HOUSING SYSTEMS: BRIEFING

01/2018

Escaping the UC 'Lobster pot'.....

…….now that the Live / Gateway areas are closed to new claims for UC.

Key Points

- **Some UC claimants in Live / Gateway UC service areas have always been able to 'escape the lobster pot' but the changes from 1st January 2018 should make it easier.**
- **This only applies to those on UC under the Live / Gateway service who are living in a Live / Gateway service area.**
- **CARE MUST BE TAKEN – escaping the 'lobster pot' is not always the best option (although many claimants can be better off).**
- **EXTRA THOUGHT must be given to those who wish to claim ESA INSTEAD.**
- **It could be a good option for those with a UC sanction.**

Escaping the UC 'Lobster Pot'

Since the closing of new claims to UC in the Live / Gateway areas (from 1st Jan 2018) one question that is being asked is:

'Can those on UC in a Live / Gateway area now escape the lobster pot and claim HB, IS, IR-ESA, IB-JSA and / or Tax Credits instead?'

The answer is: Maybe - **but care must be taken – especially by those looking to claim ESA instead.**

Generally, once you have claimed Universal Credit (UC), you stay on it even if your circumstances later change – sometimes called the 'lobster-pot' principle.

However, there has always been a way of 'escaping' it for some UC claimants on the Live / Gateway service. Now that there are no new claims for UC in the Live / Gateway UC areas even from those who pass the gateway conditions (with some exceptions: see Appendix A) - more claimants can escape the UC lobster pot including those wishing to make a new claim for IB-JSA.

Getting back onto the legacy benefit system is very tempting for many UC claimants: some will be better off (see Appendix B), some will have less conditionality, some will find it easier to budget, some will have a sanction removed (see page 4); and those who have poor IT skills may prefer to be on the legacy benefits system.

But there's **plenty to think about** in that there are some claimants who if they moved onto the legacy benefit system might be worse off or suffer other disadvantages:

- For those wishing to claim ESA - the implications that this is a new claim (see page 3).
- Potential loss of passport benefits such as free school meals,
- Those with third party deductions from their UC will find that they will not automatically transfer across to the legacy benefits,
- They could be affected by the ESA and JSA waiting days,
- They may have a higher work allowance (earnings disregard) under UC,
- They may be entitled to help with child care under UC that they won't get in the legacy benefit system
- Future changes/plans that could mean they become better off on UC,

Note: This is not an exhaustive list

And **timing will be crucial** to ensure that claimants minimise the gap between their UC award ending and their legacy benefit entitlement starting (there will nearly always be a week where the claimant receives neither UC nor the legacy benefits – see page 6.

Advice from an experienced welfare benefits adviser should always be sought before trying to escape so that a 'better off' calculation can be done and implications discussed.

Issues for those wishing to claim Employment and Support Allowance

When someone on ESA living in a Full / Digital service area has a change in circumstances that triggers the move onto UC they are generally (but not always) worse off on UC. So, many people believe that if you are on UC but could claim ESA instead they should 'escape' UC and get back onto the legacy benefit system as they would be better off. But it is not that simple!

The DWP never envisaged claimants escaping the 'lobster pot' and moving from UC back onto the legacy benefits.

This means that, whereas there are Regulations that allow decisions made on a legacy benefit to 'follow' the claimant onto UC, there are no Regulations that allow those decisions to follow the claimant from UC onto the 'legacy benefit' system.

And whilst ESA Regulations do allow a 'linking' period for some claimants who have come off ESA for short periods, a move onto UC is not one of the situations where this is allowed.

The result is that where a claimant ends their UC award, they then have to make a ***new claim*** for ESA.

This means that:

- They will have to provide a 'fit note' (ie sick note) from their doctor.
- They may have seven waiting days where they will not receive any ESA*.
- They will be in the Assessment Phase for three months.
- They will have to complete an ESA50 and are likely to have to attend a medical.
- If their condition has improved since their last medical assessment there is a risk:
    - they could be found fit for work and have to claim JSA (even if their health hasn't improved this could be a risk),
    - they could, if previously in the LCWRA (ie Support) Group, be put in the WRA Group.
- ***If put in the WRAG***, then the rules introduced in April 2017 will mean there will be ***no additional component*** in their ESA award ie their basic ESA award would be £73.10 a week. So unless they are entitled to the Severe Disability Premium (see Appendix C) they could be financially worse off if they move onto the legacy benefit system#.

FOR EXAMPLES – please see this page of the website.

* The government have announced that they will be abolishing the UC waiting days in Feb 2018 – but there is no mention of the ESA / JSA waiting days so we assume they will remain in place.

#There may be other factors that need to be taken into account when working out whether or not they are financially worse off – for instance they may earnings of £100 a week that could be considered to be permitted earnings and so totally disregarded under the legacy benefit system.

