

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 April 2024

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested the readiness and scaling assessments for Managed Migration used by the Department for Work and Pensions (DWP) in its roll out of 'Move to Universal Credit'.
2. DWP relied on sections 22 and 35(1)(a) to withhold the requested information.
3. The Commissioner's decision is that section 22 is not engaged and whilst section 35(1)(a) is engaged the public interest favours disclosure.
4. The Commissioner requires DWP to take the following steps to ensure compliance with the legislation:
  - Disclose the requested information.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 22 August 2023, the complainant wrote to DWP and requested information in the following terms:
- “Please provide any DWP managed migration readiness assessment(s) and scaling assessment(s) made to date for each of the following claimant groups:
- (a) Single claimants of tax credits only (excluding the scaling assessment carried out prior to 13/04/2023, as this is already the subject of FOI2023/28557)
  - (b) Couple claimants of tax credits only
  - (c) Other legacy benefit combinations (this includes the readiness assessment for the May 2022 discovery phase and also the readiness assessment for the September 2023 discovery phase)
- Please exclude any documents which do not relate to the current rollout beginning in 2022 and scheduled to take place through to 2028”.
7. DWP provided its response on 20 September 2023 and confirmed that it held the requested information. DWP explained that it was withholding the requested information as the information was intended for future publication and was therefore exempt under section 22.
8. DWP upheld this position when it provided the outcome of its internal review on 19 October 2023. However, it stated that it did not hold the information requested in point B of the request. DWP also introduced section 35(1)(a), formulation or development of government policy, for some of the requested information.

## Scope of the case

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9. The complainant contacted the Commissioner on 21 November 2023 to complain about the way their request for information had been handled. In particular, they disputed that DWP was entitled to withhold the requested information under sections 22 or 35(1)(a). They also disputed that DWP did not hold the information within request “(b)”.
10. During the course of the investigation, DWP amended its position regarding request “(b)” and stated:

“There has been some confusion around this request. The requestor has assumed that there are specific readiness assessments made for each cohort of customer types being explored. As the documents provided make clear the readiness assessment process is not clearly separated by customer type.

We believe that we do have information that falls within the scope of each part of the 3 separate elements of the request made. Therefore, we do not claim that we do not hold this information, although it is not in the precise format assumed by the requestor”.

11. The Commissioner addresses DWP’s change of position and the “confusion” surrounding the scope of the request in the other matters section of this notice.
12. As DWP has confirmed that the withheld information relates to the entirety of the request, the Commissioner considers that the scope of this investigation is to determine whether DWP is entitled to rely on section 22 or section 35(1)(a) to withhold this information.

## **Reasons for decision**

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### **Section 22: Information intended for future publication**

13. Section 22(1) of FOIA states that:

“Information is exempt information if –

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)”.

14. Section 22(1) is qualified by a public interest test.

15. There are, therefore, four questions to consider:

- Is there an intention to publish the requested information at some future date?

- Was the information already held with a view to publication at the time the request was made?
- Is it reasonable to withhold the information from disclosure until the intended date of publication?
- Does the public interest favour maintaining the exemption or disclosing the information?

**Was there an intention to publish the requested information at some future date?**

16. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.
17. In the First Tier Tribunal case *Department for Work and Pensions v Information Commissioner & Anor* [2023] UKFTT 822 (GRC) EA/2022/0328<sup>1</sup>, the Tribunal confirmed that the public authority must intend to publish the withheld information in its entirety with no redactions. DWP had argued that it could rely on section 22 with the caveat that redactions on the basis of other exemptions may be made at the time of publication. The Tribunal disagreed with this position and agreed with the Commissioner that the public authority must be able to identify the information that will be published.
18. As part of his investigation, the Commissioner asked DWP to confirm whether there was a settled intention to publish the information in its entirety **prior** to the request being made. DWP responded:  
  
"Yes. Publishing the full UC Programme Board papers unredacted is the approach that the Universal Credit Programme propose now to take. This approach was put in place following the recent tribunal decision and has been signed off by Ministers."
19. The Commissioner notes that the Tribunal's decision was issued in October 2023 and the request was made in August 2023. Therefore, at the time the request was made, DWP was awaiting the Tribunal decision and its approach was still that information could be redacted at the time of the future publication.
20. The Commissioner is not persuaded that DWP had a settled intention to publish the requested information in its entirety prior to the request

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<sup>1</sup> <https://caselaw.nationalarchives.gov.uk/ukftt/grc/2023/822?query=EA%2F2022%2F0328>

being made as, at that time, its position was that information may be published after two years provided that it is not exempt under another exemption.

