



BRIEFING PAPER

Number 08494, 5 November 2019

Universal Credit and the Severe Disability Premium

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The Severe Disability Premium (SDP) is an addition payable with means-tested social security benefits. Universal Credit does not include an element equivalent to SDP – or indeed any of the disability premiums currently available. Disabled people may therefore find that their entitlement to UC is significantly lower than their previous “legacy” benefits. Transitional protection will be available to those moving onto UC at the final “managed migration” stage so that they are not worse off in cash terms at the point of transfer, but this does not apply to people who move onto UC by “natural migration” – i.e. following a change of circumstances.

In June 2018 the High Court ruled that the Secretary of State unlawfully discriminated against two men who had to claim Universal Credit when they moved to another area, and as a result experienced a sudden drop in income due to there being no equivalent to SDP (and the Enhanced Disability Premium) within UC. The DWP compensated the two individuals for the losses experienced, but the Court left it to the Government to devise a wider solution.

On 16 January 2019, regulations came into force preventing people in receipt of benefits including SDP from moving onto Universal Credit until the final managed migration stage, when they can receive transitional protection. Separate regulations in force from 24 July provide for “SDP transitional payments” – both backdated and on an ongoing basis – for people who moved from legacy benefits to UC before 16 January and lost SDP. The DWP is reviewing UC claims to identify those may be eligible for payments. Around 45,000 claimants are expected to benefit from this package of support.

The two claimants in the original High Court case are seeking to challenge the latest regulations on the grounds that the transitional payments still do not fully compensate for the shortfalls experienced by some people previously getting SDP on moving to Universal Credit.

This Commons Library briefing gives further background to the abolition of the Severe Disability Premium and covers developments since the High Court judgment.

1. What is the Severe Disability Premium?

The [Severe Disability Premium \(SDP\)](#) is not a benefit in its own right, but is an additional amount payable with certain means-tested benefits including Income Support and

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income-related Employment and Support Allowance. It is currently worth £65.85 a week, or £131.70 week for some couples (2019-20 rates). SDP is intended to give additional help to those severely disabled people who, because they live independently and don't have someone caring for them who receives Carer's Allowance, are most likely to need to rely on bought-in care. At November 2017, around 28,000 Income Support or income-based Jobseeker's Allowance claimants were getting SDP¹, but most working-age SDP recipients get income-related Employment and Support Allowance (ESA). At November 2018, 506,000 income-related ESA claimants received SDP.²

2. What will happen to SDP when Universal Credit is introduced?

Universal Credit is replacing means-tested benefits – including those which may include SDP – for people of working age. When UC is fully introduced, SDP will no longer be payable to people of working age. The Coalition Government maintained that UC would simplify means-tested support for disabled people and make it easier to understand, but disability organisations pointed out that the abolition of SDP could result in people with care needs losing more than £3,000 a year, and that their needs were unlikely to be met in other ways.³

In response to criticisms, the Government pointed out that transitional protection would be available to ensure that people moving onto Universal Credit do not lose out in cash terms at the point of transfer if their entitlement to UC is lower than their existing benefits. However, this protection will only be available to people moving onto UC at the final “managed migration” stage. For most people, this is not due to start until late 2020.⁴ For people moving onto UC in the meantime – due to, for example, a change in their circumstances or following advice to make a claim – there is no such protection.

3. What did the High Court say?

On 14 June 2018 the High Court gave its judgment in [TP and AR, R \(On the Application Of\) v Secretary of State for Work And Pensions \[2018\] EWHC 1474 \(Admin\)](#). This concerned two men in receipt of income-related Employment and Support Allowance who had to claim Universal Credit following a move to a Full Service area, and as a result experienced a sudden drop in income due to there being no equivalent to the Severe Disability Premium (and Enhanced Disability Premium⁵) within UC.

