HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Coronavirus: Legacy benefits and the Universal Credit 'uplift'

By Andrew Mackley, Frank Hobson, and Rod McInnes

In March 2020, at the beginning of the coronavirus pandemic, the Chancellor of the Exchequer announced that the standard allowances of Universal Credit and the basic element of Working Tax Credit would be increased temporarily by £20 a week. This ‘uplift’, however, did not extend to the other working-age mean-tested benefits – the ‘legacy’ benefits – which are being replaced by Universal Credit. This has been a source of contention ever since. There are currently 1.76 million claimants of these means-tested legacy benefits in Great Britain.

The Government’s rationale for not extending the uplift to other legacy benefits is that the increase to UC and WTC at the beginning of the pandemic was intended to support people newly unemployed or experiencing reduced incomes and therefore new to the benefits system, who have mostly been claiming Universal Credit. Ministers and officials at the Department for Work and Pensions have also commented that delivering a temporary increase as quickly as was achieved in UC and WTC would not have been possible in the legacy system for operational reasons.

Various welfare rights groups and campaigning organisations (in addition to opposition politicians and others) have, however, throughout the pandemic called for the uplift to be extended to legacy benefits. They have argued, for instance, that legacy benefit claimants (including disabled people and carers) have experienced increased living costs during the pandemic, without the same support afforded to those on UC or WTC.

This issue is now also the subject of a legal challenge by two claimants of income-related Employment and Support Allowance who argue that the Government’s decision not to extent the uplift to their benefit has discriminated against them as disabled people, in contravention of the European Convention on Human Rights.

This paper updates our Insight on this topic which was published in May last year: Commons Library Insight, Coronavirus: Increases to benefits payments, 27 May 2020).

1. The temporary 'uplift' to Universal Credit and Working Tax Credit

On 20 March 2020, the Chancellor of the Exchequer announced temporary increases to the following working-age, means-tested benefits and tax credits:

- The standard allowances of Universal Credit (UC),
- The basic element of Working Tax Credit (WTC), and
- Local Housing Allowance rates.

These increases in UC and WTC – or the 'uplift' as they are often called – amounted to an additional £1,000 per year, or £20 per week. The Chancellor stated that this uplift was designed to "strengthen the safety net" during the coronavirus pandemic, as part of a support package for household finances which included the introduction of the Coronavirus Job Retention Scheme (CJRS) – or the 'furlough' scheme – to support employees which was announced at the same time.[1] The Self-Employment Income Support Scheme for self-employed people was also introduced shortly thereafter.[2]

This uplift, however, did not apply to any other benefits, such as contributory benefits or extra-costs disability benefits such as Personal Independence Payment (PIP). It also did not extend to means-tested benefits which are being replaced by Universal Credit, but are still being claimed by many low-income families of working age. These are known as 'legacy' benefits and are:

- Income-related Employment and Support Allowance (ESA),
- Income-based Jobseeker's Allowance (JSA), and
- Income Support.

The uplift was intended initially to last 12 months and was expected to expire in April 2021. In the March 2021 Budget, however, the Chancellor announced that the UC uplift would be extended for a further six months from April 2021 (now scheduled to end in October 2021), and that Working Tax Credit claimants would instead receive a one-off £500 payment.[3] Despite calls to extend the uplift to legacy benefits at the Budget (discussed below), however, the Government declined to do so.

Independent of the six-month extension of the UC uplift and the one-off WTC payment, inflation-linked benefits and tax credits (including means-tested legacy benefits) rose by 0.5% from April 2021, in accordance with the usual annual benefit uprating procedures.[4]

1 'The Chancellor Rishi Sunak provides an updated statement on coronavirus', GOV.UK press release, 20 Mach 2020
2 'Chancellor gives support to millions of self-employment individuals', GOV.UK press release, 26 March 2020
3 Budget 2021: Social security measures, Commons Library Insight, 9 March 2021
4 Benefits Uprating 2021, Commons Library briefing CBP-9131, 3 February 2021