21. The Commissioner acknowledges that there will have been instances prior to the Tribunal decision where DWP would have planned to publish information in its entirety. DWP has had the opportunity to confirm to the Commissioner that the intention was always to publish the information in its entirety, however, it confirmed that its approach had changed following the Tribunal decision, suggesting that at the time of the request the intention was to publish the information as long as no further exemptions applied.
22. For the above reasons, the Commissioner is not satisfied that the criterion at section 22(1)(a) is met and section 22(1) is not therefore engaged.
23. The Commissioner will not go on to consider whether the criteria at sections 22(1)(b) and (c) are met, however, he has previously found that a delay of two years for information relating to Move to Universal Credit is not reasonable<sup>2</sup>.

### **Section 35(1)(a): Formulation or development of government policy**

24. Section 35(1)(a) of FOIA states that:

“Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to –

(a) the formulation or development of government policy”

25. Section 35 is a class based exemption, therefore, if information falls within the description of a particular sub-section of section 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
26. The Commissioner considers that the ‘formulation’ of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs and recommendations/submissions are put to a Minister or decision makers.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027064/ic-240821-n0k4.pdf>

27. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy, such as piloting, monitoring, reviewing, analysing or recording the effect of existing policy.
28. Whether information is related to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focusing on the content of the information in question and its context.
29. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
  - The final decision will be made either by Cabinet or the relevant Minister;
  - The government intends to achieve a particular outcome or change in the real world;
  - The consequences of the decision will be wide ranging.

### **DWP's submissions**

30. DWP confirmed that the government policy to which the requested information relates is "Move to Universal Credit".
31. The Commissioner asked DWP to explain why it considers the information relates to the formulation or development of government policy. DWP responded:

"The information in the readiness assessments is clearly related to the formulation and development of the Move to UC policy. This is spelt out in the documents and supported by the Move to UC document published in August 2023"<sup>3</sup>
32. The Commissioner also asked DWP to set out why it considered that the policy had not yet reached the implementation stage and why the decisions being made were not yet implementation or operational decisions. DWP responded:

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<sup>3</sup> The Commissioner understands this document to be "Completing the move to Universal Credit: experimental statistics related to the move of households claiming Tax Credits and benefits to Universal Credit: data to end of May 2023"  
<https://www.gov.uk/government/statistics/move-to-universal-credit-statistics-july-2022-to-may-2023/completing-the-move-to-universal-credit-experimental-statistic-related-to-the-move-of-households-claiming-tax-credits-and-dwp-benefits-to-universal>

“As the Completing the Move to UC documents set out, DWP are taking a tried and trusted test and learn approach to developing the detailed policy required to support an effective and sensitive move of a large volume of claimants to Universal Credit”.

### **The Commissioner's position**

33. The Commissioner is disappointed at the paucity of DWP's submissions in this case and he reminds DWP of the importance of it providing him with full submissions in response to his enquiries so that he is able to make a proper assessment of section 50 complaints. The Commissioner would note that it is clearly in DWP's own interests to ensure that its submissions to him in any such complaint are clear and complete.
34. The Commissioner recently issued decision notice IC-242083-L0D4<sup>4</sup> and has taken DWP's explanation of the policy stage from this into account in his determination.
35. Having reviewed the withheld information and considered DWP's previous explanations, the Commissioner accepts that the 'Move to UC' policy was still being developed at the time of the request and the withheld information forms part of the development of this policy.
36. The Commissioner accepts that a large scale project such as Universal Credit will have different phases of the project at implementation, development and formulation stages. Therefore, whilst Universal Credit has been implemented for new claimants, the Commissioner accepts that DWP is still developing its policy on how and when all legacy benefits claimants should be migrated to the new system.
37. The Commissioner notes that the decision to move claimants on to Universal Credit had been made, however, he accepts that the policy was still in development. The Commissioner's guidance on section 35 states:

