



Northern Ireland

Public Services
Ombudsman

Investigation Report

Investigation of a complaint against the Department for Communities

NIPSO Reference: 201916360

The Northern Ireland Public Services Ombudsman

33 Wellington Place

BELFAST

BT1 6HN

Tel: 028 9023 3821

Email: nipso@nipso.org.uk

Web: www.nipso.org.uk



@NIPSO_Comms

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

TABLE OF CONTENTS

	Page
SUMMARY	4
THE COMPLAINT	6
INVESTIGATION METHODOLOGY	6
THE INVESTIGATION	8
CONCLUSION	20
APPENDICES	23
Appendix 1 – The Principles of Good Administration	
Appendix 2 – The Principles of Good Complaints Handling	

Case Reference: 201916360

Listed Authority: Department for Communities (the Department)

SUMMARY

I received a complaint about loss of entitlement to Working Tax Credits (WTC). In 2018, the complainant, a self-employed taxi driver, phoned the Employment Support Centre, Department for Communities, to register a claim for benefit because he was involved in a car accident and was temporarily unable to work. The complainant was already receiving WTC at this time. The adviser informed the complainant that he could make a claim for Universal Credit (UC). The complainant made an online claim for UC straight after the call. However, he didn't know this would automatically terminate his WTC, then worth £54 per week to him. The complainant said that he should have been made aware of this prior to making the claim, and the adviser should have highlighted the availability of advice which claimants should consider before making a claim for UC. The complainant's claim for UC was unsuccessful.

I obtained all relevant information, including a summary of the phone call, guidance for call handlers and, advice about claiming UC that was available on the *NIDirect* web pages in 2018. I also noted the NI Executive produced a strategy to soften the impact of welfare reform on benefit claimants. Access to skilled, independent advice was considered to be of '*critical importance*' for those affected by the reforms '*in recognition of the complexity of welfare and tax credit changes.*'

The Department indicated that it did not expect staff from one benefit (Employment Support Allowance) to advise on the complexities of other benefits. However, despite the consequent risk of giving advice that could leave the complainant worse off, my investigation found the complainant *was* advised to claim UC. I found no evidence that the adviser directed the complainant to the Department's own advice unit '*Make the Call*', or, the independent telephone advice specifically funded by the Department. Neither did the adviser direct the complainant to the advice available online at *NIDirect*, or, give a general caution that a claim for UC may impact existing benefits. I consider this was contrary to written guidance, conflicted with the Executive's strategy and constituted maladministration.

I concluded the outcome was unfair for the complainant and caused him an injustice, namely the loss of opportunity to make an informed decision as to whether he should apply for UC, financial loss and upset.

I recommended that the Permanent Secretary should apologise to the complainant in writing and payments should be made to the complainant to remedy his financial loss, including his ongoing financial loss.

Where its advisers signpost to UC, I recommended callers are made aware of the independent telephone advice that is available through the Welfare Changes Helpline, 0808 802 0020. The language used should make clear that the helpline offers to calculate whether the caller would be better off if they made a claim for UC.

I found the Department destroyed the audio recording of the phone call before its internal complaints process was exhausted. I consider this constituted maladministration and caused the complainant an injustice by denying him access to a full and impartial investigation of his complaint.

I recommended the Department retain audio recordings of calls for the duration of any internal complaints process and, for six months afterwards in case of a subsequent complaint being made to the Public Services Ombudsman. The Permanent Secretary's letter to the complainant should include an apology for the deletion of the call recording.

