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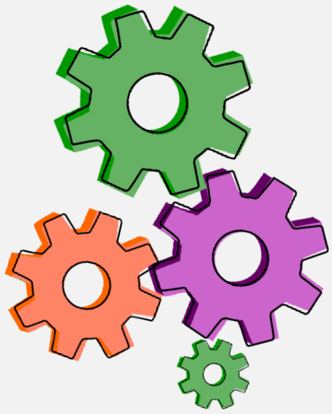
Managed Migration for Self-Employed Tax Credit Claimants



We have written this Briefing to highlight some specific issues facing self-employed Tax Credit recipients making the move over to Universal Credit through the Managed Migration process. This is because there are some key differences between the two systems which these claimants need to be aware of.

Further information about Managed Migration and issues that affect all claimants is available on the Housing Systems website.

Key Points:

- **Some self-employed claimants (or their joint claimant) may have to look for work / engage in work preparation activities as a condition of receiving UC.**
- **Self-employed UC claimants have to report their income and allowable expenses every month – this could be a big change for many.**
- **After the 12 month 'start-up' period a self-employed UC claimant could be affected by the Minimum Income Floor meaning the DWP take more earnings than they are actually receiving into account when assessing their entitlement making them worse off than had they been able to remain on Tax Credits.**
- **Some self-employed workers have fluctuations in their self-employed earnings. When on UC, they may benefit from 'smoothing' out their income and expenses (if they can) to maximise their entitlement.**
- **Those with fluctuations in their self-employed earnings that can't be smoothed out, are likely to be affected by the Minimum Income Floor / Surplus Earnings rules making them worse off than they would have been had they been able to remain on Tax Credits.**
- **Working Tax Credit claimants may be used to offsetting their losses from self-employment against their partner's income – this is not possible on Universal Credit. This could mean that more income is taken into account for UC than would have been on Tax Credits reducing their entitlement.**

  NOTE: In several of the examples below we compare the amount deducted from maximum WTC due to earned income, with that deducted from maximum UC in each case. Although the starting points won't necessarily be the same, the examples illustrate some of the differences that claimants will experience when they move on to UC.

Introduction

Many Tax Credit claimants will be self-employed and may be worried about how claiming Universal Credit will affect their income and what conditionality (if any) may to attached to the award (i.e., what they must do in return for receiving UC).

The aim of this article is to look at the key differences between the two systems for self-employed claimants.

The focus will be claimants who are receiving Working Tax Credit and considered to be self-employed.

Claiming Tax Credits / Universal Credit whilst self-employed

Tax Credits

To be entitled to Tax Credits, a claimant must be working a set number of hours a week on average (e.g.,16 hours a week for lone parents). Only hours spent in 'gainful' self-employment (see page 3) count towards this threshold.

If a claimant is entitled to Tax Credits they (and any joint claimant i.e., partner) do not need to look for work or engage with HMRC beyond reporting changes in circumstances and renewing their award each year.

All income from self-employment (whether hours spent on work that counts towards the threshold or not) can reduce a claimant's Tax Credit entitlement.

Universal Credit

There are no 'hours rules' on Universal Credit.

Depending on a claimant's (and any joint claimant's i.e., partner's) circumstances they can be required to engage in work search / preparation.

All income from self-employment (whether considered 'gainful' or not) can reduce a claimant's Universal Credit entitlement.

Additionally, claimants who are considered to be in 'gainful' self-employment could be affected by the Minimum Income Floor (generally after a 12 month 'start up' period) which means their UC award is reduced by more income that they are actually receiving (see page 6).

TOP TIP: Many self-employed claimants moving from Tax Credits to Universal Credit will be affected by the Minimum Income Floor after 12 months on Universal Credit. They need to be aware of this and may want to think about whether they can be excluded from it based on their conditionality group. Click here for more details.

How does HMRC / DWP decide if someone is in 'gainful' self-employment?

The definition of 'gainful' self-employment is similar in both benefits: the work must be done on a commercial basis with a view to realising a profit and in an organised and regular manner.