“For complicated policies, it is possible that formulation may continue even after this point. In some cases the government announces a high-level policy, or passes a 'framework' bill into law, but leaves the finer details of a policy still to be worked out. The high-level policy objective has been finalised, but detailed policy options are still being assessed

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027907/ic-242083-l0d4.pdf>

and debated. Later information about the formulation of the detailed policy will still engage the exemption”.

38. The Commissioner accepts that in the specific circumstances of this case, whilst a high-level decision had been made to move claimants on to Universal Credit, the decision on how all claimants will be moved had yet to be finalised.
39. The Commissioner therefore considers that section 35(1)(a) is engaged in relation to the specific withheld information. As section 35(1)(a) is a qualified exemption, the Commissioner will now consider the balance of the public interest.

### **Public interest in disclosure**

40. At internal review, DWP acknowledged the public interest in greater transparency which makes government more accountable to the electorate and increases trust. DWP also recognised the public interest in being able to assess the quality of advice being given to ministers and subsequent decision making.
41. In its submissions to the Commissioner, DWP recognised the advantages that putting detailed project data such as Programme Board papers into the public domain can achieve, such as maintaining trust in government and demonstrating the careful consideration of the optimum approach to delivering projects. It also acknowledged the public interest in “being transparent about how Move to UC policy is being developed”.
42. The complainant provided the following arguments in favour of disclosure at internal review:

“4. In July 2022 the Social Security Advisory Committee (SSAC), an advisory non-departmental public body sponsored by DWP stated that<sup>5</sup>:

“We have been told that the UC Programme has established its own internal performance metrics and specific criteria that inform decisions about scaling up or moving on to a new phase of implementation. The Programme is also responsible for assessing how it measures up against those criteria. This information is shared with the UC Programme Board, but not published, making it difficult for interested parties to understand the progress being made or for Parliament to hold the SRO properly to

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<sup>5</sup> <https://www.gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022>



account. In our view, this amounts to the UC Programme setting and marking its own homework.

We are conscious that there is a two-year lag on the publication of UC Programme Board minutes, but we are of the strong view that issues relating to exit criteria should be published contemporaneously. We believe that doing so would strengthen the SRO's internal and external accountabilities. In particular, this would strengthen Parliament's ability to hold the current and future SROs to account for decisions they have taken".

5. SSAC recommended that:

"We recommend that:

(a) the current criteria for moving to the next phase are published before summer recess, and subsequently within one month of amendments being agreed by the UC Programme Board, to ensure that there is transparency about the Programme's intentions [..]"

6. SSAC called for contemporaneous publication of scaling criteria, without the two year delay that would result from being published in the UCPB papers. SSAC is just one of the bodies which have called for greater transparency over the rollout and scaling of managed migration. These calls for greater transparency indicate that the public interest favours the publication of the requested information."

43. In their complaint to the Commissioner, the complainant provided the following arguments in favour of disclosure:

"In January 2023, DWP published some analysis of the first 500 cases issued with migration notices<sup>6</sup>, but have not publicly released any information about other cases from the discovery phase. In the first 500 cases 20% of tax credits recipients had their tax credits ended without them claiming Universal Credit<sup>7</sup> and about 20% of irESA<sup>8</sup> claimants

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<sup>6</sup> <https://www.gov.uk/government/publications/completing-the-move-to-universal-credit-learning-from-the-discovery-phase/completing-the-move-to-universal-credit-learning-from-the-discovery-phase>

<sup>7</sup> <https://www.gov.uk/government/publications/completing-the-move-to-universal-credit-learning-from-the-discovery-phase/completing-the-move-to-universal-credit-learning-from-the-discovery-phase#annex-a--earliest-testable-service-management-information>

<sup>8</sup> The Commissioner understands this to mean income-related Employment Support Allowance.

failed to claim by their deadline<sup>9</sup>.

