LCW/LCWRA and there is no gap between the claims, the previous ESA decision carries and is applied to the Universal Credit claim. Therefore if their previous ESA claim attracted the additional LCW (WRAG) amount this will continue to be paid on their Universal Credit claim.

Again when any claimant in receipt of ESA Support Group (who may be required to have review WCA's) or in ESA Support Group (with chronic lifelong condition and no

longer required to have further WCA's) claims or naturally migrates to Universal Credit, and there is no gap between the claims, the previous ESA decision carries and is applied to the Universal Credit claim and the claimant is entitled to the additional LCWRA (SG) amount on their Universal Credit claim.

There is a distinction between ESA Support Group requirements in that there are now 2 groups within this.

- ESA Support Group claimants with LWCRA and who do not fall into the Special Conditions group will have a review date set and may be required to undergo further WCA's
- ESA support Group claimants with LCWRA who do fall into the Special Conditions group will not have a review date set and will not be required to undergo further WCA's.

Universal Credit: Identity Verification

Advice NI asked: Where someone fails 'Verify' and does not have the required photographic or other ID to present at the frontline office; what is the process for these vulnerable clients:

DfC: For verification of identity the acceptable documents are one primary evidence document and two secondary evidence documents from the below table:

Primary Evidence

- a current passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom
- a current passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland
- Electoral Identity Card
- a residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the United Kingdom Border Agency to a national of a European Economic Area country or Switzerland
- a permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland
- a Biometric Residence Permit issued by the United Kingdom Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom
- a passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom

- an Immigration Status Document issued by the Home Office or the United Kingdom Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom
 - a certificate of registration or naturalisation as a British citizen, which indicates the holder is entitled to take up employment in the United Kingdom
- Additionally

As an exception to the standards contained in the common standards for identity verification, and if any of the above documentation is unavailable, the following documents may also be accepted:

- full driving licence, if a photo card licence, the licence has not expired
- provisional driving licence, if a photo card licence, the licence has not expired

Secondary Evidence

- certificate of registration or naturalisation as a British citizen original birth certificate issued in the Channel Islands, the Isle of Man or Ireland (or certified copy from Registrar)
- foreign birth certificate
- original (or certified copy from Registrar) birth / adoption certificates
- an expired full or provisional photo driving licence
- provisional driving licence (where photo card licence, the licence has not expired)
- NIHE rent card
- Land & Property Services rates documents
- life assurance/insurance policies
- mortgage repayment policies
- recently paid fuel/telephone bills in the customer's name
- original marriage certificate
- original civil partnership certificate
- divorce / annulment papers
- dissolution of civil partnership papers
- certificate/contract of employment in Her Majesty's forces
- certificate/contract of employment under the Crown
- certificate/contract of employment in the Merchant Navy
- current Police registration certificate
- current firearms certificate
- current/recent wage/pension slip that includes payee name and NINO
- letter from employer / contract of employment
- deed Poll certificate
- current bank / building society / Post Office card account statements
- current / open saving account book
- personal cheque book
- current debit / switch card
- current charge card
- trade union membership card

- travel pass with photograph affixed
- apprenticeship indentures
- vehicle registration / motor insurance documents
- expired passport
- form B79, a form used to notify Department for Communities (DfC) staff that a person has been discharged from prison and has been advised to claim benefit
- bail sheet
- correspondence from HMRC
- tenancy agreement for current property
- invoices (self-employed)
- letter from accountant containing information which helps to establish identity
- letter from solicitor containing information which helps to establish identity
- current / recent instrument of court appointment, for example a probate or court registered Power of Attorney
- stock transfer certificate (Director)
- certificate of incorporation (Director)
- memorandum of association (Director)
- NHS medical card • student ID card (student)
- letter from educational institution (student)
- student loan documentation

If the claimant does not have sufficient evidence to verify identification they must undergo biographical security questions / checks. The biographical test is considered as satisfied by the claimant if they successfully answer three random security questions out of a maximum of five drawn from available biographical data. At least one must be high level.