2. Government rationale for not including means-tested legacy benefits in the uplift

In explaining why the uplift was limited to the standard allowances of UC and to the basic element of WTC – without including legacy benefits – ministers and officials at the Department for Work and Pensions (DWP) have provided two key reasons:

- That the uplift was introduced to support people who are newly unemployed or have a reduced income from work as a result of the pandemic and are therefore newly in need of support from the benefits system. In the early months of the pandemic, new benefit claimants were mostly claiming Universal Credit (which is now the only option for new claimants seeking means-tested social security assistance).[5] The Secretary of State for Work and Pensions, Thérèse Coffey, told the Work and Pensions Committee on 25 March 2020 that it was the Government's desire to "focus particularly on new claimants who are coming into the process for the first time".[6]
- That delivering a swift temporary uplift was operationally possible in Universal Credit and Working Tax Credit which have digital systems where increases could be applied very quickly, but that this is not the case for legacy benefits. The DWP Permanent Secretary, Peter Schofield, told the Work and Pensions Committee at the 25 March 2020 hearing that given the "agile nature of Universal Credit" the uplift could be introduced in two weeks, whereas this was not possible for legacy benefits. Dr Coffey added to this on 4 May 2020 when she told the House of Commons that in processing a change in other benefit systems, it usually takes "four or five months before the actual changes come through, because that is how long it takes our computer systems to work".[7]

More recently, in evidence to the Work and Pensions committee on 3 February this year, Dr Coffey and Mr Schofield both reiterated these two points as the key reasons for why the uplift is restricted to UC and WTC. Mr Schofield summarised it in the following way:

> […] last year, back in March, we implemented very quickly the £20 uplift to universal credit. We were able to get that in in a matter of weeks. That is something that the agility of the universal credit system enabled us to do. The primary policy rationale for the £20 uplift was related to people who, as the Secretary of State says, were coming into benefits—coming into universal credit for the first time and needing to manage with the loss of income that they were facing in that context. So it applied to people making new claims to benefits going into universal credit as opposed to legacy benefits, but it is absolutely fair to say that in March last year we were able to implement a change to the rate of universal credit very quickly, and we wouldn't have been able to do that with legacy benefits.[8]

DWP ministers have also responded to questions on this topic by noting that legacy benefit claimants "can make a claim for UC if they believe that they will be better off",

5 From 16 March 2020 to the end of April 2020, there were 1.8 million new claims for Universal Credit, compared with over 250,000 claims for contributory New Style Jobseeker's Allowance and 20,000 claims for contributory New Style Employment and Support Allowance (HC Deb 4 May 2020 c 421).
6 Work and Pensions Committee, Oral evidence: The DWP's response to the coronavirus outbreak, HC 178, 25 March 2021, Q33
7 HC Deb 4 May 2020 c425
8 Work and Pensions Committee, Oral evidence: DWP's response to the coronavirus outbreak, HC 178, 3 February 2021, Q421

while also urging people interested in doing so to check their eligibility first before submitting a claim:

> Claimants on legacy benefits can make a claim for UC if they believe that they will be better off. The Government encourages anybody to go on GOV.UK and use one of the independent benefit calculators to check carefully their eligibility, because on applying for UC their entitlement to legacy benefits will cease and they will not be able to return to them in the future. Neither DWP nor HMRC can advise individual claimants whether they would be better off moving to UC or remaining on legacy benefits. They can get help through the government funded Help to Claim scheme as well as the Citizens Advice and Citizens Advice Scotland.[9]

3. Who are legacy benefit claimants?

As of November 2020, there were just under 1.76 million claimants of the three legacy DWP benefits in Great Britain, comprising:

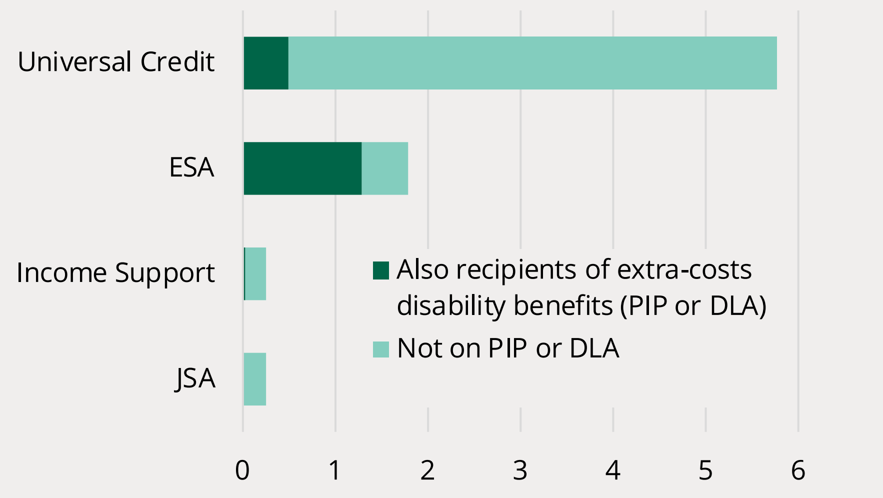
- Income-related ESA: 1,371,800
- Income Support: 262,400
- Income-based JSA: 120,100 (approximate).[10]

Claimants of these legacy benefits tend to be older than those claiming Universal Credit. They are also more likely to be claiming extra-costs disability benefits like PIP than those claiming UC. Increasing UC payments therefore benefits disproportionately younger people, and those who are less likely to claim disability benefits.

Of the 5.72 million working-age people on UC as of November 2020, around 491,000 (9%) were recorded as also being entitled to either PIP or Disability Living Allowance (DLA). Among the 1.79 million claimants of ESA who were not also on UC, 1.29 million (72%) were on PIP or DLA.

Proportions of Universal Credit and legacy benefit claimants also on extra-costs disability benefits

Millions of working age people in Great Britain, November 2020



9 PQ 932, 21 May 2021

10 Source: DWP Stat-xplore. Income-based JSA is an estimate based on the number of JSA claimants with claim durations of over 6 months. As Income-based JSA was closed to new claims at the end of 2018, JSA claimants with claim durations of over 6 months are assumed to be income-based claims which began before this date.

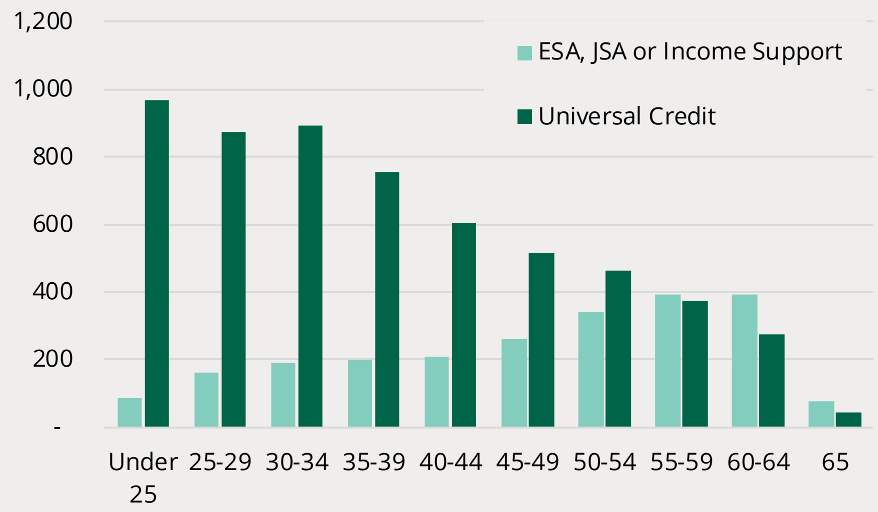
Notes: 'Universal Credit' includes all people on the benefit, whether they are ion work or out of work. Those who claim Universal Credit alongside contributory ESA or JSA are included in the "Universal Credit" category but excluded from the ESA and JSA categories.