THE COMPLAINT

1. I received a complaint about the actions of the Department for Communities (the Department). The complainant said that, on 5 April 2018, he phoned the Department's Employment Support Centre to register a claim for benefit because he had been injured in a car accident and was temporarily unable to work. He said he was advised to go online and make a claim for Universal Credit (UC).
2. The complainant submitted an online claim for UC within an hour of the phone call. His claim was unsuccessful. He then found that by submitting a claim for UC he *'effectively ended [his] right to claim WTC ever again and there is no right of appeal.'*
3. The complainant said he was left in financial hardship as a result of losing his WTC, an amount of £216 per four-week period, which was *'a substantial amount of income for [him] to lose'*.
4. The complainant believed the Department advised him *'incorrectly and in a manner that was below standard and ill informed.'*

Issue of complaint

5. The issue of complaint accepted for investigation was:
Whether the advice provided to the complainant by the Department was appropriate and in accordance with relevant guidance and standards.

INVESTIGATION METHODOLOGY

6. In order to investigate this complaint, the Investigating Officer obtained from the Department all relevant documentation together with the Department's comments on the issues raised by the complainant.
7. The information which informed the findings and conclusions are included within the body of this report.

Relevant Standards and Guidance

8. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.
9. The general standards are the Ombudsman's Principles¹:
 - The Principles of Good Administration
 - The Principles of Good Complaints Handling
10. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.
11. The specific standards and guidance relevant to this complaint are:
 - The Universal Credit (Transitional Provisions) Regulations (NI) 2016;
 - *Move to Universal Credit* (Departmental guidance for staff); and
 - Welfare Reform Mitigations Working Group Report 2016.
12. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the Department. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
13. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important was taken into account in reaching my findings.
14. A draft copy of this report was shared with the complainant and the Department for comment on factual accuracy and the reasonableness of the findings and recommendations.

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

THE INVESTIGATION

Issue: Whether the advice provided to the complainant by the Department was appropriate and in accordance with relevant guidance and standards.

Detail of Complaint

15. The complainant said that, on 5 April 2018, he phoned the Department's Employment Support Centre to register a claim for benefit because he had been injured in a car accident and was temporarily unable to work. He previously claimed Employment Support Allowance (ESA) when he had been unable to work due to illness. The complainant said the adviser informed him that he could not claim ESA and must claim UC. He said he was told to go online and make a claim for UC.
16. The complainant said that, *'not being an expert on welfare benefits'*, he followed the advice and submitted an online claim for UC. However, his claim was unsuccessful. He was later told by an adviser at Foyle Jobs Benefits Office that he should have claimed ESA. He then found he had lost entitlement to Working Tax Credits (WTC). He phoned the Tax Credits Helpline and was told that submitting a claim for UC, even an unsuccessful claim, *'effectively ended [his] right to claim WTC ever again and there is no right of appeal.'*
17. He submitted a claim for ESA and was awarded contribution-based ESA. However, the complainant said he was left in financial hardship as a result of losing his WTC, an amount of £216 per four-week period.
18. The complainant believed the Department advised him *'incorrectly and in a manner that was below standard and ill informed.'* The complainant did not recall being given any advice (or being signposted to any advice) which should be considered before making a claim for UC.

Evidence Considered

Legislation/Policies/Guidance

19. I considered the following legislation, guidance and report:

The Universal Credit (Transitional Provisions) Regulations (NI) 2016

20. Regulation 6(2)(b) states:

*Subject to paragraph (3²), where this paragraph applies, all awards of income support, housing benefit or a tax credit to which the claimant (or, in the case of joint claimants, either of them) is entitled on the date on which the claim is made are to terminate, by virtue of this regulation—
if the claimant is not entitled to universal credit, on the day before the first date on which they would have been so entitled, if all of the basic and financial conditions applicable to the claimant had been met.*

Move to Universal Credit (Departmental guidance for staff);

21. Paragraph 3 and 4 of the guidance states:

*'3. If any of the circumstances in the table below happen to a claimant, then they will need to claim Universal Credit if they wish to claim support.
4. This list is not exhaustive. When deciding whether a claim to Universal Credit needs to be made it is important that the individual circumstances of the existing benefit claimant are taken into account.'*

A move from 'in work' to 'being sick' was among the circumstances listed in the table.