In March 2023, DWP announced that it would be scaling up managed migration<sup>10</sup>.

There are around 2.5 million households remaining on legacy benefits<sup>11</sup>. The majority of these household are in receipt of tax credits (including a large number of families with children) or are receiving irESA (irESA is a benefit for people too sick or disabled to look for work)<sup>12</sup>.

DWP plan to managed migrate all remaining legacy benefit recipients (excluding those receiving irESA only, or irESA and Housing Benefit ('HB') only) by the end of 2024/25, starting with people in receipt of tax credits only in 2023. DWP announced in the Autumn Statement 2022 that rather than migrating all irESA claimants by the end of 2024/25 they now plan to manage migrate people in receipt of irESA only, and irESA and HB only, in 2028.

DWP plans to scale up managed migration, with a gradual increase in numbers followed by a steep increase. SSAC, writing before the Autumn Statement, described this as best visualised by comparison to the upwards trajectory implied by the handle of a hockey stick. SSAC [sic]

Neil Couling, the Senior Responsible Owner for UC, has stated that the Department is on track to issue all tax credits only claimants with migration notices by the end of the 2023/24 financial year<sup>13</sup>. He also confirmed that all remaining applicable households (including irESA claimants with children) will be issued with migration notices by the end of 2024/25.

DWP have provided the following numbers:

- a. In 2022 DWP estimated there would be about 1.7 million households

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[https://www.whatdotheyknow.com/request/managed\\_migration\\_ets\\_data\\_dwp\\_b/response/2251767/attach/3/Response%20FOI2023%2010503.pdf](https://www.whatdotheyknow.com/request/managed_migration_ets_data_dwp_b/response/2251767/attach/3/Response%20FOI2023%2010503.pdf)

<sup>10</sup> <https://www.gov.uk/government/publications/completing-the-move-to-universal-credit-learning-from-the-discovery-phase/completing-the-move-to-universal-credit-learning-from-the-discovery-phase>

<sup>11</sup> <https://www.gov.uk/government/publications/completing-the-move-to-universal-credit-learning-from-the-discovery-phase/completing-the-move-to-universal-credit-learning-from-the-discovery-phase>

<sup>12</sup> Table 1 <https://www.gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2>

<sup>13</sup> [https://www.rightsnet.org.uk/pdfs/041223\\_LA\\_-\\_UC\\_update.pdf](https://www.rightsnet.org.uk/pdfs/041223_LA_-_UC_update.pdf)

that DWP expected will be sent a migration notice over the course of the managed migration exercise<sup>14</sup>;

b. in 2022 there were 880,000 households receiving Child Tax Credits (i.e. all with children in the household and likely to represent the vast majority of legacy benefit households with children)<sup>15</sup>.

c. Around 100,000 people receiving both irESA and CTC will be sent migration notices before the end of 2024/25<sup>16</sup>. All of this cohort are considered too sick or disabled to look for work and will have children in their household;

d. the change in the Autumn Statement 2022 means that around 600,000 irESA only or irESA plus HB claimants may need to be managed migrated in 2028, down from around 1,000,000, due to the remainder either no longer meeting the conditions of entitlement (for example, due to reaching pension age prior to being migrated), death, or as a result of 'naturally migrating' due to experiencing a change in circumstance<sup>17</sup>. All of this cohort are considered too sick or disabled to look for work.

e. By August 2023, a total of 117,190 households had been sent migration notices<sup>18</sup>.

f. DWP claims that it is on track to issue 500,000 migration notices by the end of the 2023/24 financial year<sup>19</sup>.

[...]

Managed migration to UC is a process which, at its core, stops legacy benefit for claimants and, for those claimants that fail to claim UC, risks leaving vulnerable claimants without an income.

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<sup>14</sup> Paragraph 66

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1056553/explanatory-memorandum-for-ssac.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1056553/explanatory-memorandum-for-ssac.pdf)

<sup>15</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-10-10/hl2432>

"Note not all of these households will be subject to managed migration as some will 'naturally' migrate to UC".