Source: DWP Stat-Xplore benefit combinations dataset

Universal Credit claimants also have a younger age profile than claimants of other working-age income-replacement benefits. The median age of a person on UC in November 2020 was 35. The median age was 52 for ESA claimants, 39 for Income Support claimants, and 48 for JSA claimants.[11]

Universal Credit and legacy benefit claimants by age

Thousands of working age people in Great Britain, November 2020



Notes: 'Universal Credit' includes all people on the benefit, whether they are ion work or out of work. Those who claim Universal Credit alongside contributory ESA or JSA are included in the "Universal Credit" category but excluded from the ESA and JSA categories.

Source: DWP Stat-Xplore

We have not included WTC in this analysis since it is not captured in the same DWP datasets. For families who are in work, 94,700 out of 1,465,100 on tax credits in the UK (6.5%) get the disabled worker element and/or the severely disabled adult element as of December 2020, which suggests they are less likely to be getting extra-costs disability benefits than those on DWP legacy benefits.[12] However, not all extra-costs disability benefit recipients are eligible for these WTC elements, so this count isn't comprehensive.

11 DWP Stat-xplore benefit combinations dataset. Based on working-age claimants of ESA, Income Support or JSA not also on Universal Credit.

12 HMRC, [Child and Working Tax Credits Statistics April 2020](), 9 July 2020

4. Calls to extend the uplift to legacy benefits

Since March 2020, there has been a concerted effort by welfare rights groups and other organisations to persuade the Government to extend the uplift to means-tested legacy benefits. This has included calls from the Child Poverty Action Group (CPAG),[13] Citizens Advice,[14] and the Joseph Rowntree Foundation (JRF).[15] Such calls have argued that, like those on UC or WTC, people on legacy benefits have faced increased living costs during the pandemic, with a reduced ability to support themselves through work owing to the economic impact of coronavirus; and that many claimants of these benefits include disabled people and carers who cannot work or have a limited capability for work. Many of these calls have been made alongside parallel campaigns to maintain and/or make permanent the uplift in Universal Credit and Working Tax Credit instead of allowing it to expire, such as the JRF's 'Keep the lifeline' campaign in advance of the 2021 Budget which was supported by a number of different organisations.[16]

A campaign to extend the uplift to legacy benefits has also been coordinated by the Disability Benefits Consortium (DBC) which started the 'Don't leave Disabled People Behind' petition. As of the date of publication, this has attracted over 121,600 signatures, and states:

> The Government has chosen to 'focus on new claimants' by providing an extra £20 a week for people claiming Universal Credit. By doing this, they are discriminating against millions of disabled people on other out of work disability benefits.
>
> Disabled people are experiencing additional costs and risks as a result of COVID-19, but are without the extra support they need to manage these. As a result, people are having to choose between heating their home, or paying for a taxi to go and collect their medication because public transport is too unsafe. They are having to put themselves at risk by going to their local shop because they can't afford the minimum spend needed to get a free food delivery.
>
> Disabled people have been expected to survive on inadequate benefit levels for years. It is unacceptable that now, in a time of national crisis they are being left behind. The Government have, by increasing the rate for some, admitted that people need more financial support. They must now provide a better safety net for everyone.[17]

In February 2021, the DBC reported results from a survey of people on UC and legacy benefits which showed that after one year of the pandemic, disabled claimants had faced much greater living costs, due to increased food and utility bills. It reported that "two thirds (67%) of disabled claimants have had to go without essential items at some point

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13 In a variety of publications, most recently Child Poverty Action Group (CPAG), Falling Through the Net – Briefing 2, 25 February 2021. See also CPAG and the Church of England, Poverty in the Pandemic: An Update on the Impact of Coronavirus on Low-Income Families and Children, 14 December 2020

14 Citizens Advice, Life on less than zero, 13 October 2020. See also its 'Budget 2021 representation from Citizens Advice on the Universal Credit Uplift', 14 January 2021