Universal Credit Customer Journey Workshop guidance (October 2017)

22. The following wording appeared in a PowerPoint presentation under the heading 'New Way of Working':

*'New way of working where it is all about identifying what the claimant needs'
'Focus - Do what's right for the customer'*

Welfare Reform Mitigations Working Group Report 2016

² (3) An award of housing benefit to which a claimant is entitled in respect of specified accommodation does not terminate by virtue of this regulation.

23. The following wording is included under the heading 'Advice' on page 11 of the report:

'It is acknowledged in the Agreement³ that access to skilled, independent advice will be of critical importance in managing, and helping people to negotiate all the changes in the legislation.'

The Department's response to investigation enquiries

24. The Department said:

'The ESA advisor correctly informed [the complainant] of the option to claim UC. The advisor did not inform him of the impact submitting a claim to UC would have on his entitlement to other benefits.'

25. The Department said:

'There is no written policy that states staff should or should not inform callers of the impact UC would have on other benefits. Staff are given formal training for their own benefit branch and subsequent business area within that branch. Benefits can be incredibly complex and therefore it is not reasonable to expect staff from one benefit to advise on complex conditionality of other benefits; particularly the impact two other benefits have on each other, such as UC and Tax Credits.'

26. The Department said:

'... the Make the Call service became operational in November 2017 and therefore, would have been available to [the complainant] in April 2018.'

27. The Department said:

'Submitting a claim to any benefit is ultimately the choice and decision of the individual. Detailed information about the impact of claiming UC, including the impact on Tax Credits, is held on the 'Before you claim Universal Credit' link on the UC home screen of [nidirect.gov.uk](https://www.nidirect.gov.uk), which can be found at <https://www.nidirect.gov.uk/campaigns/universal-credit>.'

³ Fresh Start Agreement – an agreement formulated by the NI Executive which addressed various contentious political issues including the implementation of welfare reform.

28. The Department said:
'all of our advisers signpost ESA claimants to the NIDirect website which provides comprehensive guidance, including several videos on the various UC stages and customer journeys. The website also highlights the availability of external advice, help and support, including the Independent Welfare Changes Helpline which is funded by the Department and operated by Advice NI.'
29. The Department said:
'I do not accept responsibility for [the complainant] being unaware that claiming UC would impact on his other benefit entitlement.'
30. I note that in its Stage 2 complaint response the Department informed the complainant that *'Whilst making a claim to Universal Credit is currently an individual's choice, the Department aims to ensure that there is as much information as possible to allow potential customers to make an informed choice.'*
31. The Department said: *'Detailed information about the impact of claiming UC, including the impact on Tax Credits, is held on the 'Before you claim Universal Credit' link on the UC home screen of nidirect.gov.uk'*
32. The Department said, in April 2018, under the heading *'Your other benefits and tax credits'*, the relevant wording online read as follows:
'Once you have claimed Universal Credit, any benefits it replaces will stop.'

Relevant Departmental records

33. The following relevant records were considered:
- A summary of the complainant's call to the Employment Support Centre on 5 April 2018 (Appendix three)
 - the ESA script relating to UC which was available to ESA Telephony staff in April 2018 (Appendix four)
 - Move to Universal Credit (Departmental guidance for staff);
 - Universal Credit Customer Journey Workshop guidance (October 2017)

Other information considered

34. The Child Poverty Action Group⁴, a UK-wide charity, said they had a '*significant number of case examples*' similar to the complainant's experience.
35. Advice NI⁵ said they regularly see cases similar to the scenario described by the complainant. They provided examples from across the NI advice network.
36. The Law Centre NI referred to several litigation cases where apparent mis-advice given by the Department led to the loss of benefit.
37. The Department was asked to provide details of litigation taken against the Department (including out of court settlements) in the last three years which involved alleged mis-advice by the Department being the cause of a loss in benefits; including ongoing disputes. The Department said '*This information is not readily available and obtaining it would be resource intensive. Litigation cases are not recorded by case details and therefore the details of each case from over the last three years would need to be manually reviewed.*'
38. The Independent Case Examiner's Office (DWP⁶) said there are '*hundreds and hundreds*' of these cases. They advised that DWP had inserted a '*gateway*' into their UC online application process, which is designed to prevent a claimant in receipt of a legacy⁷ benefit completing a UC claim electronically without input, in person, from a DWP adviser.

