

Universal Credit: a guide for family law practitioners

Elisabeth Andrews, *Barrister, 1GC Family Law*



Elisabeth Andrews was called to the Bar in 2016 and is a family law barrister at 1GC Family Law. Elisabeth undertakes work across all areas of the family law field.

The Universal Credit ('UC') reforms were announced over a decade ago. Yet they remain beset by criticism to this day, being viewed by many as forcing some of the most vulnerable in society into debt. Those who have moved from the old 'legacy benefit' system to UC have typically seen a reduction in the level of benefits that they receive, and recipients also must wait 5 weeks for their first UC payment, owing to UC being paid in arrears. This has caused incredibly difficult circumstances for many people and is the reason why there remain calls for the UC system to be scrapped, even before it is yet to become fully operative across the country.

Within the financial remedies context, UC arises as an issue in a larger number of cases than one may initially realise. It is not an issue reserved just to low asset cases, particularly at present, given the impact that the Covid-19 pandemic has had on many businesses and thus on people's employment and livelihoods. There are significant differences between the old benefits system and UC which practitioners must be aware of when considering fair and realistic settlements, most notably in respect of the

new capital limits and the new rules surrounding spousal maintenance payments.

This article is split into two sections. The first provides an overview of the UC system itself and highlights the differences between this system and the legacy benefits. The second focuses more on what issues arise in respect of UC within the financial remedies context and how such issues may be resolved.

The reforms

The UC system replaces six individual forms of benefits, known as the 'legacy benefits', specifically, income support; income-based job-seekers allowance; income-related employment and support allowance; housing benefit; child tax credit and working tax credit. Importantly it does not replace pension credits.

The aim was to simplify the benefits system, with recipients receiving one monthly payment instead of a number of different payments, at different intervals throughout the month.

Although legislated for in 2012,¹ the new system remains to be fully rolled out across the country. The roll-out began in 2013 and now has an estimated completion date of December 2024. It is estimated that by the conclusion of the roll-out, roughly 7m people will be claiming UC, however given the impact of the pandemic, this figure may now be higher.

Individuals already receiving legacy benefits will be able to remain on this system until the roll-out reaches their local area. At this point, they will receive a letter from DWP

¹ Welfare Reform Act 2012 Part 1; Universal Credit Regulation 2013; Universal Credit (Transitional Provisions) Regulations 2014

stating that it is time for them to transfer to the UC system. Alternatively, if the recipient has a change in circumstances, such as seeking to now claim benefits individually when previously they had been claiming as part of a couple, this will trigger the need to switch to the new UC system. This is the 'managed migration' scheme.

Any new claims for the relevant benefits will automatically be made to the UC system.

How UC Works

Recipients claim a standard allowance and then on top of that, can claim for other financial needs, such as those relating to housing and child care. Claims can be made individually or as a couple.

Regarding the definition of a couple for the purposes of UC, the DWP definition is 'a couple living in the same household and are married to each other, or are civil partners, or alternatively are living together as if they were married'.²

Each household can earn up to the designated work allowance before deductions are then made from the total figure received. If claiming as a couple, it is the household income which is considered.

It is important to note that the work allowance under UC is lower than that under the legacy benefit regime.

The quantum of the deductions from the total figure claimed is calculated based upon the level of income from other sources, as well as the nature of the income received. This system was designed to try and avoid recipients' income hitting a 'cliff edge' once they began working.

A distinction is drawn between earned income and unearned income. Regarding earned income, which is typically from employment, for every extra £1 earned above the designated work allowance, £0.63p is deducted from the total UC

received. For unearned income (defined below), for every £1 earned over the allowance, there is a £1 deduction in the total UC received.

Example Figures

Monthly standard allowance

- Single claimant and under 25 years of age: £342.72 pcm
- Single claimant and 25 years of age or over – £409.89 pcm
- A couple, both under 25 years of age – £488.59 pcm
- A couple, one or both 25 years of age or over – £594.04 pcm

Additional payments – eg child care

- Up to 85% of childcare costs;
- £285.83pcm for the first and second child (this can be claimed for the first two children only);

Work allowance

- £292 pcm if housing assistance is being received;
- £512 pcm if no housing assistance is being received.

Key differences between Legacy Benefits and UC

UC can be claimed whether employed or unemployed. However, if claiming when unemployed, the recipient must be able to demonstrate that they are actively looking for work. This requirement is subject to some exceptions, for example if the recipient has certain disabilities or care commitments.