<sup>16</sup> <https://www.rightsnet.org.uk/forums/viewthread/17989/P105/#88994>

<sup>17</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-12-06/104100>

<sup>18</sup> <https://www.gov.uk/government/statistics/move-to-universal-credit-statistics-july-2022-to-august-2023/completing-the-move-to-universal-credit-statistics-related-to-the-move-of-households-claiming-tax-credits-and-dwp-benefits-to-universal-credit-data>

<sup>19</sup> [https://www.rightsnet.org.uk/pdfs/041223\\_LA\\_-\\_UC\\_update.pdf](https://www.rightsnet.org.uk/pdfs/041223_LA_-_UC_update.pdf)

DWP treatment of vulnerable claimants has been a subject of increasing concern after a series of widely reported deaths<sup>20</sup> - including those of Errol Graham<sup>21</sup>, Jodey Whiting<sup>22</sup>, and Philippa Day<sup>23</sup>, all of whom died after DWP had stopped one of their benefits.

Vulnerable claimants are most likely to be found among the irESA claimant population. However, other legacy benefit groups will also include vulnerable claimants, for example DWP research shows that the tax credit claimant population includes vulnerable or potentially vulnerable claimants<sup>24</sup>.

The DWP is aware of the risks. The Department's own research shows that the planned managed migration process risks causing and exacerbating vulnerability<sup>25</sup>. Both the SSAC<sup>26</sup> and the Work and Pensions Select Committee (WPSC)<sup>27</sup> have raised concerns about managed migration, and its impact on vulnerable claimants.

DWP says that it will identify vulnerable claimants and support them through managed migration, but has repeatedly failed to identify and support vulnerable claimants:

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<sup>20</sup> <https://www.bbc.co.uk/news/uk-56819727> &

<https://www.bbc.co.uk/programmes/m001mck1/episodes/guide>

<sup>21</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2021/465.html> &

<https://www.nottinghamcity.gov.uk/media/3377147/billy-final-sar-for-publication-11th-may-2023.pdf> [Link no longer working]

<sup>22</sup> <https://www.bailii.org/ew/cases/EWCA/Civ/2023/289.html>

<sup>23</sup> <https://www.judiciary.uk/prevention-of-future-death-reports/philippa-day/> &

<https://www.nottinghamcity.gov.uk/media/3377231/sar-valentina-final-for-publication-may-2023.pdf> [link no longer working]

<sup>24</sup> Paragraph 49 [https://data.parliament.uk/DepositedPapers/Files/DEP2023-0366/017H1 Atkins DWP Move to UC Final Report v1 0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2023-0366/017H1%20Atkins%20DWP%20Move%20to%20UC%20Final%20Report%20v1%200.pdf)

<sup>25</sup> Paragraphs 7 & 8 [https://data.parliament.uk/DepositedPapers/Files/DEP2021-0836/7G-UCPB 16-04-19-Paper6-Move to Universal Credit Update.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2021-0836/7G-UCPB%2016-04-19-Paper6-Move%20to%20Universal%20Credit%20Update.pdf)

<sup>26</sup> <https://www.gov.uk/government/publications/draft-universal-credit-managed-migration-regulations-2018-ssac-report-and-government-statement> &

<https://www.gov.uk/government/publications/universal-credit-managed-migration-regulations-2018-ssac-correspondence>

<sup>27</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1762/176202.htm>

& <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/2091/209102.htm>

- a. CPAG<sup>28</sup> research found that, contrary to DWP guidance, staff do not systematically ask if claimants with a mental health condition require reasonable adjustments<sup>29</sup>;
- b. In some cases the processes designed by the DWP to safeguard vulnerable claimants have either not been followed or have been inadequate. For example, DWP failed to follow these processes in the case of Jodey Whiting, and amended processes following Errol Graham's death after recognising that they were insufficient;
- c. The Equality and Human Rights Commission ('EHRC') is seeking to reach an agreement with the DWP to improve the treatment of disabled claimants. The EHRC does not accept that action so far taken by the DWP are sufficient to ensure that the Department meets its legal obligations to avoid discriminating against disabled claimants<sup>30</sup>.