I’ve heard someone can also ‘escape’ their sanction – is this correct?

Yes. Because the DWP never envisaged claimants escaping the ‘lobster pot’ and moving from UC back onto the legacy benefits there are no Regulations that allow a sanction decision to follow the claimant from UC onto the ‘legacy benefit’ system.

In fact, entitlement to 'old style' JSA or ESA, or to Income Support, will 'wipe the slate clean', because the sanction reduction period ends on the first day of entitlement to the 'existing benefit'. Even if the claimant returns to Universal Credit within what would have been the sanction period, there will be no reduction for the sanction, as the reduction period has already ended.

Regulation 34 of the UC Transitional Provisions Regulations 2014, states that if an award of Universal Credit terminates while there is an outstanding reduction period and the claimant becomes entitled to old style JSA, old style ESA or Income Support, then the reduction period ceases.

NOTE: Anyone who comes off Universal Credit and does not make a claim for 'old style' JSA or ESA, or Income Support, will still be in their UC reduction period. If they return to UC within their reduction period, their award will be reduced.

Will the DWP allow someone to end their UC award?

In response to one of our (many) Freedom of Information Requests (click here) the DWP confirmed that it is possible for a UC claimant to end their award.

‘No provision in the Universal Credit Regulations or Commencement Orders explicitly permits or prohibits the relinquishment of a Universal Credit award. In the absence of such a prohibition, a person receiving Universal Credit who wished to end their award could contact this Department in the usual way when they have a question concerning their award. Once this Department has received the claimant’s notification that they wish to relinquish their award, the necessary work would be taken to end it.’

So, if a claimant can convince DWP to end their UC award – can they claim legacy benefits instead?

The answer is yes as long as:

- They are ending a claim for UC on the Live / Gateway service~.
- They are living in a Live / Gateway area, and
- They are not currently treated as a 'UC claimant' – see Appendix A.

But they may have a battle with the agencies administering the legacy benefits ie DWP, HMRC, and their Local Authority - to get them to accept that they can 'escape' the 'lobster pot' (please let us know if this happens). These authorities cannot refuse to accept a new claim; if the claimant is refused ie they are not allowed to even make a claim by the first person they contact, they should push for a claim to be accepted: they may need to ask to speak to a supervisor. They need to be allowed to make a claim – which can then be declined - as they then have a decision given to them in writing that they can then challenge.

~It is less clear for those on the Full / Digital UC service who have moved since they claimed and are now living in a Live / Gateway area.

What if a UC claimant is moving in with a non-UC claimant as a partner?

Then they need to seek advice about whether it is better for them that the non-UC claimant joins the Universal Credit claim as a new partner, or whether it would be better if the Universal Credit claimant ends their claim for Universal Credit and then joins the non-UC claimant's benefit claims as a partner.

If they decide to end the Universal Credit claim and make couple claims for the legacy benefits then:

- If the non-UC claimant is already on a legacy benefit they wish to claim as a couple - then all they need to do is report a change in their circumstances.
- If the non-UC claimant is not on the legacy benefit as a single person but wishes to claim now they are part of a couple the best option here is that the UC claim is withdrawn before the new partner moves in / on moving in – this is not crucial but will probably make things easier.

Note: This is also possible under the Full / Digital service but more complicated – as no new claim for legacy benefits will be allowed.

Timing is crucial

Where a Live / Gateway UC claimant decides to end their UC award and go back on legacy benefits they must think about timing - or they could be without any financial support either from UC or the legacy benefits for several weeks.

This is because Universal Credit is a monthly benefit - so when you withdraw your claim you withdraw it for the whole month. If the claimant withdraws their claim shortly before the end of their Monthly Assessment Period, then they receive no Universal Credit for the whole of that Monthly Assessment Period.

Depending on the legacy benefits they are looking to claim – some may be able to be backdated without the need to explain why there was a delay claiming (ie IR-ESA), others will require the claimant to explain why they didn't claim earlier (ie HB*) and others have very tight backdating rules (ie IS and IB-JSA).

*Note: claiming HB and stating 'because I was on UC although I have withdrawn that claim now' will probably not be accepted as a good reason.

So it is generally better for the claimant to end their UC award after their Monthly Assessment Period has ended eg if their MAP ends on 5th, then they ring the UC Helpline on 6th to end the claim#. And then make the claims for their legacy benefits the day after this eg if they have withdrawn their UC claim on 6th, they make the claim for legacy benefits on 7th.

#We have heard that ending the claim between the end of the MAP ie the date is it assessed, and the payment date can cause problems with the payment actually being made. We are not sure if this is a general problem – so it may be advisable to wait until the claimant has received their UC payment before withdrawing the UC claim. This would, however, mean a bigger gap between the date their final UC payment goes up to and the dates their new claim for legacy benefits start.