15 Joseph Rowntree Foundation (JRF), The £20 weekly uplift must be extended to legacy benefits, 18 November 2020; JRF, The financial impact of COVID-19 on disabled people and carer: Why extending the £20 uplift to legacy benefits is the right thing to do, 3 December 2020

16 JRF, Keep the lifeline: why the Government should keep the £20 uplift to Universal Credit, 18 January 2021. See also the joint letter from multiple organisations and others, coordinated by the JRF, to the Government: 'Join open letter to The Chancellor – Keep the lifeline', JRF, 30 September 2020

17 'Don't Leave Disabled People Behind', Disability Benefits Consortium petition on 38 Degrees website (accessed 27 May 2021)

during the pandemic" and that "[a]lmost half (44%) of disabled claimants are reporting being unable to meet financial commitments such as rent and household bills".[18]

The Resolution Foundation noted in its report, 'Safe Harbour' published in October 2020, that part of the Government's rationale for not extending the uplift to means-tested legacy benefits was that since no new claims for these benefits (with some exceptions) have been possible since December 2018, recipients of them would not have been in work recently. The Resolution Foundation argued, however, that:

> […] there were recipients of UC who in March 2020 were not working, and there were others with long-term health-related conditions who are in effect identical to some ESA claimants. On this basis, it seems arbitrary and unfair to have increased UC and not income-based ESA or JSA. If the £20 per week increase to UC is made permanent, the Government should, in the interests of fairness, consider increasing legacy benefits.[19]

Additionally, on 28 July 2020, the then chair of the Social Security Advisory Committee (SSAC) wrote to the Secretary of State for Work and Pensions to say that while the Committee understood the operational reasons for not including income-related ESA and income-based JSA in the uplift originally, "we are of the strong view that it is increasingly untenable for this group of claimants to be excluded and to continue to have a lower level of income than those in receipt of Universal Credit and Working Tax Credit". It recommended that the DWP find a way to ensure these claimants "are brought up to the same level" as those on UC and consider backdating this uplift to 6 April 2020.[20]

Similarly, in its report on the DWP's response to the coronavirus outbreak, published on 22 June 2020, the Work and Pensions Committee concluded that the Government was right in the initial phase of the coronavirus crisis to focus on increasing UC and WTC as such a change could be implemented speedily to help millions of people. It noted, however, that this

> […] does not mean that the Government should simply ignore the needs of those people who are claiming – through no fault of their own – benefits which rely on outdated and complex administrative systems. Those benefits include support for disabled people, people with health conditions, for carers, and for people with children. Even if it takes the Department several months to make the changes, that would still be better than offering no additional support at all.

It recommended that the DWP "should immediately seek to increase the rates of relevant legacy benefits by the equivalent amount" and backdate payments to April 2020.[21]

The Government responded to this report in September 2020 by saying it had no plans to extend the uplift beyond UC and WTC, and that legacy benefit claimants might be able to claim UC if they believe they would be better off, but that they should check their eligibility before submitting a claim as they would not be able to return to the legacy system once a claim for UC has been made.[22] The Work and Pensions Committee said it was "disappointed" with this response in a subsequent report focused primarily on the

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[18] Disability Benefits Consortium, Pandemic Poverty: Stark Choices Facing Disabled People on Legacy Benefits, 21 February 2021. This followed a survey conducted in April 2020 which found that more than 90% of disabled people were experiencing increased costs as a result of the pandemic: DBC, '"It would mean not having to skip meals" – the emergency need to #IncreaseDisabilityBenefits', April 2020

[19] Resolution Foundation, Safe Harbour? Six key welfare policy decisions to navigate this winter, 7 October 2020

[20] SSAC letter to the Secretary of State for Work and Pensions, 28 July 2020

[21] Work and Pensions Committee, DWP's response to the coronavirus outbreak, HC 178, 22 June 2020, paras 61-63