The claimants sought to challenge what had happened on three grounds:

- The absence of any additional payment in Universal Credit for those who were previously eligible for Severe Disability Premium and Enhanced Disability Premium

¹ DWP ad hoc statistical analysis, [People on income-related ESA and Enhanced or Severe Disability Premium, or both](#), 7 June 2018

² [PQ 279148](#) [on Employment and Support Allowance: Lone Parents], 26 July 2019

³ See section 6 of Commons Library briefing SN06548, [Draft Universal Credit Regulations 2013](#), 7 February 2013; Disability Rights UK, Children's Society and Citizens Advice, [Holes in the safety net: The impact of Universal Credit on disabled people and their families](#), December 2012

⁴ See Revenuebenefits, [Universal credit: Managed migration](#), updated 2 September 2019

⁵ The [Enhanced Disability Premium](#) (EDP) is currently worth £16.80 a week and is payable if the claimant or their partner receives the highest rate DLA care component, the enhanced rate PIP daily living component or Armed Forces Independence Payment; or if a claimant of income-related ESA gets the Support Component. 1.4 million ESA claimants received EDP at February 2018, of whom 400,000 also received SDP – see [People on income-related ESA and Enhanced or Severe Disability Premium, or both](#), 7 June 2018

constituted unlawful discrimination contrary to article 14 read with article 1 of the First Protocol (A1P1) to the European Convention on Human Rights (ECHR);

- The implementation arrangements for Universal Credit (in the [Universal Credit \(Transitional Provisions\) Regulations 2014](#)⁶) gave rise to unlawful discrimination contrary to article 14 read with A1P1 to the ECHR, because of the absence of any element of transitional protection to reflect the difference between the amount they received in legacy benefits and what they received under Universal Credit; and
- The Secretary of State had breached the *Equality Act 2010* by failing to have due regard to the impact of removing the premiums for disabled people when making the *Universal Credit Regulations 2013* and the Transitional Provisions Regulations.

Mr Justice Lewis dismissed the challenges on the first and third grounds, but allowed the appeal on the second ground. The Transitional Provisions Regulations did not strike a fair balance between the interests of the individual and the interests of the community in bringing about a phased transition to Universal Credit. The impact on the individuals was clear – their cash payments were now significantly lower than the amounts they previously received. There appeared to have been no consideration given to the desirability or justification for requiring the individual to assume the entirety of the difference between their previous benefits and Universal Credit; this was all the more striking given Government statements over the years that such persons could need assistance and there was a need to define precisely the circumstances in which persons would not receive assistance. In this case, the operation of the implementation arrangements was “manifestly without reasonable foundation” and failed to strike a fair balance (para 88). The differential treatment was based on status and had not been objectively justified.

Mr Justice Lewis held that at present the implementing arrangements for Universal Credit (in the *Universal Credit (Transitional Provisions) Regulations 2014*) gave rise to unlawful discrimination contrary to Article 14 ECHR read with Article 1 of the First Protocol to the ECHR. A declaration would be granted that there is unlawful discrimination, and the defendant (i.e. the Secretary of State) would then be able to determine how to rectify the unlawful discrimination (para 114).

Following the ruling, in addition to making payments for damages for the pain and distress caused, the DWP agreed to compensate the claimants for the money they had lost as a result of moving onto Universal Credit, and to make ongoing payments of around £170 a month to reflect future loss which would be paid until changes to the regulations came into force.⁷

4. How did the Government respond?

In a written statement on 7 June 2018⁸, the then Secretary of State for Work and Pensions Esther McVey said that “in order to support the transition for those individuals who live alone with substantial care needs and receive the Severe Disability Premium”, the rules would be changed so that claimants getting SDP experiencing a change of circumstances such that they would have migrated to Universal Credit would not move to UC until they qualified for transitional protection – i.e. not until the final “managed migration” stage.

⁶ [SI 2014/1230 as amended](#)

⁷ See Leigh Day Solicitors, [Men with severe disabilities win compensation following Universal Credit discrimination](#), 30 July 2018

⁸ [HCWS745](#)

The Secretary of State also announced that claimants who had **already** moved to UC and lost SDP would receive on-going payments and an additional payment to cover the period since they moved.