A key difference is that UC is received monthly, rather than weekly or fortnightly as with many of the legacy benefit payments. The switch to UC may therefore cause difficulties for those used to budgeting on a weekly or fortnightly basis.

² Universal Credit: Further information for Couples: <https://www.gov.uk/government/publications/universal-credit-and-couples-an-introduction>

UC is also paid in arrears. This means that there is typically a 5-week wait between the application being made and the first payment being received, with this including one week in processing time. In certain circumstances, an applicant may apply for advance payment of all or part of their UC payment.

The two most crucial differences, so far as financial remedy proceedings are concerned, relate to the new capital limits and also what falls within the remit of ‘unearned income’.

Capital limits

When assessing eligibility for UC, any capital held by the recipient which fall below the £6,000 threshold will not be considered.

Any capital which falls between £6,000 and £16,000 will be treated as generating income, specifically, as generating £4.35 per month for every £250 in savings (whether or not this amount, or any other amount of income, is actually being received from the savings).

Any capital over £16,000 will make an individual ineligible to claim UC.

These thresholds are the same whether claiming UC as an individual or as a couple.

Unearned income

Under the legacy benefit system, neither spousal maintenance nor child maintenance were taken into account when assessing the level of benefits received.

However, under UC, spousal maintenance now falls into consideration, under the category of unearned income.³

Other forms of unearned income includes pension income, income from a trust or annuity or capital treated as income.

As outlined above, once the work allowance has been reached, all unearned income leads to a pound-for-pound deduction from the total amount of UC to be paid.

Benefit cap

The benefit cap will apply if in receipt of UC. This means that the recipient’s benefits will be reduced if they receive more than the limit allows for their circumstances. Online UC calculators are useful in assessing whether any recipient will hit the cap.

In a limited set of circumstances, a ‘grace period’ can apply, which means that the cap, if engaged, will not affect UC payments for up to 9 months.⁴ There are also a number of exceptions to not being capped when in receipt of UC, for example, if the recipient is also in receipt of Working Tax Credit, if UC is claimed because of a disability or because the recipient cares for someone with a disability, or receives PIP or DLA payments.

Example figures – the benefit cap:

- A couple, or have children, living outside of London: £384.62 per week
- A couple, or have children, living inside London: £442.31 per week
- Single and living outside of London: £257.69 per week
- Single and living inside London: £296.35 per week

UC within the financial remedies context

Issues upon separation

There are a number of matters which practitioners should have in mind from the very outset when advising clients who either already claim benefits or may need to make a new application owing to the financial implications of the divorce or separation.

Firstly, is either party, or are both parties, already claiming benefits? If so, are they

³ Universal Credit Regulation 2013, Regulation 66

⁴ ‘Benefit Cap: How Earnings are Affected when the Benefit Cap starts’: <https://www.gov.uk/benefit-cap/how-earnings-affect-when-benefit-cap-starts>

receiving benefits under the legacy benefit system or have they already begun receiving UC?

If the parties are on the legacy benefit system, their separation will equal a change in circumstance about which they will have to notify the DWP. The effect of this change in circumstance, specifically needing to now make a claim as an individual, will mean the parties now move on to the UC system.

Those moving to the UC system typically see a reduction in the overall level of benefit income. This could cause particular hardship for one or both parties, especially during the 5 week wait for the first UC payment.

Consideration will have to be given to how the parties will be able to meet their outgoings during these 5 weeks, if they will be facing particular hardship. It should be explored whether they should apply for an advance payment of UC. Alternatively, will there need to be a temporary suspension agreed between the parties of, for example, child maintenance payments, to ensure all other bills and rental or mortgage payments can be met during this time?

If only one party will be claiming UC, it will likely need to be explored how the financially stronger party can provide extra assistance to the financial weaker party whilst they await their first UC payment. However, with any such assistance, bear in mind the new capital and spousal maintenance provisions.

For those already in receipt of UC, consideration will also need to be given to the impact on the separation upon the additional elements claimed, such as housing and child care. In respect of child arrangements, who is now the primary carer? Is there now a changed need in respect of the level of child care required? All such factors can impact the overall level of income one party may receive and therefore the level of financial support they may require from the financially stronger party.

Online calculators are very useful tools in working out the likely level of UC to be received under different scenarios.⁵ Precise calculations will of course assist in negotiations and once within the realm of proceedings when schedules of assets and incomes are to be prepared.

The thresholds for other benefits which do not fall within the UC system should also be kept in mind when considering post-separation finances. For example, regarding Child Benefit, if after separation the household income is now below £50,000, this will mean a portion of the benefit will no longer have to be paid back in extra income tax.