Where a Tax Credit claimant has both self-employed and employed earnings, the split between the two jobs is of little importance.

However, for Universal Credit it is more significant, as a claimant can only be found to be in 'gainful' self-employment if the self-employment is their main job or main source of earnings.

Tax Credits

The 'gainful' self-employment rule was added to Working Tax Credit in 2015. So current self-employed Tax Credit claimants should have either have had to prove that they are in 'gainful' self-employment in light of the rule change, or when they made their claim / started self-employment if this was after 2015. To assess whether a claimant is in 'gainful' self-employment HMRC looks at things like the claimant's accounts and business plans

HMRC may check whether their self-employment is still 'gainful' if their reported profits and hours of work in a tax year suggest that they are earning less than the National Minimum Wage. However, outside of this and reporting their income / expenses, they will not need to discuss their self-employment with HMRC.

Universal Credit

When a self-employed person makes a claim for UC or a UC claimant starts self-employment, they will need to attend an interview, called a self-employed Gateway interview, with a Work Coach who will consider whether they are in 'gainful' self-employment. This Gateway Interview is in addition to any New Claim / Claimant Commitment Interview.

This will be a new experience for many Tax Credit claimants who may not have had any contact with their local Job Centre before, nor been interviewed about their self-employment.

Most self-employed people making a new claim for UC will have a 12-month 'start-up period' (click here for more information). During this period they will need to meet with a Work Coach to check that they are still in 'gainful' self-employment every few months. After the start-up period has finished, they will need another self-employed Gateway Interview if the level of their self-employed activity changes significantly.

TOP TIP: Self-employed claimants who are invited for a Gateway interview MUST attend the interview for their UC claim to be successful. This is in addition to any other interviews they are asked to attend. If they are manage migrating, they will lose entitlement to any Transitional Protection they could have received if their first UC claim fails.

What if their self-employment isn't considered 'gainful'?

Tax Credits

Any hours spent on self-employed work that HMRC do not consider to be 'gainful' do not count towards the hours threshold when considering entitlement to Working Tax Credit. However, any income it produces can reduce a claimant's Tax Credit entitlement.

If a claimant is (or joint claimants are) meeting the hours threshold through other work, it does not matter whether the self-employment is considered to be 'gainful' or not.

Universal Credit

If a Universal Credit claimant is not considered to be in 'gainful' self-employment, they could be required to look for more work depending on their other circumstances. This would be a big change for Tax Credit claimants who have not had to engage in work preparation before (unless they have at some point been on JSA / ESA). If they consider themselves to be in 'gainful' self-employment, they should make sure they are prepared to give the DWP evidence of this at their Gateway interview.

If they claim UC as a couple, then their partner could be required to look for work / more work depending on their circumstances. Again, this would be a big change as Tax Credit claimants do not have to engage in work search / preparation as a condition for receiving it.

When do they need to report their income / expenses?

Both Tax Credits and Universal Credit can be reduced by a claimant's self-employed income. This means that claimants need to report their income and expenses in time for HMRC / the DWP to calculate their entitlement.

Both Tax Credits and Universal Credit claimants need to report all income and expenses – whether this is from 'gainful' self-employment or not.

Tax Credits

Tax Credits are an annual benefit – this means that theoretically claimants only need to report their income once a year (unless there is a significant in-year change).

Claimants receive a renewal pack each year (usually in May or June) and they need to return the form by the end of July. To finalise a claimant's Tax Credit entitlement, HMRC need to see their finalised end-of-year accounts. If the claimant has these by the end of July, they can report them when they return their renewal pack. If the accounts haven't been finalised yet, the claimant will need to report estimates when returning their renewal pack and then report the finalised accounts when they have them. If a claimant doesn't return their renewal pack in time, their Tax Credit award will be closed.

In practice this means that most self-employed Tax Credits only need to report their income and expenses to HMRC once or twice a year – unless they are reporting them more frequently for income tax purposes.

