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The Universal Credit assessment period and earned income

By Steven Kennedy and Andrew Mackley

Universal Credit is assessed and paid monthly. For claimants who are in work, the amount they receive is based on their earnings with reference to a fixed monthly period – the "assessment period."

For some people – for example, those who are not paid wages monthly, or whose wages are paid on the last working day of the month – this can mean that in some assessment periods they receive an additional payment of wages. As a result, Universal Credit awards can fluctuate unpredictably. Claimants may also lose out as only one monthly "work allowance" can be deducted from their earnings when their UC award is calculated.

The Department for Work and Pensions advises Universal Credit claimants to be prepared for months when they will get an additional payment of wages and budget accordingly or, alternatively, ask their employer to change the date on which they are paid.

On 11 January 2019, the High Court ruled that the DWP had wrongly interpreted the regulations on how earned income should be calculated. It held that the amount of earned income in respect of an assessment period is based on, but not necessarily the same as, income actually received in that period. The DWP would have to make adjustments where the actual amounts received in an assessment period do not in fact reflect earnings payable in respect of that period.

At a further hearing on 26 February the High Court rejected the DWP's application for permission to appeal. The Department has now applied directly to the Court of Appeal for permission to appeal.

This Commons Library briefing looks at the problems working Universal Credit claimants can experience because of the assessment period rules, and at the implications of the High Court judgment.

1. What is the Universal Credit assessment period?

Universal Credit is assessed and paid monthly in arrears, as a single payment. The thinking behind this is that UC should mimic work and receipt of a salary. How much a person or family receives is calculated separately each month, by looking at their earnings and other income with reference to a fixed monthly period – the "assessment period."[1] UC payments are normally paid directly into the claimant's account within seven days of the last day of the monthly assessment period, or "as soon as reasonably practical" thereafter if this is not possible.

The assessment period "window" is not the same for all Universal Credit claimants. A household's first assessment period begins on their first day of entitlement to UC and lasts for one calendar month.[2] Each subsequent assessment period begins on the same day of the month, unless the first date of entitlement is 31st of the month (in which case each assessment period beings on the last day of the month); or if the first date of entitlement is on 29th or 30th of the month (in which case in February it begins on the 27th, or in a leap year on the 28th).

Once a household's assessment period dates have been determined, they remain fixed for as long as the household remains entitled to Universal Credit. They cannot ask the DWP to change the assessment period dates. Furthermore, if a household ceases to be entitled to UC or closes their claim, if they then make a new claim for UC the previous assessment period dates apply unless six months or more have elapsed.

2. How can the way claimants are paid wages affect how much UC they receive?

Universal Credit awards comprise a standard allowance with additional amounts for children, housing and other needs and circumstances such as childcare and caring. The actual amount a family receives will however depend on its income and savings. Earned income – i.e. income from employment or self-employment – will reduce the UC award at a constant rate (the "single taper"), although some families will be able to keep some of their earned income each month (the "work allowance") before it begins to affect their UC.[3] The taper rate is 63 pence for each additional pound of net earnings.

For employees paid through Pay as You Earn (PAYE), HMRC's Real Time Information (RTI) system allows DWP to automatically adjust their UC award if their wages change.[4] A

[1] The UC calculation is based on the household's circumstances – e.g. the number of children, housing costs, disability status – on the last day of the assessment period. This "whole month" approach benefits households experiencing a change part way through the month which increases their entitlement, but where a change occurs which reduces entitlement the household will lose out. The loss can be substantial if the change occurs just before the end of assessment period.

[2] See New to Universal Credit: How and when you'll be paid on www.understandinguniversalcredit.gov.uk

[3] Only claimants with children or a limited capability for work because of illness/disability have a work allowance. The 2018-19 rates are £198 a month for claimants getting help with housing costs, and £409 if they're not getting help with housing costs. From April 2019 the monthly rates will increase to £287 and £503 respectively.