Hurdles to settlement: capital limits and unearned income

Spousal maintenance now being classified as unearned income, and therefore leading to a reduction on a pound for pound basis in the overall amount of UC received, means that spousal maintenance may not be an effective remedy in cases where the financially weaker party claims UC.

For example, if considering a case where a party receives £500 in benefits per month and £400 per month in periodical payments. Under the old legacy benefit system, that recipient would be claiming a total of £900 per month. Under the UC system however, the total will now be £500 per month, this being a reduced £100 in UC and £400 in spousal maintenance.

Other options will therefore need to be explored. Whilst capital transfers may seem a suitable alternative, one must bear in mind the new capital limits under UC, as set out above. Depending on the parties' ages, pensions may also be a suitable alternative route, however parties must then be aware that pension income from early retirement will count as unearned income for UC purposes.

One solution could be to increase the quantum of the periodical payment or

⁵ <https://benefits-calculator.turn2us.org.uk/AboutYou> ; <http://www.betteroffcalculator.co.uk/> ; <https://www.entitledto.co.uk/benefits-calculator/Intro/Home?cid=9b3ff71a-3cf5-4a49-95db-8a615bb34e94>

capital transfer, in order to negate the loss in the UC received. The availability of this solution of course depends on the size of the asset base in the case. Often, such increased quantum will not be possible given the typical case involving UC is one involving limited assets.

Alternatively, if parties own their own home, this will likely be the key asset. Under UC rules, the premises occupied as the main family home does not fall to be considered as 'capital' in respect of the capital limits.

Parties with children could explore an increase in child maintenance payments, to replace any ongoing CMS payments, given that child maintenance remains outside of the scope of 'unearned income'. Parties would need to ensure that such payments are clearly recorded in an order as being child maintenance and not spousal maintenance payments.

Increased global maintenance payments is another possibility, although the DWP would need to be informed as to the apportionment between spousal and child maintenance within the global figure.

Lastly, consideration should be given to alternative mechanisms by which the paying party can make payments which still financially assist the other, but do not risk their UC income reducing. For example, it may be appropriate for the paying party to make payments directly to the receiving party's creditors or landlords, without these funds first being sent to the receiving party. The DWP would of course need to be informed about any such arrangements involving making rental payments on the receiving party's behalf, to ensure that additional housing funds are not still then also received on top of the basic UC allowance.

Variation claims

As the UC system is rolled out across the country, it seems inevitable that this will lead to variation claims in respect of settlements reached under the old legacy benefit system. Firstly, UC typically reduces

a recipient's overall income. Further, as outlined above, the impact of the new spousal maintenance rules and capital transfer limits can have a drastic impact on the level of benefit income received under UC. The effect could be that previously agreed periodical payments are now no longer sufficient to meet the parties' reasonable income needs. Alternatively, any capital remaining in the recipient's accounts from a previously ordered or agreed capital transfer, could have the effect of now reducing UC payments or indeed making the recipient entirely ineligible for UC should the remaining capital be over £16,000.

The transfer on to UC could therefore unfortunately have the effect of increased reliance on ex-spouses for longer, if state assistance is reduced or ceases entirely.

Further reforms?

Organisations supporting victims of domestic abuse had lobbied for amendments to be made to the UC system within the Domestic Abuse Bill, which has now received Royal Assent and become the Domestic Abuse Act.

These organisations, such as Refuge, had raised that there is a particular concern surrounding the way in which monthly UC payments are made. UC is by default paid into a single bank account even if the claim is a joint claim by two individuals. Therefore a perpetrator of economic abuse is able to have control over the household income by directing the UC payment comes into their account.

Whilst survivors of abuse can request the payments be split into two accounts, this request has to be made on the online UC account. It will be made obvious to the perpetrator by way of a notification on their online account, or when they see the UC amount reduce in their bank statement, that this request has been made. This then places the survivor at risk of further harm.

There is also a 5-week delay for the first payment. Those who have fled abuse will consequently find themselves in an

incredibly vulnerable position whilst waiting for their first UC payment, if applying for the first time or applying now as an individual.

Proposals were therefore made that UC payments claimed by couples should, by default, be paid into two separate bank accounts and also that those fleeing

domestic abuse should be eligible to receive grants to assist during the initial 5-week waiting period.

Unfortunately, such amendments have not been included within the Domestic Abuse Act. It is hoped such amendments can be achieved through another mechanism in the near future.