UC is a benefit which is not designed with the needs of vulnerable claimants in mind. The Prime Minister's Implementation Unit carried out research which concluded that 'Universal Credit is challenging by design for claimants with vulnerabilities'. And that, although 'holistic support is vital to help vulnerable claimants', 'frontline staff were often unclear on the expectations of managing complex claims for vulnerable people'<sup>31</sup>.

[...]

The WPSC stated that published tests of readiness are needed to hold the Government to account at each stage of UC rollout and proposed the adoption of provisional tests of readiness for managed migration at scale<sup>32</sup>. After receiving the Government's response, the then chair of the Committee accused the Government of having 'wilfully missed the

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<sup>28</sup> Child Poverty Action Group

<sup>29</sup> <https://cpag.org.uk/news/making-adjustments-experiences-universal-credit-claimants-mental-health-problems>

<sup>30</sup> <https://www.equalityhumanrights.com/our-work/news/ehrc-taking-action-improve-treatment-disabled-benefit-claimants> [The original link no longer works, the Commissioner believes the report is question can be found at:

<https://www.equalityhumanrights.com/media-centre/news/ehrc-taking-action-improve-treatment-disabled-benefit-claimants?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3DDWP>]

<sup>31</sup>

[https://www.whatdotheyknow.com/request/papers\\_7a\\_7b\\_from\\_the\\_221019\\_ucp/response/2465973/attach/4/H%20UCPB%2022.10.19%20Paper%207b%20PMIU%20UC%20vulnerab%20claimants%20deep%20dive.pdf.pdf](https://www.whatdotheyknow.com/request/papers_7a_7b_from_the_221019_ucp/response/2465973/attach/4/H%20UCPB%2022.10.19%20Paper%207b%20PMIU%20UC%20vulnerab%20claimants%20deep%20dive.pdf.pdf)

<sup>32</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/2091/209102.htm>

point'<sup>33</sup>.

SSAC included recommendations about the contemporaneous publication of the criteria for the purposes of assessing performance in their report on the 2022 regulations<sup>34</sup> and called for their publication when giving oral evidence to the Work and Pensions Select Committee<sup>35</sup>.

[The complainant] considers that the criteria for scaling managed migration and assessments of readiness against those criteria is key information to enable Parliament, civil society and other actors to scrutinise the DWP's plans for this large-scale exercise in as close to real time as possible. Given the risks which are inherent in an exercise that involves potentially stopping the benefits of vulnerable people, we consider the public interest lies in publication of this information contemporaneously and in any event prior to the scale up of the managed migration project (or of its respective stages in respect of the different cohorts of legacy benefit claimants).

[...]

The following factors favour the disclosure of the requested information:

- a. managed migration to UC involved significant amounts of public funds and a large number of households (including many vulnerable groups) [...];
- b. the risks of managed migration [...];
- c. various organisations have called for the publication of the requested information [...]."

### **Public interest in maintaining the exemption**

44. DWP explained that good government depends on good decision-making and this needs to be based on the best advice available and a full consideration of all the options without fear of premature disclosure. It considered that if this public interest cannot be protected there is a risk

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<sup>33</sup> <https://committees.parliament.uk/committee/164/work-and-pensions-committee/news/97652/government-wilfully-missed-the-point-on-uc-managed-migration-tests/>

<sup>34</sup> Recommendation 3 <https://www.gov.uk/government/publications/the-universal-credit-transitional-provisions-amendment-regulations-2022/the-universal-credit-transitional-provisions-amendment-regulations-2022-report-by-ssac-and-statement-by-the-secretary-of-state-for-work-and-pension>

<sup>35</sup> <https://committees.parliament.uk/oralevidence/10926/html/>

that decision-making will become poorer and will be recorded inadequately.