5. How have the changes been implemented?

The measures relating to Severe Disability Premium have been introduced via separate regulations:

- [*The Universal Credit \(Transitional Provisions\) \(SDP Gateway\) Amendment Regulations 2019 \(SI 2019/10\)*](#), which came into force on 16 January, prevents claimants of legacy benefits with SDP from making a claim for UC.
- [*The Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations 2019 \(SI 2019/1152\)*](#), in force from 24 July 2019, which provide for, among other things, transitional payments for claimants who were in receipt of SDP who have already moved to UC, comprising ongoing monthly payments and an additional lump-sum covering the period since they moved.

The second set of regulations were the Government's third attempt to legislate for "SDP transitional payments." Measures relating to transitional payments for people who had already moved to UC and lost their SDP were included in [*draft Universal Credit \(Managed Migration\) Regulations*](#), laid before Parliament on 5 November 2018. An initial draft of the regulations had been submitted to the Social Security Advisory Committee, which undertook a public consultation on them over summer 2018.⁹

In the event, the DWP withdrew the draft regulations following wider concerns about its proposed approach to managed migration. The Department then included provisions on SDP transitional payments in the [*draft Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations*](#), laid before Parliament in January 2019.

The regulations were subject to the affirmative procedure, i.e. both the Commons and the Lords would have to agree to the regulations for them to come into force. In the event, no debate or vote took place in either House. In a case brought by the two claimants who had successfully challenged the DWP in the High Court in June 2018 (TP and AR), and a third claimant (SXC), the High Court ruled on 3 May 2019 that the Government's proposed scheme for SDP transitional payments was unlawful.¹⁰ Under the scheme set out in the regulations, those who had lost SDP would have received payments of £80 per month, whereas SDP recipients moving to Universal Credit at managed migration would receive top-ups of up to £180 a month. The claimants argued that this difference in treatment could not be justified. The High Court agreed.¹¹

The High Court left it to the Government to decide what should happen next with regard to the regulations, and DWP Ministers said that the Department was considering the options open to it.¹² The final [*Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations*](#) – which unlike the previous versions were

⁹ See [Draft Universal Credit \(Managed Migration\) Regulations 2018: SSAC report and government statement](#), 5 November 2018

¹⁰ [TP AR & SXC. R \(On the Application Of\) v Secretary of State for Work and Pensions \[2019\] EWHC 1116 \(Admin\)](#)

¹¹ See Leigh Day Solicitors, [Government defeated again as High Court finds Universal Credit migration arrangements unlawful](#), 3 May 2019

¹² [HC Deb 7 May 2019 cc447-52](#)

subject to the negative procedure¹³ – were laid before Parliament on 22 July 2019 and came into force two days later.

6. How are SDP claimants now prevented from moving to UC?

[*The Universal Credit \(Transitional Provisions\) \(SDP Gateway\) Amendment Regulations 2019*](#)

provide that, from 16 January 2019, no claim to Universal Credit can be made by a single claimant or a joint claimant where either is entitled to Income Support, income-related ESA, income-based JSA or Housing Benefit¹⁴ that includes a Severe Disability Premium. This is known as the “**SDP gateway**.” The exclusion also applies where such an award ended within the past month, provided the person(s) continued to satisfy the conditions for eligibility for SDP.

In response to enquiries from welfare rights advisers, the DWP has confirmed that the SDP gateway also applies to people who meet the conditions for SDP but have not yet received it. So if a person is in receipt of a legacy benefit and experiences a change of circumstances that would require a claim for Universal Credit to be made, if it is identified that they should have been receiving SDP as they met the qualifying conditions but for whatever reason SDP was not in payment, the gateway will apply and they will be prevented from claiming UC. They will be able to stay on legacy benefits, and the SDP will be added to their claim.¹⁵

The DWP has issued guidance to its staff and to local authorities explaining the effect of the changes:

- Advice for Decision Making Memo ADM 01/19, [UC claimants entitled to Severe Disability Premium](#), January 2019
- Housing Benefit Circular A1/2019 (revised) [HB gateway: Severe Disability Premium and claimants with 3 or more children](#), updated 10 July 2019