Universal Credit

In contrast, Universal Credit is a monthly benefit so self-employed claimants need to report their income and allowable expenses (i.e., a cash in and cash out approach) on a monthly basis – even if their income and expenses are the same each month.

They will receive a 'report your income and expenses to-do' on their UC account 7 days before the end of each Monthly Assessment Period. They need to input any income received and allowable expenses incurred in that Monthly Assessment Period (even if the work was completed earlier in the year, or the expenses cover multiple months) ie. The full amount of a bill paid even if it pays for a 6-month period.

If they fail to report their income / expenses on time, they will not receive their award until they have reported this information. And if they fail to provide it within a month of the request their UC claim can be closed.

Tax Credit claimants should be used to keeping records of their income and expenses, but it may be an adjustment to have to report these things monthly if they have been completing their Tax Returns at the end of the financial year.

Some Tax Credit claimants may already be reporting their income and expenses to HMRC on a monthly basis. These claimants may want to consider the timing of their UC claim so that they can report these figures to both HMRC and UC around the same time (although note that there are slightly different rules between HMRC and UC on what counts as an allowable expense).

TOP TIP: A claimant's Monthly Assessment Periods will end at the same time each month. They will need to report their income and expenses at this time each month. They need to understand that this is monthly responsibility and may want to make their UC claim (which then sets these Monthly Assessment Periods) at a point in the month when this task would be easiest.

TOP TIP: A self-employed UC claimant may want to think about if they can re-organise their invoicing / paying bills to fit better with the monthly assessment of their UC entitlement – see fluctuating income on page 7.

How is self-employment income treated?

Tax Credits

As Tax Credits are an annual benefit, a claimant's entitlement is worked out based on their estimated annual taxable income for most claimants HMRC use their annual income from the previous tax year. So for self-employed claimants, it is usually their self-employed earnings from the previous tax year that affect their entitlement.

However, if they report a significant change in income during the current tax year, and this is expected to be over £2,500 different to the previous year, the estimated income for this tax year is used with a £2,500 adjustment, either up (for a drop in income) or down (for an increase) applied and their ongoing Tax Credit payments adjusted accordingly.

Their annual trading profits are considered before any deductions for tax and National Insurance. If they made a profit, this is added to their (and their partner's if applicable) other income (e.g., income from employment, social security income etc). Pension contributions are deducted in full.

Their total income is compared to the relevant threshold and any excess reduces their entitlement by 41%.

Universal Credit

Most new Universal Credit claimants who are in 'gainful' self-employment will be given a 'start-up period' of 12 months in which the Minimum Income Floor does not apply. This can apply no matter how long the business has already been running at the start of the Universal Credit claim. If this is the case, the DWP will deduct their allowance expenses from the income (net of tax, National Insurance and certain pension contributions) received in each Monthly Assessment Period (MAP). This self-employed income is added to any other earned income they, and their partner if applicable, receive (from employment or self-employment).

If they are affected by the Minimum Income Floor (MIF) (i.e., because they do not have any circumstances (ignoring their earnings) which would normally mean that they're not in the All Work-Related Requirements group, are in 'gainful' self-employment and are not in a 'start-up period'), then their self-employed earnings (added to any earnings from employment) are compared to their applicable MIF – this will be the number of hours they're expected to work in a week multiplied by the National Minimum Wage. If they are earning above this, then their actual earnings are used to reduce their UC award. However, if they are earning less than this, their MIF is used as their earnings for that Assessment Period and their UC calculated accordingly. Note: this can be more complicated for couples (click here).

If a UC claimant (or either member of a couple) is responsible for a dependent child or has been found to have (or can be treated as having) a Limited Capability for Work, they will have a Work Allowance.

55% of their earned income (minus the Work Allowance if applicable) reduces their UC entitlement.

EXAMPLE: Mel is a self-employed hairdresser claiming Working and Child Tax Credit. She keeps weekly records of her profits and expenses and when her Tax Credits are renewed, she gives the annual figures to HMRC. For 2022/23, she reported a profit of £19,000. She hasn't reported a significant change in her income, so last year's income is used to calculate her Tax Credit entitlement. She has no other income so the £19,000 is compared to the relevant threshold (£7,455) and her annual Tax Credit entitlement will be reduced by 41% of the excess (i.e., £4,733.45). This equates to a monthly deduction of £394.45.

