

**Work and Pensions Committee
Universal Credit (UC) natural migration inquiry
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome this opportunity to respond to the Committee's latest UC inquiry. We take this opportunity to make some general comments about the migration to UC as well as answering the Committee's specific questions. As always, we are happy to follow up any of the points raised in this submission with the Committee.
- 1.2 The roll-out of UC (including managed migration phase) is running some six years behind original plans. This, along with the numerous changes to the system and poor communication about those changes, has made things extremely difficult for claimants and their advisers.
- 1.3 We recommend that the Department for Work and Pensions (DWP) set up a national stakeholder forum, similar to the one established by HMRC in the early years of tax credits. This would allow representative bodies, covering a wide range of the claimant population, to raise issues and exchange information with DWP in a trusted and confidential environment. It would also enable discussions about policy and operations and allow sharing of information between organisations.
- 1.4 We are seriously concerned about recent changes to the UC system that have been confirmed on the day they are going live, with little advance information for organisations who support claimants. This makes it impossible to provide accurate and timely advice to claimants and is of concern as we head towards managed migration.

- 1.5 Most of the recent changes to the system have come about as a result of mounting pressure and/or court action against the DWP. These changes are of course welcome, but we are concerned that these changes are not being considered fully or holistically, which leads to a system that is confusing. It also leads to potential unfairness when some groups are protected but others, in very similar circumstances, are not.
- 1.6 The result of all of this is an extremely complex landscape for claimants and advisers. We are increasingly being contacted by people who have been incorrectly advised by the DWP or HM Revenue & Customs (HMRC) to claim UC, who have inadvertently claimed UC and found themselves worse off, and by people who are considering future changes but want to understand the impact on their benefits in light of UC roll-out.
- 1.7 We recommend that the legislation is changed to allow those who have been incorrectly advised to claim UC and who are worse off as a result, to go back to legacy benefits.
- 1.8 There are a number of groups of people who may receive less under UC than under the current legacy benefit system. In some cases this is due to the UC system being less generous, but in other cases it is due to changes in definitions/rules.
- 1.9 At present, the triggers for natural migration create unfairness. The starkest example of this is that someone claiming housing benefit who moves within a local authority area does not need to claim UC but someone moving across a local authority boundary area does. There does not seem to be any sound rationale for this distinction.
- 1.10 In addition, some positive parts of the draft managed migration regulations, such as the two-week run-on for out of work benefits and the grace period for self-employed people, do not commence until at least July 2020 for those naturally migrated. Therefore, those who migrate in the meantime will miss out on these, which seems illogical.
- 1.11 For all of these reasons, we recommend that natural migration is halted. This would enable people to continue claiming legacy benefits until such time as transitional protection is in place and existing claimants can move to UC under the managed migration process. If this does not happen, we are left with an unfair system that treats people in similar circumstances very differently with significant financial impacts in some cases.
- 1.12 There is an absence of guidance about triggers that will lead to someone needing to make a UC claim under natural migration. In theory, detailed guidance about this should be available – either in written format or as a tool that is easily understood and used by claimants. We also recommend that DWP should support this guidance by funding a suitable welfare organisation to provide a telephone helpline to provide advice across the range of benefits and transition issues.

2 About Us

- 2.1 LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of

the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
- 2.4 We have done a great deal of work over the last 15 years with regards to tax credits. Our submission therefore considers natural migration from the perspective of tax credit claimants, although many of the points may also apply to those migrating from other benefits that UC is replacing (often referred to as 'legacy benefits').