Analysis and Findings

39. Welfare reform was a fundamental part of the *Fresh Start Agreement* formulated by the NI Executive. Through the *Welfare Reform Mitigations Working Group*, the Executive established a strategy to soften the impact of statutory reforms affecting benefit claimants in Northern Ireland. According to the Working Group⁸ '*it is acknowledged in the Agreement that access to skilled, independent advice will be of critical importance in managing, and helping people to negotiate all the changes in the legislation.*'

⁴ A registered UK charity set up in 1965.

⁵ A registered charity founded in 1995, which exists to ensure 'accessible advice services across Northern Ireland'.

⁶ Department for Work and Pensions

⁷ Those benefits being replaced by UC and which are stopped by statute when a UC claim is made.

⁸ Working Group Report January 2016 page 11

40. I note that, according to the Department, in a subsequent phone conversation with the complainant on 28 October 2018, he was recorded saying *'everything is confusing since the change in benefits (ie: UC coming in).'*
41. The Working Group proposed that *'a robust strategy of advice and support be put in place to enable people to cope with the changes'*. It does not appear this was intended to impose a particular duty on the Department to help claimants negotiate the complex changes to welfare support; instead the focus appears to have been the provision of independent expert advice. One example of the available help was the Independent Welfare Changes Helpline, which was funded by the Department and readily available in April 2018. I note the Department also had its own advice support unit *'Make the Call'* which was also operational in April 2018. Given the emphasis placed on independent expert advice by the Executive, I consider the Department was obliged to ensure claimants were in no doubt about the help that was available to them, especially the advice which the Department was specifically funding for this purpose.

Phone call 5 April 2018

42. The first principle of good administration *'Getting it right'* includes that public bodies *'should follow their own policy and procedural guidance, whether published or internal.'*
43. I note the complainant phoned the Department's Employment Support Centre on 5 April 2018 to register a claim for benefit because he was injured in a car accident and was temporarily unable to work. He was a self-employed taxi driver. I note the complainant previously claimed ESA when he was unable to work due to sickness absence, and so, he was used to this process. However, on that occasion, the complainant said he was advised he *'could not claim ESA and must claim Universal Credit.'* I note the Department acknowledged the adviser *'informed [the complainant] about the option to claim UC.'* I am satisfied the complainant was advised he could make an online claim for UC by the Department's adviser.

44. From the call summary, I note the adviser gave the complainant a phone number. The Department said the summary is the *'only remaining record of the call and this does not specify the number provided to [the complainant.]'* The Department said *'when signposting Universal Credit to callers, Employment and Support Allowance telephony agents will provide the general enquiry line number 0800 012 1331.'* I note this is the number for the Universal Credit Service Centre where, according to the ESA script, *'an Agent will be able to help you with your claim'*.
45. When questioned, the complainant had no recollection of being given a phone number by the adviser. Had the Welfare Changes Helpline number been flagged by the adviser, or the *'Make the Call'* number, the complainant may have been better equipped to consider whether it was wise to make the claim for UC to which he had been signposted. I consider the Welfare Changes Helpline was particularly geared towards advising potential claimants whether UC was right for them.
46. The Department subsequently described the Service Centre number as a *'Universal Credit helpline'* and said this *'would have led [the complainant] to a Universal Credit agent who could then have provided him with further information relevant to his decision as to whether to claim.'* I consider this is hypothetical and it begs the question: why did the *Welfare Reform Mitigations Working Group* deem it necessary to recommend an independent helpline?
47. The Department made further comments on the role of the Universal Credit Service Centre:
'Case Managers and Decision Makers provide customers with information and support in making and maintaining their Universal Credit claim including giving appropriate guidance on what steps a customer must take to progress their claim and how to provide any additional evidence required to support their claim.'
- I consider these comments may shed more light on the type of assistance a caller would have received. In particular, they point more towards the making and maintaining of a claim rather than whether a claim should be made.