Mel receives a Migration Notice and makes a claim for Universal Credit. She has a self-employed Gateway Interview and is found to be in 'gainful' self-employment. She is entitled to a 'start-up period' so the Minimum Income Floor doesn't apply. In her first Monthly Assessment Period she reports profits of £1,400. She has no other income. As she has children, she will have a Work Allowance.

If she lives in rented accommodation (and so has a Housing Costs Element included in her UC award), the Work Allowance will be £379 meaning her UC would be reduced by £561.55 a month (55% of £1,400 minus £379).

If she doesn't have a Housing Costs Element included in her UC award, the Work Allowance will be £422.95 and her UC would be reduced by £587.95 a month (55% of £1,400 minus £631).

Losses

Tax Credits

If a Tax Credit claimant makes a loss in an accounting year, this can be offset against *any other* income included in their Tax Credit claim, including that of their partner if applicable. Also, if losses exceed all other income, the excess loss can be carried forward to be offset against profits derived from the same trade in any future tax year.
Remember: if they are using the hours spent on self-employment towards the number of working hours required to be entitled to Working Tax Credit, HMRC will probably want them to prove they are still in 'gainful' self-employment if they report a loss.

Universal Credit

For Universal Credit, monthly losses can be offset against future profits from self-employment but not against other earned income (either the claimant's or their partner's if applicable), or against unearned income.

However, if they are affected by the Minimum Income Floor, their MIF will be used as their earnings for that Monthly Assessment Period. Note – this can be more complicated for couples.

EXAMPLE: Habib and Zaynab have been claiming Working and Child Tax Credit. Habib works 30 hours a week and Zaynab is a self-employed seamstress. She started renting a shop last year and investing more time in marketing to try and boost her profits to cover the rent. For 2022/23, she reported a loss of £5,000. HMRC asked to see her business plan and accounts to check she was in 'gainful' self-employment and agreed that she was. They have not reported a significant change in income to HMRC so their Tax Credit entitlement will be based on last year's income. Zaynab's loss (£5,000) will be offset against Habib's earned income (£16,000). They have no other income so £11,000 is compared to the relevant threshold (£7,455) and their Tax Credit entitlement is reduced by 41% of the excess (i.e., £1,453.45). This equates to £121 a month.

They receive a Migration Notice and make a joint claim for Universal Credit. Zaynab attends a self-employed Gateway Interview, and the DWP agree that she's in 'gainful' self-employment and entitled to a 'start-up period'. In their first Monthly Assessment Period, Zaynab reports a loss of £250 which is carried forward to be offset against any future profit. Their UC entitlement is reduced by the full amount of Habib's income as this cannot be offset by Zaynab's loss, so their award is reduced by £445.50 (55% of £1,189 minus £379).In the next month, Zaynab reports a profit of £200. This is offset against her previous loss so it does not affect their UC entitlement (and the remaining £50 loss is carried forward). Again, their UC entitlement is reduced by the full amount of Habib's income.

If Zaynab is still in the All-Work-Related-Requirements group when her 'start-up period' ends (i.e., after a year on UC), she will be affected by the Minimum Income Floor meaning she is treated as having earnings even in months where she reports a loss.

TOP TIP: Working Tax Credit claimants may be used to offsetting their losses from self-employment against their partner's income – this is not possible on Universal Credit. This could mean that more income is taken into account for UC than would have been on Tax Credits reducing their entitlement.

Fluctuating earnings

Tax Credits

As Tax Credits are an annual benefit, it does not matter if a claimant's profits fluctuate throughout the year – it is the annual amount that matters.

Note: they need to be typically working the relevant number of hours to remain entitled to Working Tax Credit. There are special rules that allow some claimants, such as term-time workers, to remain on Working Tax Credit when they are working below the relevant hour threshold for a period if they have a recognised pattern of employment and normally work enough hours.