High Value Security Questions

- spouse / partner full name
- spouse / partner NINo
- spouse/Partner DOB
- date of marriage / civil partnership
- number of dependants in claim
- selected dependants full name (middle names)
- selected dependants DOB
- current bank account number (last 4 digits)
- current bank sort code (in full)
- name of bank
- mortgage details (name of lender)
- weekly / monthly rate of payment (amount)
- date of last payment received
- signing day
- pay day
- previous names (including maiden name)
- Previous address (eg) held by DfC– most recent first
- Work's pension (name of employer and amount)

- other benefits in payment – what benefit, rate of payment, date payment started
- other income (wage)
- current deductions:
 - Social fund (amount of loan, rate of deduction, what loan for)
 - overpayment (amount overpaid, weekly deduction, amount owing, reason for overpayment;
 - electric/gas (amount of deduction, who payable to etc.)
- debt reference number
- vehicle exemption certificate number
- date of issue of vehicle exemption number
- disabled person's name (Carer's)
- disabled person's date of birth (carer's)
- carer's relationship to disabled person
- reference to recent event (for example a doctors' report, super-session appeal)
- Child Maintenance Service Case Reference Number
- previous employer (name and address)
- previous hospital admissions (date / location)
- any customer-only known facts (contained within notepad, for example, previous contact (when / what for)
- name of appointee
- address of appointee
- appointee NINo
- marital status

Medium Value Security Question

- name and surgery address of GP

Low Value Security Question

- nationality
- method of payment / periodicity
- date of birth (if not used as part of the handshake to locate the customer record)
- telephone number - (landline or mobile)
- address
- postcode

State Pension Credit

As highlighted in Edition 3 of '...think...', new regulations have been issued in Northern Ireland in relation to the inclusion of additional amounts for children and qualifying young persons in pension credit awards.

Advice NI: How can the Dept make the SPC amendment Regs?

DfC: You asked about the State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations (Northern Ireland) 2018, in particular as to "the process and whether or not this strays beyond" the Legislative Consent Motion (LCM) agreed in Fresh Start.

In relation to the LCM, the Department for Work and Pensions continues to make regulations for Northern Ireland where the primary power lies in the Welfare Reform (Northern Ireland) Order 2015 or the Welfare Reform and Work (Northern Ireland) Order 2016, in accordance with the LCM to which you refer.

Regulations such as the Regulations in question, which do not rely on the primary powers in these two Orders have been made under the normal process through the Assembly. The Regulations in question were made on 29th June 2018, on the basis that until such time as the Assembly returns, Departments in Northern Ireland have exercised the power to make certain negative and confirmatory resolution regulations.

The process is that Statutory Rules are laid before the Assembly, either after making or in draft, by the delivery of a copy to the Business Office of the Assembly on any day during the existence of an Assembly (section 41(3) of the Interpretation Act (Northern Ireland) 1954).

Although the Assembly is not currently meeting, the Assembly is still in existence, so instruments etc. have been validly laid as outlined above. Regulations/papers have been laid in the Assembly Business Office, and are therefore available to MLAs. Copies have also been placed in the Assembly library and published in the public domain. The making and laying of instruments has been promulgated via the Belfast Gazette. The regulations are also available via legislation.gov.uk

Needless to say, this process is kept under ongoing review.

Mixed-Age couples: Claim State Pension Credit or Universal Credit?

Advice NI: could I ask for the guidance for UC staff when dealing with 'split age couples' ... , for example is it explained that generally people will be much better off financially claiming Pension Credit and there will be no claimant commitment required, interested in seeing the guidance provided to staff on this issue?

DfC: As you are aware we don't routinely share operational guidance. Current Universal Credit guidance for Department for Communities (DfC) staff advises that, when a couple claim Universal Credit and one claimant is over State Pension Age, the claimant has the choice whether they submit a claim to Universal Credit or State Pension Credit. DfC staff will inform the claimant how to submit a claim to their

benefit of choice.

Note: Advice NI is continuing to engage with the Department on this issue as we believe that all claimants must be offered full information in order to make an informed choice as to whether to claim Universal Credit or State Pension Credit.