[4] See Revenuebenefits, Universal credit: RTI and Universal Credit, last updated 9 January 2019

person's UC award will be calculated on the basis of the payments received as indicated via RTI, but DWP is not obliged to use RTI data if, for example, the employer is not providing accurate reports, or the information on the RTI report is wrong. Not all employers submit information to HMRC via RTI; some employees – and all self-employed UC claimants – have to self-report their earnings to the DWP.[5]

Regulation 54 of the *Universal Credit Regulations 2013* (SI 2013/376 as amended) provides:

> **Calculation of earned income - general principles**
>
> **54.**—(1) The calculation of a person's earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

A rigid application of the assessment period rule can cause problems for people whose pay arrangements are not completely in step with the Universal Credit system. UC claimants may receive more than the usual number of wage payments in an assessment period, such as those who are paid weekly and may therefore be paid five times within one month, or those who receive their wages on the last working or banking day of the month and so experience months when two months' wages are received during one assessment period.[6] In consequence, UC awards can change suddenly from month to month in ways that are difficult to predict and budget for.

Claimants can also lose out financially over the longer term if they get an additional pay packet in an assessment period. Those receiving two month's pay in one assessment period but no payment of wages in the next assessment period will only have one month's work allowance deducted from the earnings. Claimants paid two months' wages in one assessment period but none in the next can also find themselves subject to the benefit cap in the second month, even though their annual earnings have not changed.

Households who would usually be eligible for passported help with health costs – such as free prescriptions – because their earnings are low can find themselves ineligible in some months when their earnings appear to be more than they are. Or, it can result in people not being eligible a UC payment and therefore for a discretionary housing payment from the local authority, as these are only available to people in receipt of Housing Benefit or the housing element of UC.

If a household is not entitled to Universal Credit because they have received an additional payment of wages, they need to re-apply to get UC again the following month. This doesn't however require them to make an entirely new claim. To re-apply, they will need to log on their online account. The claim will show their circumstances on the date they last got UC. they will need to confirm that the details in their account are correct to claim again automatically. Their monthly assessment period and payment dates are unchanged.

3. How have assessment period rules affected claimants?

There have been various complaints by claimants, commentators and other interested parties in the welfare sector that the monthly assessment period rules are causing problems for a significant number of UC claimants who are experiencing fluctuations in their monthly payments. In August 2018 the Child Poverty Action Group (CPAG) said that

[5] See the DWP Full Service Guidance chapter Real time information. Last updated 20 June 2018
[6] See DWP, Universal Credit: different earning patterns and your payments, last updated 8 March 2019

of more than 400 Universal Credit cases submitted to its "Early Warning System" since 2017, one in 20 included a problem related to the assessment period. It reported:

> Many working claimants are seeing their UC award rise and fall month by month purely because of when their paydays and assessment periods fall, making budgeting extremely difficult, while others lose hundreds of pounds a year because of the knock-on effects of these mismatches on work allowances, the benefit cap, passported benefits and discretionary housing payments. This included those who are not paid monthly, so receive more pay in some assessment periods than others, as well as monthly-paid employees who receive two monthly pay packets in some assessment periods… and none in others. People who receive back pay from a previous job can lose out unexpectedly too.[7]

CPAG reported that many of the claimants in its study found budgeting difficult because people were receiving "hugely variable UC awards even when their underlying earnings have not changed". It cited the example of a couple whose UC monthly payments had ranged from zero to almost £1,200.[8]

CPAG argues that a "fundamental rethink of the strict system of monthly assessment of earnings would be sensible." For some claimants, it believes weekly assessment would be more suitable, while for others (such as self-employed with "lumpy" earnings and costs across a year), longer assessment periods might be more suitable. However, it also recognises that monthly assessment was central to the design of UC and could not be changed overnight. With that in mind, CPAG suggests measures which could resolve the issues its report identifies within the current system of monthly assessment. These include:

- Using averaged earnings for benefit cap decisions and for those on non-monthly pay cycles.
- Using regular monthly pay, where applicable, to determine UC awards
- Permitting monthly-paid claimants to change their assessment period dates.
- Allowing earnings to be averaged over three months to determine entitlement to passported benefits.
- Providing more information and tools for claimants so that they know in advance what they will get and can plan accordingly.[9]

4. What is the DWP's position?

The Department for Work and Pensions has produced guidance for claimants, Universal Credit: different earning patterns and your payments (payment cycles), which was last updated in March 2019. This notes that if claimants are paid by their employers on the same date each month, they should get one payment of earnings with one UC assessment period: "As long as your earnings and personal circumstances stay the same, then your Universal Credit payments should stay the same".