Universal Credit

As Universal Credit is a monthly benefit, fluctuating earnings throughout the year can affect a claimant's entitlement. In months where they have lower self-employed earnings*, they will receive more UC but in months where they have higher self-employed earnings, they could receive less. They could try to 'smooth' out their income by arranging to pay more bills in months where they expect higher profits where possible.

*If they are affected by the Minimum Income Floor (MIF), the applicable MIF will be used to reduce their UC entitlement in Monthly Assessment Periods where they earn less than this. This can mean that a much higher income from self-employment is used over the year than the claimant actually receives (and that would have reduced their Tax Credit entitlement).

EXAMPLE: Jason is an artist and sells his work at craft fairs and online. He claims Working Tax Credit as a disabled worker. He gets most business over summer and in the lead up to Christmas. In quieter periods, he spends more time on marketing and producing his art. For Tax Credits, it does not matter how his income is spread over the year. He reports his annual income to HMRC, and this reduces his Tax Credit entitlement accordingly.

Jason receives a Migration Notice and makes a claim for Universal Credit. He attends a self-employed Gateway Interview, and the Work Coach agrees that he's in 'gainful' self-employment. Whilst he is in his 'start-up period' he is not affected by the Minimum Income Floor (MIF). This means that during quiet months, he receives more Universal Credit. However, once the 'start-up period' ends, if he is still in the All-Work-Related-Requirements group, the MIF will apply, and he may not receive any more UC to help in quiet months. To avoid being affected by the MIF, Jason should consider if there is a reason for him to be in another conditionality group (e.g., could he be found to have a Limited Capability for Work). Remember – certain workers can be referred for a Work Capability Assessment click here.

TOP TIP: Self-employed Tax Credit claimants with earnings that fluctuates could lose out when they move onto Universal Credit due to its monthly calculations and possibly the Minimum Income Floor. They should consider whether they can 'smooth' their income by opting to pay bills, buy stock etc in months with higher income. They should also be aware that they can opt to pay their tax and National Insurance monthly to smooth these expenses.

Earnings received in large lump sum payments a few times a year

Tax Credits

Tax Credits are an annual benefit, so a claimant's award of Tax Credit is estimated based on the total taxable earnings they received in the previous tax year. This annual entitlement is then paid to them in instalments – meaning they receive the same amount each time. Therefore, receiving their income in a few large lump sum payments across the year makes no difference to their Tax Credit award.

Universal Credit

However, UC is a monthly benefit. A self-employed worker who receives their self-employed income in a few large lump sum payments across the year (such as farmers) will not only see the amount of UC they are entitled to vary from one payment to the next, but could also find that they are affected by the Minimum Income Floor in some Assessment Periods and the Surplus Earnings Rules in other Assessment Periods. They are more likely to be worse off on UC (when compared to the support they were receiving from the legacy benefit system) but may not get any Transitional Protection. For these claimants the timing of their UC claim, within the three month window given to manage migrating claimants, could be important.

EXAMPLE: Jack is a sheep farmer and lives with his wife, Helen and their two children. They currently receive Working and Child Tax Credit. They report their income and expenses once a year to HMRC and despite receiving the majority of their income in a few months of the year from selling their lambs and subsidy payments) they receive the same 4 weekly payments of Tax Credits.

On UC Jack will need to report his income and allowable expenses monthly (at the end of his UC Assessment Periods). In Assessment Periods when he receives a big chunk of his income eg. £10,000 from the sale of his lambs, he will receive no UC. Additionally, he could be affected by the Surplus Earnings rules whereby some of this income is carried forward to the following Assessment Period, meaning he receives less or no UC in the following MAP as well – click here for more information. During the months when he receives no or a low income - generally the first 6 months of the year, as he is considered to be in 'gainful self-employment', he will be affected by the Minimum Income Floor and assumed to be earning a lot more than he is. This means that overall, they will receive less in UC than they were receiving in Tax Credits.