An article on [The SDP Gateway](#) in the April 2019 edition of the Child Poverty Action Group’s Welfare Rights Bulletin also gives further information.¹⁶

The DWP’s Explanatory Memorandum accompanying the regulations introducing the SDP gateway stated that the changes would mean that legacy benefit claimants in receipt of SDP would no longer “naturally migrate” to UC following a change in circumstances, but would “remain on their existing benefits or be able to claim another existing benefit instead until such time as they are moved to Universal Credit as part of the Department’s managed migration process.”¹⁷ Following the pilot currently underway in Harrogate,

¹³ A Statutory Instrument laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or “prayer” – to reject it is agreed by either House within 40 sitting days

¹⁴ For people on Housing Benefit who satisfy the conditions for SDP it is included in the calculation of their needs – the “applicable amount” – and may affect the amount of help they get with their rent in that way

¹⁵ [Rightsnet discussion thread on “Claimants already getting SDP”](#), post #122, 19 March 2019; see also the DWP email of 19 March 2019 cited in [CPAG’s judicial review pre-action template letters on the SDP gateway](#)

¹⁶ Owen Stevens, [The SDP Gateway](#), CPAG Welfare Rights Bulletin 269, April 2019

¹⁷ [Explanatory Memorandum to the Universal Credit \(Transitional Provisions\) \(SDP Gateway\) Amendment Regulations 2019](#), para 7.2

under the latest timetable announced by the DWP the main phase of managed migration is expected to get underway in late 2020, and be completed by the end of 2023.¹⁸

The Department has however now legislated to remove the SDP gateway, with effect from 27 January 2021.¹⁹ It states that this is in light of the High Court's judgment of 3 May 2019 (in TP, AR and SXC – see above) which found that the differential treatment between SDP claimants who have already moved to UC, and those who are prevented from doing so because of the SDP gateway, was not justified.²⁰

Removal of the SDP gateway from January 2021 means that, from that point onwards, legacy benefit claimants with SDP experiencing a relevant change of circumstances will, instead of remaining on legacy benefits until they move onto UC via managed migration, naturally migrate and lose their SDP. They will however be eligible for SDP transitional payments (see below) on the same basis as people who moved to UC before the SDP gateway was introduced in January 2019.

7. How will 'SDP transitional payments' work?

"SDP transitional payments" will be made to eligible claimants who were in receipt of the Severe Disability Premium who have already moved to Universal Credit through natural migration (e.g. following a change in their circumstances). Eligible claimants will receive both a **lump-sum payment** to cover the period since they moved to UC, and **ongoing monthly payments**. At some point during the managed migration stage, these monthly payments will be converted into **transitional protection**, and as such will erode over time or end in accordance with the usual rules governing transitional protection.

The basic conditions²¹ to be satisfied to get transitional payments are that:

- the claimant was awarded Universal Credit no later than one month after they were entitled to Income Support, income-based JSA, or income-related ESA that included a Severe Disability Premium;
- where Income Support, income-based JSA or income-related ESA ended within that month, the claimant continued to satisfy the conditions for SDP for the rest of that month;
- the award of UC has not since terminated (whether by the claimant ceasing to meet the conditions for entitlement, forming a couple with another person, or separating from a partner);
- the claimant has not ceased to be entitled to a qualifying benefit for SDP, such as the PIP daily living component; and
- the claimant (or their partner) must not, since moving to UC, have got a carer who receives either Carer's Allowance or the carer element of UC

¹⁸ [Written Statement HCWS1399](#), 12 March 2019

¹⁹ Regulation 7 of the [Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations 2019 \(SI 2019/1152\)](#)

²⁰ [Explanatory Memorandum to the Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations 2019](#), paras 7.42-7.44

²¹ New Schedule 2 inserted in the [Universal Credit \(Transitional Provisions Regulations 2014 by regulation 3 of the Universal Credit \(Managed Migration Pilot and Miscellaneous Amendments\) Regulations 2019 \(SI 2019/1152\)](#)

Further information can be found in DWP Memo ADM 15/19, [UC Transitional SDP amount](#), August 2019.

