

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gov.uk

Our Ref: FOI2020/25034

02 October 2020

Dear D Moore,

Thank you for your Freedom of Information (Fol) request received on 22 May. You asked:

In R (TD, AD and Patricia Reynolds) v Secretary of State for Work and Pensions [2019] EWHC 462 (Admin) Lord Singh found that DWP errors resulted in three benefit claimants making claims for Universal Credit which they need not have made. The claimants lost benefit as a consequence and were prevented from reclaiming their original or "legacy" benefits because of "the lobster pot" principle' (see para. 5):

<http://www.bailii.org/ew/cases/EWCA/Civ/2020/618.html>

Lord Singh, at para. 69, deals with the Secretary of State's argument that as the claimants had applied for UC they could not revert to their original benefits. He dismissed it:

"In my view, this is to elevate form over substance. Although it is true that the Appellants were not compelled by law to apply for UC, as a matter of practical reality they had no choice but to apply for UC. It is important that the legislation in this country governing social security should be interpreted in a way which conforms to practical reality, given the potential impact on some of the poorest people in society."

1. Please provide all information you hold related to how legacy benefit claimants who make a claim for Universal Credit because of an incorrect determination by the Department that their circumstances have changed can return to claiming legacy benefits.

Lord Singh, at para. 94, wrote:

"It will be a matter for the Secretary of State to decide how to respond to a declaration by this Court that there has been a violation of these Appellants' rights under Article 14. That may or may not lead to a scheme being designed which benefits other people, who are not before this Court, but the design of any such scheme will in the first instance be for the Secretary of State, although it must be done in a way which is lawful, including by reference to the Convention rights."

2. If such a scheme referred to were to be designed, please provide me with the address details of the part of your organisation that would be responsible for designing it.

3. Please provide brief details of any other instances within the past five years where the

Department was found by a court to have violated a person's rights under Article 14. Additionally, if the Department designed any scheme to remedy the violation concerned, please provide brief details.

DWP Response:

Please accept my apologies for the delay in responding to your Freedom of Information request. However due to the situation with COVID-19 it was not possible for me to reply to you within the timeframe of 20 working days

Following a search of our paper and electronic records, I have established that the information you requested is not held by this Department.

However, you may find the following explanation useful. We have provided this outside our obligations under the Freedom of Information Act.

Regardless of whether a claimant is misdirected or not, once a claim to UC has been made the legal gateway to Legacy benefits is closed and the claim cannot be re-opened.

While a claimant is able to withdraw their UC claim, this does not mean that they can re-claim any of the legacy benefits that UC replaces. Legally, the claim to UC abolishes any of the 6 legacy benefits that UC replaces for that claimant. This is true even if the claimant subsequently withdraws the claim (whether determination has been made or not), as it is the claim itself (i.e. once the claimant submits their claim online) that triggers the abolition of their legacy claims. Should a claimant wish to continue to receive support through the benefit system for children or housing costs, it must be via UC.

I understand it's difficult when you want to help the claimant by rectifying an error somebody has made but the claimant clearly now needs to be fully supported through there UC journey in order to receive the correct benefit amount.

We are constantly updating the [Signposting Claimants Correctly](#) Guidance which all staff should be aware of and referring to. There is also the [Natural Migration guidance](#).

If you have any queries about this letter, please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwp.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have

exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF
Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745