Seasonal Workers

Tax Credits

For those self-employed workers who are seasonal and only work part of the year and are unemployed the rest of the year, HMRC is likely to have treated them as not working in the months when they have no work. Under the legacy benefit system these claimants would have had to have swapped between an 'in work' benefit ie. Working Tax Credit and an 'out of work' ie. Jobseekers Allowance benefits.

Universal Credit

Self-employed workers whose work is seasonal (such as gardeners), can receive UC during these periods (the amount they receive may change but they can continue to receive UC). They may not, however, be able to 'smooth' out their income and expenses like other self-employed UC claimants. These claimants are likely to be affected by the Minimum Income Floor in some Assessment Periods and could find they are affected by the Surplus Earnings Rules in other Assessment Periods. They are more likely to be worse off on UC (when compared to the support they were receiving from the legacy benefit system) but may not get any Transitional Protection. For these claimants the timing of their UC claim within the three month window given to manage migrating claimants could be important.

Periods of sickness

Tax Credits

Self-employed workers whose earnings drop whilst they are unable to work due to a period of sickness will normally still be considered to be working their normal hours, therefore their entitlement to Working Tax Credit continues. If the time off work means that their earnings over the year have dropped by more than £2,500 when compared to the previous year, then their Tax Credit entitlement will be re-assessed to take account of this and they will receive an underpayment.

Universal Credit

Self-employed workers whose earnings drop whilst they are unable to work due to a period of sickness will normally still be considered to be in 'gainful' self-employment and therefore (unless during a start-up period or excluded) can be affected by the Minimum Income Floor (click here for more information).

TOP TIP: Self-employed claimants who will be affected by the Minimum Income Floor should think about what would happen to their income if they became ill for a temporary period. The MIF will only cease to be applied to their claim if they are no longer 'gainfully' self-employed (i.e., they are going to have to close their business or there is likely to be a longer term drop in their self-employed earnings) or they are found to have an LCW (which may not be possible if their illness is short term). If the MIF is applied, then this will be taken as their earning in Monthly Assessment Periods where they are earning less than this – even if this is due to illness. They may want to look into insurance that would allow them to continue to be paid in such circumstances.

How will Managed Migration work for self-employed claimants?

Managed Migration will work in the same way for self-employed claimants as other claimants.

When they are chosen for Managed Migration, they will be sent a Migration Notice giving them a deadline by which they must claim Universal Credit (i.e., their 'deadline day'). If they make a successful claim first time within a month of their deadline (i.e., their 'final deadline day') in the same 'benefit unit', they could be entitled to Transitional Protection.

Financial protection for claimants who manage migrate onto Universal Credit comes in the form of the Transitional Element. The DWP calculate a claimant's entitlement to this Element using information from HMRC, supplemented where necessary with other information. They work out the claimant's 'Total Legacy Amount' and compare this to the claimant's 'Indicative UC Amount'.

When working out a claimant's 'Total Legacy Amount' and 'Indicative UC Amount', the DWP will get a self-employed claimant's earnings from HMRC not the claimant's UC claim – so the DWP will be given an earnings figure that could be from the previous tax year. This means that the income used to calculate the claimant's Indicative UC Amount' could be very different to the income they actually receive in their first UC Monthly Assessment Period.

EXAMPLE: Cam is a self-employed tradesman. He was receiving Working Tax Credit as a 'disabled worker'. In the last tax year he made £10,000 in gross profit. He is expecting to receive more income this tax year but has not reported this to HMRC so they are still using the £10,000 figure to calculate his entitlement. Cam claimed UC after receiving a Migration Notice and meets the eligibility criteria for Transitional Protection. When working out his entitlement to the Transitional Element, the DWP will get information about his earnings from HMRC – who will give them the £10,000 figure. The DWP will divide this by 12 and apply deductions for Income Tax and National Insurance if applicable. This means they will use self-employed income of £833.

It does not matter what income Cam reports in his first Monthly Assessment Period, his entitlement to the Transitional Element is calculated using the earnings information given by HMRC. Cam reports a profit of £1,000 in his first Monthly Assessment Period on UC, this will affect his first UC award but not his entitlement to the Transitional Element.