3 General comments

- 3.1 Before we comment on the specific questions asked by the Committee, we would like to take the opportunity to make some general comments about the migration to UC.
- 3.2 The roll-out of UC and the eventual migration of legacy benefit claimants to UC has taken far longer than originally forecast. The Coalition Government's November 2010 White paper¹ set out a provisional timetable that would have seen no new claims to legacy benefits by April 2014 and migration of existing legacy benefit claimants between April 2014 and October 2017. Instead, testing for managed migration of existing claimants will not start until July 2019 with completion expected by the end of 2023, based on current planning.
- 3.3 The fact that the schedule is running some six years behind original plans, along with the numerous changes to the system and poor communication about those changes, has made things extremely difficult for claimants and their advisers. LITRG are providers of online information via our websites, including one for advisers currently funded by HMRC,² and at times it has been very difficult to keep those up to date.
- 3.4 We have a long established relationship with HMRC in respect of tax credits. With the current problems in UC, it is perhaps easy to forget that the early years of the tax credit

¹ Page 37

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf

² www.revenuebenefits.org.uk

system were also plagued with problems, with large volumes of overpayments and many IT problems. However, HMRC did try and work with stakeholders to deal with such issues and provide information. They did this via a national stakeholder forum that met bi-monthly (with additional sub-group meetings between main meetings) and included senior HMRC officials and relevant operational staff.¹ There was an ongoing log of issues that formed the basis for discussion that were tabled by the forum members.

- 3.5 Of course, HMRC and the voluntary sector did not always see eye to eye and HMRC were certainly not able to resolve all of the issues, but was there at least a willingness to discuss them. All discussions were held under Chatham House rules and a productive relationship developed between the organisations and HMRC based on trust. Unfortunately, our experience of DWP's relationship with stakeholders is not as positive in relation to the roll-out of UC. We believe that it would help to have a similar national forum of key stakeholders representing a wide range of claimants to work through some of the problems that are being raised. This would enable discussions about policy and operations and allow organisations to share experiences and gain a better understanding.²
- 3.6 Such a forum would also address one of the other key problem areas for voluntary sector organisations: finding out about changes. The last few months have been particularly difficult for organisations like LITRG as we have tried to keep our information up to date. Recent key changes to both tax credits and UC, in terms of who can claim, have been announced³ *on the day they are going live*, with no advance information for organisations who support claimants. It has been incredibly difficult to get confirmation of changes from either DWP or HMRC and there has been no cascade of information out to stakeholders via any of the existing stakeholder groups led by either Department. This makes it impossible to provide accurate and timely advice to claimants, which is vital when they are facing fundamental changes to their system of support. This is a serious concern as we head towards managed migration.
- 3.7 Many of the changes being made to UC and to the conditions for claiming tax credits (and other legacy benefits) are happening as a result of court action against the DWP. For example, claimants entitled to the severe disability premium⁴ in certain legacy benefits are

¹ The Benefits and Credits Consultation Group (BCCG) no longer meets in person and is now a virtual group, in part due to the introduction of UC.

² There is a DWP operational stakeholder forum which does have UC communication issues on the agenda as a standing item.

³ In most cases, the changes have been announced at an earlier date but with no indication of when they will apply. In some cases, there has been no pre-announcement.

⁴ No claim may be made for universal credit on or after 16th January 2019 by a single claimant who, or joint claimants either of whom (a) is, or has been within the past month, entitled to an award of an existing benefit that includes a severe disability premium; and (b) in a case where the award ended during that month, has continued to satisfy the conditions for eligibility for a severe disability premium. <http://www.legislation.gov.uk/ukxi/2019/10/contents/made>

one of only two groups who can make new claims for tax credits now that UC has rolled out across the UK. This exception was introduced following Judicial Review action by the Child Poverty Action Group.¹

- 3.8 As a result, we are concerned that changes to UC are being made quickly in response to court action or mounting pressure and are not being considered fully and holistically, which leads to a system that is confusing and, potentially, unfair. For example, there are other groups, such as families with disabled children, who will lose out if they naturally migrate to UC in the same way as those claimants involved in the severe disability premium court action. At present there are no exceptions or protections for these other groups. That is not to say that some of the changes that have been made are not welcome, but we merely highlight that the way in which these changes have come about is far from ideal.
- 3.9 All of this together presents an extremely complex landscape for both claimants and advisers. It is therefore not surprising that we hear of incorrect advice given by staff in both DWP, HMRC and Local Authorities leading to people claiming UC when they do not need to (and losing money as a result). We have also been contacted by people who were trying to find out more about UC and have inadvertently claimed it without realising that their existing benefits will stop.
- 3.10 Finally, we receive a growing number of enquiries from people who are asking about future changes they are considering and what the impact that might be on their benefits due to the introduction of UC and the natural migration rules. For example, someone might consider staying with a partner that they would otherwise prefer to leave, or might delay moving in with a new partner, due to fearing the impact on their benefits caused by natural migration rules.