48. From the call summary, there is no record that the adviser highlighted the availability of advice online, or the importance of the complainant reading it before deciding to make a claim for UC.
49. Following the Department's advice, I note the complainant made an online claim for UC; there was no requirement for him to call the number given by the adviser. I note his claim was unsuccessful because his earnings fell below the *Minimum Income Floor*, a figure equivalent to the national minimum wage. However, I note the complainant then discovered that his entitlement to WTC ceased permanently because he had made the claim for UC. I am aware that legislation introduced in 2016⁹ meant that entitlement to WTC ended when a claim for UC was made. I appreciate this was a substantial loss to the complainant which, in hindsight, could have been avoided if he had known about the rules governing UC.
50. I note the Department's guidance for staff: *'Move to Universal Credit'* indicated that claimants who move from *'in work'* to *'being sick'* would have to claim UC if they wished to claim support. This guidance for staff was relevant to the complainant's change in circumstances that prompted him to make the phone call to the Department's Employment Support Centre on 5 April 2018. I note the guidance for staff stated that *'Claimants who have a relevant change of circumstances....will move to Universal Credit, so claimants will still need to understand the impact changes of circumstances will have on their benefit.'*
51. The Department said: *'There is no written policy that states staff should or should not inform callers of the impact UC would have on other benefits.'* However, I consider the above wording both, equates the aforementioned change in a claimant's circumstances with a move to UC and, infers that staff are expected to provide advice in relation to the consequent impact on the claimant's existing benefits. This is reinforced by the guidance which states: *'When deciding whether a claim to Universal Credit needs to be made it is important that the individual circumstances of the existing benefit claimant are*

⁹ The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 – regulation 6(2)(b)

*taken into account.*¹⁰ I note the Department's response to the draft report was silent on this point.

52. I am satisfied that, during the phone call, the complainant's change in circumstances (a move from *'in work'* to *'being sick'*) was equated with a move to UC by the adviser. I acknowledge the ESA adviser could not be expected to advise on the complexities of UC. Therefore, rather than risk advising the complainant to claim a benefit which could leave him worse off, I consider the adviser should have directed the complainant to another source of advice - *'Make the Call'* or, better still, to the Welfare Changes helpline, a source of independent advice. The adviser did neither. I consider the advice given to the complainant by the ESA adviser did not help the complainant understand the impact on his existing benefits if he were to proceed, as suggested, with a claim for UC.
53. In light of the relevant guidance, I consider the Department failed to follow the first principle of good administration, *'Getting it right'*.

Online application

54. The third principle of good administration *'Being open and accountable'* includes *'Public bodies should give people information and, if appropriate, advice that is clear . . .'*
55. I note the ESA script which was available to ESA telephony staff in April 2018 included:
'There have been changes to some benefits for people living in your postcode area. Universal Credit is now available, you can make a claim for Universal Credit on line at www.nidirect.gov.uk/UniversalCredit'
56. I am satisfied that, once informed by the adviser that income-related ESA was no longer available to him and UC had become the appropriate income-related benefit for him, the complainant's focus was to make the claim and obtain the

¹⁰ Numbered paragraph 4 of the guidance *'Move to Universal Credit'*

benefit. I consider the complainant had a reasonable expectation that he would not be left worse off by following the advice given by the Department's adviser.