45. DWP explained that the Senior Responsible Owner (SRO) is accountable for a programme or project meeting its objectives, delivering the required outcomes, and realising the required benefits. DWP set out that the SRO of a government major project is accountable to Parliament. DWP explained that this accountability is monitored by regular appearances before the Work and Pensions Select Committee and public appearances before the Public Accounts Committee. DWP considered that these powerful committees subjecting the SRO to regular scrutiny of project delivery is a more effective method of securing accountability than the publication of specific internal project documents.
46. DWP explained that it continues to engage with external stakeholders at its regular forums. It explained that at these forums, it shares where it is, how processes have evolved and take views on how to better support those transitioning to Universal Credit under managed migration. DWP considers that, by doing this, all interested parties get a better understanding of the progress being made.
47. DWP considers that there is a significant risk that live debate around the detailed processes being tested to discover the optimum approach to moving vulnerable people over to Universal Credit will undermine the space needed for officials to test and develop effective policies. DWP stated that it did not engage in public debate around the processes being developed for moving tax credit customers across to Universal Credit. DWP further stated that the move of tax credit customers has progressed according to plan. DWP considers that there is a risk that live discussion of potential approaches will create confusion among the claimants that these policies are designed to serve.
48. DWP explained that it dealt with the SSAC's recommendations in a formal response and provided the following extract:

"The Department thanks Social Security Advisory Committee for its consideration of the regulations and report. The Department welcomes the Committee's focus on the regulation regarding the removal of the 10,000 limit on the number of claimants who can be sent a managed migration notice. This regulation has been proposed as this previous regulatory constraint no longer reflects how we wish to test and learn our approach for a responsible and safe transition for claimants to UC. We note that the committee has not made any recommendations regarding the draft regulations; therefore, we have not made any amendments to them, apart from some minor technical and drafting changes, ahead of laying them in Parliament.

The committee did make recommendations focusing on programme governance, operational matters, and engagement with stakeholders, particularly Parliament. The Department would like to formally note all the recommendations.

We already have comprehensive governance arrangements in place for Move to UC, including through the Programme Board, the regular review of the Permanent Secretary, and the oversight of Ministers. The Department already engages with the Work and Pensions Select Committee regularly.

The Department fully understands the importance of ensuring that the move from legacy benefits to UC is as smooth as possible. As part of our learning during the Discovery phase, we will test and validate our approach on what additional support may be required for people to make their claim to UC.”

49. DWP acknowledged that Managed Migration of Universal Credit involves significant amounts of public funds and a large number of households. DWP agreed with the complainant that many vulnerable groups will be represented in the people being moved to Universal Credit. DWP considered, however, that the accountability for the expenditure is provided by The Universal Credit SRO who is scrutinised by the Public Accounts Committee regularly and DWP include Universal Credit expenditure in its published Annual Accounts. DWP stated that it did not believe that these undisputed facts require the UC Programme to release unrelated project documentation.
50. In relation to the complainant’s argument that the risks of managed migration mean that the information should be disclosed, DWP responded:

“DWP recognise the risks involved in Managed Migration and formally managed risks as part of its project management processes. It is unclear what bearing this issue has in the release of the requested documents.”
51. In relation to the complainant’s argument that various organisations have called for the publication of the requested information, DWP responded:

“DWP is not aware of any organisations, other than SSAC, (as set out above), and this request, calling for the publication of these documents. Following searches made this does not reveal any such call in the public domain”.



52. DWP confirmed that having reviewed the requested documents, and considered the requirements of FOIA, it was confident that DWP is serving the public interest by focussing on the effective delivery of Universal Credit and withholding the requested documents at this time.