4 Questions

4.1 ***Which groups of people stand to lose out most when they transfer to UC? What should the Government be doing to support those groups?***

- 4.1.1 There are a number of groups of people who will receive less under UC than they currently receive under the legacy benefit system if they move across through natural migration, although some others will gain. It depends on the specific circumstances involved.² Those

¹ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1474.html>

² Whether someone is better off or worse off under UC compared to legacy benefits depends on their specific circumstances. The Resolution Foundation recently published figures that show 3 million people will lose from the transition (with 1 million losing more than £50 a week) and 2.4 million will gain (with 0.9 million gaining more than £50 a week) – although these figures do not take into account the expected increased take-up under UC. See Page 9:

<https://www.resolutionfoundation.org/app/uploads/2018/11/Back-in-Credit-UC-after-Budget-2018.pdf>

who lose money do so in some cases because the UC system is less generous in certain areas than the existing system. For example, families with disabled children and lower earners who do not receive a work allowance in UC are likely to see reductions in their awards.

Example

- 4.1.2 Clarissa is a lone parent responsible for two children – Amy and Niall. She receives Disability Living Allowance (lowest rate care) for Amy, works 30 hours a week earning £13,000 a year and relies on her family for help with childcare. She has no housing costs as she lives with her mother.
- 4.1.3 Under tax credits, Clarissa was entitled to approximately £11,500 a year. Under UC, Clarissa will be entitled to around £7,440. A reduction of just over £4,000 a year.
- 4.1.4 However, people can also be worse off because of changes in definitions/rules. For example, under the UC rules young people can only receive the child element up to the 1st September following their 19th Birthday, whereas under tax credits it is payable until the age of 20 (as long as they started or enrolled on their full time non-advanced education course by their 19th birthday).
- 4.1.5 Similarly, the rules for shared lives carers appear to be different for UC than for tax credits. Under the tax credit system, shared lives carers are self-employed and because they come under special tax rules, their taxable income is often nil for tax credit purposes. In addition, HMRC treat the hours they do as shared lives carers as counting towards the working tax credit hours requirements. Our understanding is that under UC, they are likely to be treated as self-employed but their income from caring will be taken into account under normal UC self-employment rules. This means they are likely to get far less support under UC than under tax credits.¹
- 4.1.6 We would also like to draw the Committee's attention to existing tax credit claimants who have reached state pension credit qualifying age. Since 1 February 2019, it is no longer possible for such people to make brand new tax credit claims. If an existing tax credit claimant has a change of circumstances that ends their tax credit award, but they still need to claim support, they will need to claim pension credit or UC (if they have a partner below state pension credit qualifying age²). Since 1 February 2019, pension credit has been amended to include child elements that broadly replicate child tax credit. However, there is

¹ DWP have confirmed that foster carers will not be treated as self-employed under UC and so will have fostering income ignored, but will be subject to conditionality requirements in line with other parents.

² Until 15 May 2019, after that date, mixed age couples will only be able to claim UC and not pension credit.

no equivalent provision in pension credit to that provided in working tax credit to help low-income workers and those with childcare costs.¹