The **monthly amounts** are:

- £285 for single claimants not in the UC Limited Capability for Work-Related Activity (LCWRA) group
- £120 for single claimants whose award includes the LCWRA element
- £405 for joint claimants who were receiving the higher couple rate SDP
- £285 for joint claimants who were receiving the lower couple rate SDP and are not receiving the LCWRA component in UC
- £120 a month where joint claimants were receiving the lower couple rate SDP and are receiving the UC LCWRA component

The lump-sum payment covering the period starting from when the claimant migrated to UC will be based on the relevant flat rate payment. As some of the backdated payments may be substantial, the regulations provide that any lump-sum payment can be disregarded in UC for a duration of the award, or 12 months, whichever is longer.

Claimants do not need to apply for SDP transitional payments. A specialist team has been set up within the DWP to review UC claims and identify people who may be eligible for SDP transitional payment. UC cases are being worked through in chronological order, and claimants making enquiries are being informed that they will be contacted “in due course”. Once a claim has been reviewed, the claimant is notified via their UC journal if they are eligible for SDP transitional payments.

Further information including FAQs can be found in a DWP bulletin for local authorities, [LA Welfare Direct lite 9/2019](#), updated 30 October 2019.

The DWP is aiming to make SDP transitional payments “as soon as possible”. As of 26 September 2019, the Department had made over 13,800 payments, with the average (median) value of the lump sum payment being £2,280. This represents 90% of expected backdated payments, totalling over £37.2 million.²²

8. What have others said about the Government’s response?

The measures announced by the Government have been welcomed, but some organisations point out that for some claimants the SDP transitional payment rates still fall short of the amounts paid to the two claimants in the High Court case, and of the level of support received by those who remain on legacy benefits. For example, while single claimants with a “limited capability for work-related activity” receive a monthly transitional payment of £120, the actual loss for people in this group who have naturally migrated would normally be around £190 a month.²³ In a letter to the National Association of Welfare Rights Advisers, the DWP Universal Credit Senior Responsible Owner, Neil Couling, said that the Ministerial intent was to “ensure that claimants do not see a cash loss of an equivalent amount of the Severe Disability Premium” and “not to replicate the transitional protection that will be available to claimants” moving onto UC at

²² [Written Statement HCWS66](#), 31 October 2019

²³ 2019-20 rates for the ESA Support Component + EDP + SDP (monthly equivalent rates) minus the UC LCWRA element

the managed migration stage.²⁴ The two claimants who were successful in the original High Court case have commenced further judicial review proceedings, on the grounds that the final version of the regulations are still unlawful.²⁵

There is also concern that the measures only ameliorate the losses for existing claimants. Newly disabled claimants will be entitled to less support – sometimes considerably less – than those who applied earlier under the legacy benefits system. In addition, the value of transitional protection will erode over time, and may be lost completely if a claimant experiences a change in their circumstances.²⁶ Some organisations have argued that the Severe Disability Premium – or alternatively a “self-care” component for those who live alone and don’t have a carer – should be included in Universal Credit.²⁷

In its report [Universal Credit: support for disabled people](#) published on 19 December 2018, the Work and Pensions Committee recommended that DWP:

...carry out and publish by March 2019 an assessment of the impact of removing the disability premia from Universal Credit for new claimants. It should include in this an assessment of the costs and benefits of introducing a “self-care” amount in Universal Credit, paid at the same rate as the Care component to claimants who would have been eligible for disability premia. It should also include clear worked examples of the financial support that disabled people claiming different benefits (including disability premia and tax credit disability additions) under the legacy system will receive under Universal Credit.²⁸

In a response to its predecessor Committee back in February 2013, the then Government had committed to undertaking a “thorough process of evaluation for the effect of Universal Credit on disabled people.”²⁹ In its response to the above recommendation, the DWP said that UC was “never intended to replicate all aspects of the legacy system”.³⁰