[22] Work and Pensions Committee, DWP's response to the coronavirus outbreak: Government Response to the Committee's First Report, HC 732, 8 September 2020, p3

future of the uplift in UC and WTC, published in February 2021. It argued that, while it was operationally difficult to extend the uplift to legacy benefits, since the DWP makes annual one-off Christmas bonus payments to people claiming non-UC benefits such as PIP, Carer's Allowance, and Disability Living Allowance, it was "hard to see why the Government could not make a one-off payment to people claiming legacy benefits."[23]

5. Recent debate on legacy benefits and the uplift

In the run-up to Budget 2021, welfare rights groups and other organisations had hoped that the uplift would be extended to legacy benefits, but this did not happen. Opposition MPs such as chair of the Work and Pensions Committee, Stephen Timms, Shadow Secretary for Work and Pensions, Jonathan Reynolds, the SNP's Alison Thewlis, and Liberal Democrat Work and Pensions Spokesperson Wendy Chamberlain criticised the decision not to extend the uplift to legacy benefits.[24]

The Secretary of State for Work and Pensions responded by arguing once again that the uplift was the result of a "specific reflection" at the beginning of the pandemic "to recognise the issues regarding people who were newly unemployed".[25]

Organisations including the Joseph Rowntree Foundation (JRF) and the Disability Benefits Consortium (DBC) also voiced their disappointment.[26] The DBC said that it would "redouble our efforts" in its ongoing campaign to persuade the Government to change its policy. It said:

> It's easy to be disheartened following the Budget. But what we know is that this is a government that U-turns in the face of public opinion. They did it over free school meals, and they may yet do it over the 1% pay increase for nurses. Their instinct over these issues has been wrong, but they will sometimes bow in the face of a determined campaign. So we must not lose heart, and remain campaigners.
>
> Our challenge is that in the decade since austerity kicked in, everyone has grown too used to disabled people being collateral damage in the national belt-tightening effort. Individual tragedies pepper the front pages of local newspapers, officials promise to learn lessons, and yet still the chancellor is confident that the British public will countenance a system where a disabled person on Employment and Support Allowance receives £20 less a week than someone who is newly unemployed. The difference that £20 can make to an individual's life is well documented, by the Disability Benefits Consortium and others, and the cost is minimal in the wider picture of government spending commitments. So this has to change.[27]

6. Cost of extending the uplift to legacy benefits

There have been several attempts to estimate the costs of extending the uplift to means-tested DWP legacy benefits. The Resolution Foundation estimated in October 2020 that it would cost between £1.5 billion and £2 billion per year, although (depending on how

23 Work and Pensions Committee, The temporary increase in Universal Credit and Working Tax Credit, 9 February 2021
24 HC Deb 4 May 2021 c424-494
25 Ibid. c428
26 JRF, JRF Spring Budget 2021 analysis, 4 March 2021
27 DBC, If not now, then when?, 10 March 2021

long it was in existence), it noted that this figure would fall significantly in future years as the caseload rollout of Universal Credit progresses.[28]

In November 2020, the JRF also produced an estimate, which it put at £1.9 billion in 2021/22, alongside its estimate of £6.4 billion for the costs of maintaining the uplift in UC and WTC for that year.[29]

7. Legal challenge

In March 2021, judicial review proceedings were launched by the legal firm Osbornes Law on behalf of two disabled people on income-related Employment and Support Allowance. They argue that the DWP's decision not to extend the uplift to income-related ESA "has unlawfully discriminated against them as disabled people, under the European Convention on Human Rights".[30] Permission from the High Court to proceed with the challenge was given on 27 April. The claimants have asked the High Court to hear the case before the end of July 2021.[31] Both claimants have been assessed as having Limited Capability for Work-Related Activity ('LWRA') and are in the ESA 'Support Group' where claimants cannot work and are not expected to prepare for work in the future.