- 4.1.7 There are other anomalies that, depending on the circumstances, can lead to people being worse off under UC. For example, under tax credits the first £100 of Statutory Maternity Pay is effectively disregarded from earnings and all maternity allowance is disregarded as income. Under UC, Statutory Maternity Pay is classed as earnings (with no disregard) and maternity allowance is taken into account in full as unearned income (meaning it is subject to a 100% taper rather than the 63% earnings taper).²
- 4.1.8 Similarly, in the case of a mixed-age couple (where one member of the couple has reached their qualifying state pension credit age and the other has not) claiming UC, any pension income will be taken into account in full as unearned income with no disregard comparable to that in tax credits and no taper. This means it will reduce the UC award £1 for £1. Mixed-age couples will no longer have the option of claiming pension credit in preference to UC from 15 May 2019.
- 4.1.9 One of the other groups who, in theory, would lose out are those entitled to the severe disability premium in existing benefits. Again, this is because UC was designed to be less generous in this respect. However, following legal action, DWP have introduced a provision which stops people who receive a severe disability premium³ in certain benefits from making a new claim for UC. That means they can continue to make claims for tax credits and other legacy benefits until such time as the managed migration process is in place so that they receive transitional protection.
- 4.1.10 While this is a welcome protection, as we have noted above, there are other groups (such as those with disabled children) who are in a similar position to severe disability premium claimants. The need to make a UC claim could be triggered by a move to another Local Authority area whereas someone moving within the same Local Authority will not be triggered to claim UC – resulting in unfairness between claimants in very similar circumstances.
- 4.1.11 In addition, some positive parts of the draft managed migration regulations (for example, the two-week run-on for out of work benefits and the grace period for self-employed people to protect from the Minimum Income Floor) do not start until at least July 2020 for those naturally migrating.

¹ Our understanding is that existing tax credit claimants will eventually be moved to pension credit with some form of transitional protection

² See also <https://www.maternityaction.org.uk/2018/05/the-impact-of-universal-credit-on-pregnant-women-and-young-parents/> which explains how losing access to UC can also mean loss of access to the Sure Start Maternity Grant.

³<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-01-14/HCWS1249/>

- 4.1.12 Anyone who moves in the meantime not only faces the possibility of receiving less money under UC, but they will also miss-out on these additional protections. With 1.6 million claimants expected to naturally migrate in 2019,¹ we cannot see any justification for protecting only one group (those with severe disability premium entitlement) over other groups nor delaying introducing the two-week run-on or grace period for self-employment.
- 4.1.13 We therefore recommend that natural migration is halted. This would enable people to continue claiming legacy benefits until such as time as transitional protection is in place and existing claimants can move to UC under the managed migration process. This could be done by simply inserting a provision preventing UC claims from anyone who has received a legacy benefit in the previous (say) three months.
- 4.1.14 If this does not happen, we are left with an unfair system that treats people in similar circumstances very differently with significant financial impacts in some cases.
- 4.2 ***What does the lack of a comprehensive list of “triggers” that can transfer people to UC mean in practice? Should the Government produce a full list?***
- 4.2.1 We are aware from questions that we get via our website that people are often confused about how the introduction of UC impacts their existing benefits or whether, following a change in their circumstances, they will need to claim UC. We also know that people are researching their position ahead of making changes in their lives and some are actively considering not reporting positive changes for fear it might lead them to be worse off in the long run. In part this is due to fear caused by the negative press that UC has had, but in some cases, it will be the case that they would be worse off moving to UC under natural migration.
- 4.2.2 We are also aware of people being incorrectly advised by DWP and HMRC about whether they need to claim UC. One website enquirer told us that her circumstances had changed and she was off work sick. She tried to claim contribution-based employment and support allowance (this has not been replaced by UC) and was told by the Jobcentre she needed to claim UC in order to access it. When she did that, her tax credits stopped, much to her surprise.
- 4.2.3 Unfortunately, for people wrongly advised to claim UC, the legislation does not allow for the situation to be reversed and the person to go back to legacy benefits. It is possible to withdraw a UC claim, but in the majority of cases the person is unable to make a new claim for legacy benefits. We have heard from some advisers that they have been successful in escalating a case and getting tax credits reinstated, but that does not seem to be the legislative or official HMRC/DWP position in such cases.
- 4.2.4 We recommend that the legislation is changed to allow re-claims for legacy benefits where people have been incorrectly advised to claim UC, there is evidence to support this and as a result they are worse-off. If that is not possible, then it may be possible for HMRC (although

¹ <https://hansard.parliament.uk/commons/2019-01-07/debates/329ADE07-8849-46C0-8F2C-04571D568FAA/UniversalCreditTransition>

possibly not Local Authorities) to use their Collection and Management powers¹ to re-instate awards in such cases. However, this would require a clear policy decision by HMRC so that it is applied consistently in all applicable cases and not just those that are escalated to a senior level.