A recent report published by the Disability Benefits Consortium estimates that introducing a “self-care” element paid at the same rate as the Universal Credit carer element would have a long-run cost of £1,015 million a year. It also estimates that increasing the self-care element (and the carer element) by £30 a month (so that those who would have qualified for SDP in the ESA Support Group are no worse off on UC than in the legacy system) would cost an additional £250 million a year.³¹

9. Have there been any other related legal challenges?

Yes. On 8 February 2018 the Child Poverty Action Group (CPAG) launched a judicial review on behalf of two households, each with a person with a disability, challenging the lack of transitional protection or, alternatively, the inability to reinstate legacy benefits

²⁴ NAWRA, [Disabled people moving on to UC losing out](#), August 2019

²⁵ See Leigh Day Solicitors, [Government faces third legal challenge to Universal Credit migration arrangements](#), 6 August 2019. The Commons Library understands that the proceedings have now been filed with the Court

²⁶ See the Work and Pensions Committee’s report [Universal Credit: support for disabled people](#), HC1770 2017-19, 19 December 2018, paras 32 and 39

²⁷ Ibid. para 37

²⁸ Ibid. para 41

²⁹ [Government response to the House of Commons Work and Pensions Select Committee’s third report of Session 2012-13: Universal Credit implementation: meeting the needs of vulnerable claimants](#), Cm 8537, February 2013, para 64

³⁰ [HC 1998 2017-19, 5 March 2015, para 29](#)

³¹ Sue Royston, [Mending the holes: restoring lost disability elements to universal credit](#), DBC, September 2019

once an award of Universal Credit has made, where the decision terminating the award of legacy benefits is subsequently overturned and the household is worse off under UC.

The first case concerned a lone parent with a disabled child whose Income Support was terminated in error and was advised to claim UC. The family received £140 a month less under UC because the lower rate disabled child addition in UC is worth less than the equivalent disabled child element in Child Tax Credit.

The second case involved a single woman who was in receipt of Personal Independence Payment (PIP), and ESA including the Severe Disability Premium. Both benefits were stopped, and the claimant was left with no option but to claim UC. The claimant challenged the PIP and ESA decisions, but the legislation prevented her from returning to legacy benefits. As a result, she was left more than £180 a month worse off due to the absence of SDP in UC. The case was continued notwithstanding the announcement of SDP transitional payments since claimants with a limited capability for work-related activity would still be over £100 a month worse off under UC than if they had remained on legacy benefits.

The two cases – *R (TD and AD) v SSWP* CO/590/2018, and *R (Reynolds) v SSWP* CO/4542/2018 – were heard together in the High Court on 23 and 24 January 2019, and the judgment was delivered on 1 March.³²

Both claims were dismissed. Mrs Justice May concluded that the differential treatment of the claimants, as a result of which there was no transitional protection to cushion their transfer to Universal Credit, could not be said to have lacked consideration so as to render it “manifestly without reasonable foundation” (para 77). Mrs Justice May said that, in her judgment, evidence provided by Dr Fannon (a Universal Credit Policy team leader at the DWP) had sufficiently established that in the formulation of policy, consideration was given to the position of claimants who transferred to UC as a result of a decision ceasing legacy benefits that was later revised (para 78).

Mrs Justice May also rejected the submission that the Secretary of State had acted irrationally in implementing the “lobster pot” principle (which prevents a claimant returning to legacy benefits once a claim for UC is made) without also making provision for transitional protection, observing that:

The [Secretary of State’s] manner of implementing UC cannot be said to be irrational if her treatment of these claimants was justified by sufficient consideration of their position.³³

The High Court rejected the claim of unlawful discrimination and refused permission to appeal. CPAG then applied directly to the Court of Appeal for permission to appeal, and this was granted. A date has not yet been set for the hearing.

Further information can be found at the CPAG’s website – see [Universal Credit, disability and transitional protection](#).

³² [\[2019\] EWHC 462 \(Admin\)](#)

³³ para 82

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