Press releases from Osbornes Law and Doughty Street Chambers (one of the barristers chambers acting for the claimants) on 29 April included the following further information about the arguments underpinning the legal challenge:

> UC and the subsistence benefits it is replacing, (e.g. ESA, Jobseekers Allowance ("JSA") and Income Support ("IS")) all include an allowance for basic living costs (known as the "standard allowance" for UC and the "personal allowance" for ESA, JSA and IS). These basic allowances had been set at the same rate within UC and those legacy benefits for many years. Until January 2021 many of the more severely disabled people on ESA were not permitted to claim UC instead. As a result of the decision to include a £20 a week uplift in UC, the standard allowance for UC is now significantly higher than it is for ESA and the other legacy benefits. But both groups of claimants depend on the basic allowance in their subsistence benefit payments to meet their basic needs. Regardless of the reasons for making the decision in March 2020, the claimants argue that it has become increasingly untenable for those claimants on legacy benefits to be treated differently from those on UC as they all face the same consequences of the pandemic. To continue to exclude those from legacy benefit from the uplift is "risking the establishment of a two-tier social security system": see Francesca Maddison, Joseph Rowntree Foundation., 18th Nov 2020.
>
> In summary the legal challenge is based on the proposition that it is clear that because of the pandemic those dependent upon basic allowances are facing higher basic living costs, and yet despite their very similar circumstances, only some of them receive a Covid-specific uplift to help meet those costs. This unfairness calls for a properly evidenced justification, particularly as very many disabled people are disproportionately affected by this decision and the pandemic generally. Thus far the Government has failed to provide any objectively verifiable reason for the difference in treatment of people in essentially identical circumstances.[32]

28 Resolution Foundation, Safe harbour, 7 October 2020, p6
29 JRF, Spending Review: No plan to protect people in poverty, 26 November 2020, p9
30 'Legal action launched over 'blatant discrimination' of DWP's £20-a-week uplift', Disability News Service, 11 March 2021
31 'Universal credit 'basic fairness' £20 uplift case given high court go-ahead', Disability News Service, 6 May 2021; 'Universal Credit increase: High Court challenge piles pressure on DWP to extend £20 uplift to all benefits', INews, 30 April 2021
32 'High Court Challenge The Denial of Benefit Increases For Nearly 2m People with Disability', Osbornes Law news article, 29 April 2021

The challenge has received support from organisations that have been calling for the uplift to be extended to legacy benefits, including the JRF and the DBC.[33]

Government ministers have declined to respond in public to the substance of this legal challenge, citing the DWP's policy of not commenting on live litigation. At Work and Pensions questions on 17 May 2021, Will Quince, Minister for Welfare Delivery, responded to a question on the judicial review challenge with the following:

> The Government have focused support on UC and working tax credit claimants because they are more likely to be affected by the sudden economic shock of covid-19 than other legacy benefit claimants. I am not going to comment on the live litigation, but I would say that legacy claimants can make a new UC claim and benefit from the £20 a week increase; the Government encourage anybody to go on gov.uk and use one of the independent benefit calculators to check carefully their eligibility before they apply.[34]

8. Commons Library briefings on social security support during the coronavirus pandemic

- Coronavirus: Withdrawing crisis social security measures, Commons Library briefing paper CBP-8973, 30 April 2021
- Coronavirus: Universal Credit during the crisis, Commons Library briefing paper CBP-8999, 15 January 2021
- Budget 2021: Social security measures, Commons Library Insight, 9 March 2021
- Benefits Uprating 2021, Commons Library briefing paper CBP-9131, 3 February 2021
- Opposition Day Debate: A Motion relating to Universal Credit and Working Tax Credit, Commons Library Debate Pack CDP-2021-0009, 15 January 2021
- Coronavirus: Support for household finances, Commons Library briefing paper CBP-8894, 22 June 2020

33 'JRF hails High Court bid to end discrimination against legacy benefit claimants', JRF press release, 29 April 2021; '#IncreaseLegacyBenefitsUpdate – Upcoming claimants' court case', DBC press release, 29 April 2021

34 HC Deb 17 May 2021 c404

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