The guidance states explicitly that the assessment period system is designed to provide flexibility for claimants to take on additional work so that if a claimant's income changes every month, then the UC award will change to reflect that.

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7 Josephine Tucker and Dan Norris , Rough Justice: Problems with monthly assessment of pay and circumstances in universal credit, and what can be done about them, CPAG, August 2018, p3

8 Ibid. p9

9 Ibid. section 2.3

For those who receive an additional payment of wages within a single assessment period, the guidance notes that claimants may receive too much income to qualify for UC for which they "will need to be prepared" and advises that claimants should "budget for a potential change in your monthly Universal Credit payments."

In response to the High Court challenge (see below), the DWP submitted that regulation 54 of the 2013 Regulations (quoted above) meant that it had to calculate UC awards based on the amount of earned income received in a single assessment period. It noted further that the underlying aim of these rules was to provide for an automatic system which would preclude adjustments taking place on an *ad hoc* basis owing to administrative difficulties.

Additionally, the DWP has argued that a key aim of UC is to encourage changes in behaviour, and that employees could ask their employers to alter the date or method of paying wages, thereby avoiding the problem of an additional payment of wages being considered within the same assessment period.

5. What did the High Court decide?

This High Court case involved four single parent UC claimants who challenged the rigidity of the assessment period system which results in some people being treated as receiving two monthly wages in one assessment period, in turn affecting their UC award. The claimants had received their wages on or around the last working day or the last banking day of the month, so that there were times when wages payable in respect of two different months were paid during one monthly assessment period. The DWP had counted both salary payments in a single assessment period which had meant that they would not retain each salary payment via the work allowance before any reduction of their earned income by 63% as part of the UC award calculation.

On 11 January 2019 the High Court ruled[10] that the DWP had wrongly interpreted the 2013 Regulations, and that an adjustment may need to be made where the actual amount received in an assessment period does not reflect the earned income paid "in respect" of that period. It held that (para 50):

> Regulation 54 of the 2013 Regulations does not provide that the amount of earned income "is to be the actual amounts" received "in" the assessment period. Rather, the amount of earned income is to be "based on" the actual amounts received. Furthermore, the purpose of the calculation is, as appears from the opening words of the calculation, to calculate the amount of a person's income "in respect of an assessment period".

In terms of the period in respect of which the earned income is earned, the High Court ruled (para 52):

> It is the earned income in respect of the period of time included within the assessment period that is to be calculated. That is to be based on the actual amounts received in the assessment period. There may, however, need to be an adjustment where it is clear that the amounts received in an assessment period do not, in fact, reflect the amounts of earned income received in respect of the period of time included within that assessment period.

The Court ruled that the calculation of UC payable to the claimants ought to reflect that the two monthly salaries had been paid "in respect" of different monthly UC assessment periods (para 54):

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[10] *R (Johnson, Woods, Barrett and Stewart) v SSWP*; [2019] EWHC 23 (Admin)

> The intention, as is clear from regulation 22(2), is that a claimant be allowed to retain a particular amount of earned income in respect of each assessment period [the work allowance] to reflect the living costs that the claimant will incur in that assessment period. It would be odd in the extreme if the calculation method in regulation 54 meant that a claimant would in respect of one month's salary be prevented from retaining the amount of the work allowance for that month because the salary happened to have been paid in the same assessment period as another month's salary, with the consequence that the two months' salary were combined and only one amount of work allowance could be deducted.

The Court held that (para 56):

> ...on a proper interpretation of regulation 54, read in context, the earned income of a claimant is the earned income he or she receives in respect of the assessment period, that is in respect of periods of time comprising the assessment period. The calculation will be based upon the actual amounts received. That will be the starting point and in many, perhaps in the vast majority of cases, may well be the finishing point of the enquiry that the legislation requires. However, there may need to be an adjustment where it is clear that the actual amounts received in an assessment period do not, in fact, reflect the earned income payable in respect of that period.