### **The balance of the public interest**

53. The Commissioner accepts that significant weight should be given to safe space arguments – ie the concept that the Government needs a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction – where the policy making is live and the requested information relates to that policy making.
54. Whilst the Commissioner accepts that the public interest in maintaining the exemption will be strongest while the policy is still being formulated or developed, this does not convert the exemption to an absolute one where information will not be disclosed simply because of the stage that the policy process has reached. There will be occasions where the government policy is at the formulation or development stage and the public interest in disclosure is sufficiently strong that the public interest in maintaining the exemption will not outweigh this.
55. The Commissioner's guidance on section 35(1)(a) clearly sets out that the relevance and weight of the public interest arguments depend entirely on the content and sensitivity of the information itself and the effect of its release in all the circumstances of the case. The guidance confirms that the Commissioner's position is that arguments that routine publication of particular types of information are not in the public interest are misconceived as each case must be considered on its individual circumstances.
56. The Commissioner considers that there is clearly a strong public interest in disclosure of information that would improve the public understanding and allow scrutiny of the Government's approach to migrating legacy benefit claimants onto Universal Credit.
57. The Commissioner considers that there is a very significant and weighty public interest in understanding, and scrutiny of, a policy that will affect millions of people, including the most vulnerable in society. The Commissioner considers that the public is entitled to be able to scrutinise the decision to progress Move to UC and the criteria that DWP has set with regards to this. Disclosure of this information would allow the public insight into the decision making process and an understanding of the decisions made and challenges overcome. The Commissioner considers that there is greater understanding to be gained from the timely disclosure of information than retrospective scrutiny.

58. The Commissioner acknowledges that the Move to UC policy and its progress is scrutinised by the SSAC as set out by DWP. However, he notes that the SSAC has, as part of this scrutiny, called for greater transparency around the Move to UC policy including publication of the criteria DWP has set itself before it proceeds with the policy.
59. The disputed information provides insight and understanding of how the policy is being developed, the factors DWP considered significant and important in whether to progress and whether these were met before the further roll out of the policy occurs. This public interest in disclosure is further strengthened by the fact that these decisions will impact on those applying for and in receipt of disability benefits. This will impact on millions of people, including some of the most vulnerable in society. The Commissioner considers that the public is entitled to scrutinise these decisions at an early opportunity.
60. The First Tier Tribunal in *Department for Work and Pensions v Information Commissioner & Slater EA/2022/0328*<sup>36</sup> stated at paragraph 75:
- “Ultimately, as the move to UC (and the benefit payments involved) is about such a large amount of public money, and of importance to 6.5 million households (and many vulnerable people), the Tribunal agrees with the Commissioner that for the public interest in withholding the information to prevail the strongest justification is necessary. As Mr Couling<sup>37</sup> says in his witness statement ‘20% of working-age individuals will receive Universal Credit by the time the Move to UC process has concluded’. We note all the points raised by the DWP and we are sure that it has a strong preference, for good reasons, for the material not to be disclosed. But we agree with the Commissioner that the public ‘is entitled to be well informed as to the reasoning behind policy decisions which are likely to shape British society. Disclosure of this information would allow the public insight into the decision-making process and an understanding of the decisions made and challenges overcome’.”
61. Whilst the Commissioner accepts that there is some weight to the public interest arguments regarding allowing DWP the space to develop policy away from external interference, having reviewed the withheld information and DWP’s arguments, he is not persuaded that the public interest in maintaining the exemption outweighs the strong public interest in disclosing the information.

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<sup>36</sup> <https://caselaw.nationalarchives.gov.uk/ukftt/grc/2023/822?query=EA%2F2022%2F0328>

<sup>37</sup> The Move to UC SRO

62. The Commissioner therefore requires DWP to disclose the requested information.

### **Other matters**

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63. The Commissioner is disappointed that DWP has failed to acknowledge its part in the confusion regarding what information is held.

64. DWP stated to the Commissioner that it did not claim that it doesn't hold the information falling within request "(b)". However, DWP clearly stated at internal review:

"In our original response we applied an exemption under section 22 for all 3 points raised. However, this was incorrect as we do not hold the information for point B, therefore we cannot release information we do not hold".

65. The confusion over what information is held was not introduced by the complainant. The Commissioner's guidance<sup>38</sup> is clear that requesters are not expected to understand exactly how information is held. DWP stated that it did not hold the information rather than explain that information is held differently to how the requester expected. DWP then denied claiming that the information was not held rather than acknowledge the error at internal review.

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<sup>38</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/#terminology>

## Right of appeal

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66. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
68. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**