Note about the Benefit Cap

Having a Working Tax Credit (WTC) entitlement excludes legacy benefit claimants from the Benefit Cap. However, on UC claimants must be earning £722 or more (i.e., 16 hours a week at minimum wage) to be excluded from the Cap in a Monthly Assessment Period (MAP) (unless one of the other exemptions applies). This could be an issue for some self-employed workers who are working the required hours to receive WTC but have earnings below £722 in a MAP. Note – it is their actual earnings that matter even if they are affected by the Minimum Income Floor. These claimants could be affected by the Benefit Cap and so be worse off on UC.

Most claimants worse off on UC due to the Benefit Cap will not be entitled to a Transitional Element because of special rules outlined in Reg 53 (11) of the UC TP Regulations. These rules only apply to claimants not getting any HB or whose HB is reduced to 50p a week due to the Benefit Cap (ie. not where they are currently excluded from the Benefit Cap so receiving their full entitlement to HB). So, there will be some WTC claimants who will receive a Transitional Element due to being worse off on UC due to the Benefit Cap (this could apply to some self-employed claimants).

However, as the Benefit Cap will be applied to their future UC awards (unless they start to fall under one of the exceptions), the inclusion of a Transitional Element in their UC award may make no difference to the amount of UC they receive.

EXAMPLE: Cheryl is self-employed and was receiving Working and Child Tax Credit and Housing Benefit. She is just starting her business so had low profits last year. She claimed UC after receiving a Migration Notice and is entitled to a Transitional Element (as when the DWP calculated her entitlement, they applied to the Benefit Cap to her Indicative UC Amount because she earned below £722 a month but the Cap was not applied to her Total Legacy Amount because she was receiving WTC). In her first Monthly Assessment Period, Cheryl earned less than £722 so her UC was capped, and the addition of the Transitional Element didn't affect the amount of UC she received. However, after this her profits increased, and she earned more than £722 in subsequent MAPs. This means that she is excluded from the Benefit Cap and will receive her full UC entitlement (which will include a Transitional Element until eroded completely or lost).

A potential issue?

The Transitional Element is not a normal Element and can be lost in certain circumstances. One of these circumstances is where the claimant(s) was earning above the Administrative Earnings Threshold (AET) when they made their claim for UC but has been earning below the AET for more than three consecutive Monthly Assessment Periods.

The Regulations state that, for these purposes, in any Assessment Period where a claimant is affected by the Minimum Income Floor, or would be if not for the 'start-up period', they will be treated as though they were earning above the AET.

This could therefore be an issue where:

- a claimant has a Transitional Element included in their UC award, and
- would be affected by the Minimum Income Floor in their first Monthly Assessment Period, and
- is later moved into a conditionality group that excludes them from the MIF.

If they are consistently earning below their Administrative Earnings Threshold, they will lose their entitlement to the Transitional Element after three consecutive Monthly Assessment Periods (because they were treated as earning above the AET when they claimed UC).

EXAMPLE: Vinnie and Claire were claiming Working and Child Tax Credit when they received their Migration Notices. They are entitled to a Transitional Element of £290. Vinnie is self-employed and working 16 hours a week. Claire receives Carer's Allowance. Vinnie would be affected by the Minimum Income Floor but for the 'start-up' period, so the couple are treated as earning above the AET in their first MAP.
Vinnie is worried about the MIF as he earns the equivalent of 16 hours a week at minimum wage and does not expect this to increase by much over the next year – so he will be affected by the MIF when the 'start-up period' ends. But Vinnie thinks that he could be found to have an LCW which would mean he is no longer in the All Work-Related Requirements Group and would be exempt from the MIF. However, once Vinnie becomes exempt from the MIF, they will no longer be treated as earning above the AET meaning that after four consecutive Monthly Assessment Periods if their joint earnings are not above the Couple Administrative Earnings Threshold, they will lose their Transitional Element and the amount of UC they receive could drop.