Regarding the DWP's submission emphasising the importance of automation in the design of the system, the High Court noted that manual adjustments might incur cost and "administrative inconvenience", but that the "language of the regulations cannot be distorted to give effect to a design which may have proceeded on a basis which is wrong in law" (para 59). It pointed out that, in addition, the existing regulations (particularly Regulation 61) already contemplated scenarios where manual intervention might be required, such as when RTI data may not be sufficiently accurate or timely. This indicated that there was "no insurmountable problem" in carrying out calculations (para 60).

Finally, the High Court dismissed the DWP's submission that claimants could ask their employers to change the salary payment arrangements to avoid clashes with the UC assessment period. It noted (para 61):

> …it is the employer not the employee who determines the date and method of payment. It is difficult to see how it could be said that the regulations were drafted on the assumption that any problems would be resolved by claimants asking third party employers to alter their payroll systems.

It noted that three of the defendants had in fact asked their employers to change their pay arrangements but that the employers had declined. The Court added (para 61):

> …whilst it may be that universal credit was intended to contribute to changed behaviour patterns, those would appear to be connected, at best, with encouraging or facilitating work in particular as a means of enabling those on low incomes to move out of poverty. There is nothing to suggest that the behavioural changes envisaged included encouraging employees to request, and employers to make, changes to payroll arrangements. In any event, however desirable such behavioural changes may be (and that is a matter of policy for the executive and not a matter of law for the courts), there is no basis for inferring that the relevant regulations in this case were drafted on the assumption that such changes would occur. The Secretary of State must apply the legislation as it currently is and as correctly interpreted.

6. What happens next?

The Child Poverty Action Group, which had been a party to the High Court challenge, welcomed the ruling as a "common-sense judgment which clearly established that the DWP has been applying its universal credit regulations incorrectly." Carla Clarke, CPAG's solicitor, claimed that it "should mean that in future no one will lose out on their universal

credit awards or face the hardship that my clients have faced simply because of when their payday happens to fall."[11]

The Department for Work and Pensions has not made any public statement in response to the High Court judgment[12], but at a further hearing on 26 February the High Court refused an application from the DWP for permission to appeal the decision of 11 January. In light of its "very clear conclusion" as to the correct interpretation of the legislation, the Court did not consider than an appeal had real prospects of success. Nor did it think there was any compelling reason for permitting an appeal to proceed.

The DWP is now seeking permission to appeal directly to the Court of Appeal, and so this is subject to ongoing legal proceedings. In the meantime, the High Court's judgment should be applied in cases where two monthly wages have been treated as earnings in a single assessment period.

Universal Credit welfare rights sources advise that claimants who lose out because of how a salary payment falls within their assessment period should ask for their claim to be reviewed and cite the High Court's ruling when doing so. CPAG has provided resources for welfare rights advisors acting for such claimants on their website.

A recent Low Incomes Tax Reform Group (LITRG) blog suggests that, for some Universal Credit claimants at least, a potential solution to the two monthly wages in one assessment period issue could lie in raising awareness among employers of concessions to the reporting requirements under HMRC's Real Time Information (RTI) system. LITRG notes that under RTI, the basic premise is that employers need to send payroll information to HMRC on or before their employees' pay date. However, HMRC have introduced concessions to the 'on or before' requirement. In particular, guidance states that where employees are paid a day early because their regular pay day falls on a non-banking day, their employer should not use the earlier pay day in the payment date field, but should use the contractual pay date.[13]

[11] "High Court finds DWP unlawful on Universal Credit assessments", CPAG press release, 11 January 2019

[12] A parliamentary written answer on 7 February said that the Department was "carefully considering the High Court's Judgment" and it was "therefore not appropriate to comment further at this stage" (PQ 214621)

[13] LITRG blog, Universal credit payment problems – could HMRC hold the key?, 25 February 2019

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