Waiting days

Both IR-ESA and IB-JSA have seven waiting days (with some exclusions). These are not being abolished from April. So when someone makes a new claim – unless they are excluded from the waiting days – they will not receive any ESA or JSA for the first seven days of their claim.

Housing Benefit

When someone makes a new claim for HB it is generally paid form the Monday after they make their claim~.

So if they end their UC claim on a Tuesday for instance, and make their HB claim on the Wednesday – HB will only be awarded from the Monday after.

~ Exceptions do exist but these are to do with taking on a liability so are unlikely to be relevant here.

Appendix A: Who is a 'UC Claimant'?

Under the Live / Gateway UC service a claimant is a UC claimant where they:

1. Have made a claim for Universal Credit and are awaiting the outcome of that claim – including if they have requested a mandatory reconsideration or appeal on a claim, or
2. Have been awarded and still entitled to Universal Credit, or
3. Although not currently in receipt of Universal Credit, are considered under the Universal Credit Regulations as a Universal Credit claimant under the 'six month' rules (see below), or
4. In certain circumstances, were previously on Universal Credit as part of a couple claim (see below).

Fall under the 'six month' rule

For a Live / Gateway Service area Universal Credit claim the six month rule will apply where either:

a. New claims - the claimant has made a claim for Universal Credit, they meet all the claiming conditions but due to the level of their earnings the assessment produces a 'nil entitlement', or
b. On-going claims - a claimant's entitlement to Universal Credit becomes 'nil' purely because of their earnings – this could be as a result of an increase in their earnings or another change (such as a dependent child leaving the household) which now means their entitlement drops to 'nil'.

During the six months following this change they are treated as a UC claimant and therefore do not need to make a new claim for Universal Credit as long as they continue to meet the main claiming criteria* and the only reason they are not receiving any Universal Credit is because their earnings are too high given their circumstances.

*ie if they inherit over £16,000 or go abroad for over a calendar month etc then this six month rule would no longer apply.

During this six month period they are classed as a Universal Credit claimant and therefore unable to claim legacy benefits. (UC (TP) Reg 6 para 2ba),

But this 'six month rule' only applies where the claimant had/has earnings – if the new claim was refused for a different reason, or the on-going claim was cancelled for another reason – then the 'six month rule' will not apply (although if they were part of a couple claim see below).

Previously part of a couple claim

Where someone has been on Universal Credit as part of a couple claim they will be classed as a Universal Credit claimant even if the Universal Credit claim has come to an end. Whilst classed as a Universal Credit claimant they will not be able to make a claim for legacy benefits.

Someone will be classed as a Universal Credit claimant where:

- They were previously on Universal Credit as part of a couple claim and this was ended when they separated and they were the first member of that couple to notify the DWP of the separation – in this situation they will be considered to be a Universal Credit claimant for one month from the date they notified the DWP of the separation if no decision has been made as to their entitlement to Universal Credit (UC(TP) Reg 6 para 2c),
- They were previously on Universal Credit as part of a couple claim and this was ended when they separated, and they either failed to notify the DWP of the separation or they were the second member of that couple to notify the DWP of the separation, and no decision has been made as to their entitlement to Universal Credit (UC(TP) Reg 6 para 2ca),

- They were previously on Universal Credit as a couple claim and this was ended when one partner died, and no decision has been made as to their entitlement to Universal Credit (UC(TP) Reg 6 para 2ca),
- They were on Universal Credit as a single claimant and this was ended because they became a couple, and no decision has been made as to their entitlement to Universal Credit (UC(TP) Reg 6 para 2ca & 2d).

Appendix B: Who is better off on legacy benefits?

The following claimants – who can escape UC - could be better off on the legacy benefits.

However, if a claimant is considering ending their UC award and claiming legacy benefits instead, there are several factors to take account of; even claimants listed in the circumstances listed below could be better off staying on UC if you take all their circumstances into account!

Certain claimants who could get the various premiums related to disability in their legacy benefits.
There is no Severe Disability Premium, Enhanced Disability Premium or Disability Premium in Universal Credit. The only elements available for those claimants with disabilities are where they have been found to have a limited capability for work - ie the Limited Capability for Work Element (which will only be included if the claimant's period of limited capability for work began before 3rd April 2017) and the Limited Capability Work Related Activity Element.

If a UC claimant is getting middle rate care component of DLA or standard daily living PIP and has not been assessed as having a limited capability for work they could be up to £95.00 a week better off on legacy benefits. Some claimants will be worse off on UC, although others are actually better off. Therefore it is essential that claimants get advice about their particular circumstances.

NOTE: Those who have been found to have a limited capability for work who end their UC award and make a claim for ESA will be making a *new claim* for ESA and so will only be entitled to a component in their ESA award if they are put in the Support Group – and then only after the assessment period has ended.