- 4.2.5 It is not surprising that staff in both Departments and indeed Local Authorities are giving misleading advice because the current landscape is exceptionally complex. It is not clear what guidance staff have and whether that does include a comprehensive list of triggers, but our concern is that to advise someone properly can require an understanding of more than one benefit.
- 4.2.6 In theory, there should be detailed guidance available explaining the triggers that will lead existing legacy benefit claimants to claim UC. Given that natural migration will continue for a number of years, DWP should produce a tool, supported by guidance, that covers triggers and can be easily understood and used by claimants who want to understand how future changes will impact their benefits.
- 4.2.7 However, we are not convinced that this will be easy to produce in practice for every possible scenario. Detailed guidance, such as the kind we publish on our HMRC-funded website for advisers, www.revenuebenefits.org.uk, is likely to be difficult to understand for the majority of claimants. We therefore favour some sort of web tool that could be used to select the existing benefits and a list of changes to get an idea of whether it would require a claim for UC.
- 4.2.8 To support this guidance, we think that DWP should prioritise setting up a transition support help line. Funding could be provided by the Department to a suitable welfare organisation in order to provide technical support and advice across the range of benefits on transition issues. This is the only way to ensure that people fully understand their position.
- 4.3 ***Are the existing “triggers” for natural migration appropriate? If not, how should they be changed?***
- 4.3.1 We do not think the existing triggers for natural migration are appropriate because they lead to unfair outcomes for people in very similar circumstances. For example, as mentioned at 4.1.8 above, someone who claims housing benefit can move within their Local Authority area without it having any impact on benefits. If they move to another Local Authority area, it will trigger a need to claim UC in order to access help with housing costs which will mean any tax credit award will end automatically. They may get less under UC leaving them worse off than someone with a similar change of circumstances who moves within the same authority area.
- 4.3.2 There is an exception to this rule for those covered by the severe disability premium exception, but again as already noted this can lead to unfairness for groups (such as those

¹ Under Section 5, Commissioners for Revenue and Customs Act 2005

with disabled children) who are not covered by any exception to prevent natural migration from occurring.

4.3.3 As noted above, we believe the best option is to halt natural migration for those in receipt of existing legacy benefits until transitional protection is in place and allow existing claimants to move across under managed migration process.

4.4 ***Has the Department for Work and Pensions done enough to help people understand what changes in their circumstances might cause them to have to transfer to UC, and what that might mean for them? What more could it do?***

4.4.1 We think the current guidance on GOV.UK is difficult to follow when trying to understand whether a change of circumstances will lead to someone having to claim UC instead of legacy benefits. It requires a person to have a good understanding of the existing benefit system and to follow a trail of pages across GOV.UK and then be able to put the information together to answer their question. Most of the claimants we come into contact with are unlikely to be able to find an answer to such questions.

4.4.2 The main UC page on GOV.UK¹ says:

'Universal Credit is being introduced in stages across the UK. You do not need to do anything until you hear from the Department for Work and Pensions (DWP) about moving to Universal Credit, unless you have a change in circumstances.'

However, it does not say what change in circumstances trigger a move to UC. Nor does it give a link to any further information. From that, a tax credit claimant might reasonably assume that adding another child to their claim is a change of circumstances that will require them to claim UC when in fact it does not. They may fail to report the additional child if they fear they will be worse off when moving to UC or they may make a claim for UC when they do not need to do so.

4.4.3 On that same page, it explains that those covered by the severe disability premium exception cannot claim UC and goes on to say:

'If you have a change of circumstances that affects the severe disability premium or your other benefits, report it and you'll be told what to do next.'

Again, this is not helpful for people who might want to make a decision based on potential changes. People should be able to access guidance that allows them to understand how changes might affect their entitlement with certainty, rather than requiring them to wait until the change happens to be 'told what to do next' (which incidentally we feel is a poor choice of language).

LITRG
18 February 2019

¹ www.gov.uk/universal-credit