Those entitled to both a disability and carer addition in their legacy benefits.
Under Universal Credit they will only qualify for either a Limited Capability for Work/Work Related Activity Element or a Carer Element. (Note though that a couple could still have one member on a Limited Capability for Work*/Work Related Activity Element and the other on a Carer Element).
*If their period of limited capability for work began before 3rd April 2017.
NOTE: Those who have been found to have a limited capability for work who end their UC award and make a claim for ESA will be making a new claim for ESA and so will only be entitled to a component in their ESA award if they are put in the Support Group – and then only after the assessment period has ended.

Those with deductions being taken out of their UC for debts
Generally the deduction level are lower under legacy benefit rules.

Families who get DLA for their child at anything other than high rate care
Under UC there is a Disabled Child Element that gets added into the claimant's Maximum Universal Credit when their award is assessed – there is a high rate and a low rate. The high rate only applies where the child / qualifying young person gets the high rate care component of DLA (or enhanced rate daily living PIP). Otherwise only the low rate Disabled Child Element ie £126.11 a month is included in the claimant's UC award when it is assessed – this works out at £29.10 a week instead of the £60.90 Disabled Child Premium under legacy benefits.

Families with childcare costs
Some low income working families who are paying for childcare to enable them to work will be better off on legacy benefits. This tends to be those families who are entitled to Housing Benefit - as 100% of eligible childcare costs (up to a maximum amount) reduce the claimant's assessable earnings under HB whereas under UC a Child Care Costs Element taking account of 85% of eligible childcare costs is added to the claimant's Maximum UC award.

Child minders
Child minders are treated as self-employed people under Universal Credit and so: could be subject to the minimum income floor, have to notify their income and expenses on a monthly basis, and may not have any of their earnings disregarded compared to the generous disregards for child minders under the legacy benefits.

Families whose UC award is reduced by Benefit Cap at an amount higher than their eligible rent
Under legacy benefits the only benefit that can be cut where a family's total 'welfare' exceeds the Cap limit is Housing Benefit. Whereas under Universal Credit the Cap is taken from the whole UC award so they lose all the "excess" over the cap.

Couples both under 25
Under Universal Credit there is a lower standard allowance for couples if they are both aged under 25, whereas under the legacy benefits there is only a lower personal allowance where both are under 18.

Some claimants with non-dependant couples
Non-dependant deductions – or what the DWP call Housing Costs Contributions - are very different under UC when compared to HB. Generally they are more generous under UC but there are a limited number of situations where they are higher under UC.

Mixed age couples
The legacy benefits are generally much more generous to mixed age couples as it is based on the older members age – it varies from couple to couple but it is not uncommon for a mixed age couple to be over £100 a week better off on legacy benefits.

UC claimants who have been sanctioned and are still within a sanction period
As explained on page 4, escaping the lobster pot is an opportunity to escape a UC sanction (and repayment of any hardship loan too!).

NOTE: This is not an exhaustive list

Appendix C: Severe Disability Premium

Who will Qualify?

A single person, where:

- They receive Attendance Allowance or middle or higher rate care component of Disability Living Allowance, or a daily living component of Personal Independence Payment, or any rate of Armed Forces Independence Payment, (ie have high care needs), and

- No non-dependant aged 18 or over is normally residing* with tenant, and

- No-one gets paid Carers Allowance or gets the Carer Element in an award of Universal Credit for looking after them.

A Couple will get the single rate where only one qualifies, ie:

- One gets Attendance Allowance or middle or higher rate care component of Disability Living Allowance or a daily living component of Personal Independence Payment, or any rate of Armed Forces Independence Payment, (ie has high care needs), and

- No-one gets paid Carers Allowance or gets the Carer Element in an award of Universal Credit for looking after them, and

- The other is severely sight impaired or blind or treated as severely sight impaired or blind, and

- No non-dependant aged 18 or over is normally residing* with them.

Or

- Both get Attendance Allowance or middle or higher rate care component of Disability Living Allowance or a daily living component of Personal Independence Payment, or any rate of Armed Forces Independence Payment, (ie have high care needs),

- But Carers Allowance or the Carer Element in an award of Universal Credit is being paid to a carer looking after just one of them, and

- No non-dependant aged 18 or over is normally residing* with them.

A couple will get the couple rate where both qualify ie:

- They both get Attendance Allowance or middle or higher rate care component of Disability Living Allowance or a daily living component of Personal Independence Payment, or any rate of Armed Forces Independence Payment, (ie both of them have high care needs), and
- No non-dependant aged 18 or over is normally residing* with them, and
- No-one gets paid Carers Allowance or gets the Carer Element in an award of Universal Credit for looking after either of them.

* Ignore any non-dependants who are themselves on: Attendance Allowance or middle or higher rate care component of Disability Living Allowance or a daily living component of Personal Independence Payment, or any rate of Armed Forces Independence Payment