57. I note the Department said: 'Detailed information about the impact of claiming UC, including the impact on Tax Credits, is held on the *'Before you claim Universal Credit'* link on the UC home screen of *nidirect.gov.uk*'.
58. I note the Welfare Changes helpline number was referenced within the *NIDirect* web pages.
59. I have established that, in April 2018, within the *NIDirect* website, under the heading *'Your other benefits and tax credits'*, the relevant wording online read as follows:
'Once you have claimed Universal Credit, any benefits it replaces will stop.'
I have considered the content of this statement. I am satisfied that the use of the word "*replaces*" gives a clear impression to potential applicants that their current benefit would only stop if the UC application is successful. I note the online advice did not state that an application for UC could lead to benefits being stopped if the application was unsuccessful. Such a reference would have alerted the complainant or, at least, highlighted the need to obtain further advice.
60. I consider the lack of clarity in the online advice available to the complainant is contrary to the third principle of good administration and therefore constitutes maladministration. I am satisfied this caused an injustice to the complainant by denying him the opportunity of making a fully informed decision about whether he should make an application for UC.
61. I note Departmental guidance for staff that was produced prior to April 2018 included a Universal Credit Customer Journey Workshop. The following wording appeared in a PowerPoint presentation under the heading *'New Way of Working'*:
'New way of working where it is all about identifying what the claimant needs'
'Focus - Do what's right for the customer'

62. I do not consider the Department did what was right for the customer in this instance. I am satisfied the Department did not meet the requirements of the first and third principles of good administration and this constituted maladministration which caused the complainant an injustice. I therefore uphold this complaint.
63. During the phone call on 5 April 2018, I note the Department failed to direct the complainant to claim contributions-based ESA, which he was entitled to claim, and which would not have affected his WTC payments. I consider this failure further amplifies the inadequate service experienced by the complainant. I note the Department sought to remedy this failure before the complainant approached my office.

Deletion of call record

64. The third principle of good administration 'Being open and accountable' includes:
'Public bodies should create and maintain reliable and usable records as evidence of their activities. They should manage records in line with recognised standards to ensure that they can be retrieved and that they are kept for as long as there is a statutory duty or business need.'
65. I note the recording of the complainant's phone call to the ESA adviser was permanently deleted by the Department on 19 October 2019. The Department said: *'Call recordings that are older than 14 months are not retained in line with the Department's data retention policy.'* However, in this case, the recording was deleted before the completion of the Department's internal complaints process which concluded on 22 January 2020.
66. I note paragraph 3.3.1 of the Department's Voice Recording Operational Guide acknowledges that voice recordings *'can be particularly helpful in handling and resolving complainant complaints'*. The guide does not state that relevant voice recordings should be retained for the duration of a complaints process. However, I consider this is implicit since the Department has acknowledged the value of recordings in this way.

67. I consider the Department's deletion of the recording was premature and in breach of its own operational guide, preventing a full investigation of the matter at Stage Two of the Department's complaints process. Furthermore, the premature deletion of the recording took no account of the need to respond to any enquiries that this office, or any other party, might make in the event the complainant challenged or queried the Department's actions beyond the scope of its own internal complaints process.
68. I am satisfied this action did not meet the requirements of the third principle of good administration. Therefore, I consider it constituted maladministration and caused the complainant an injustice by denying him access to a full and impartial investigation of his complaint, either by the Department or by the Public Services Ombudsman.

Response to the draft report

69. The complainant offered no comment on the draft report.
70. The Department reiterated its belief that it *'took all reasonable actions to signpost [the complainant] correctly to where he could claim an income based benefit'* (UC). The Department said it did not agree that it caused an injustice or was responsible for any maladministration.
71. The Department said *'from August 2018, the telephony new claim script was revised to include the line; 'You can obtain help and advice on the sanctions process by contacting the Welfare Changes Freephone helpline on 0808 802 0020.'*
72. The Department said *'it would not be possible for the Department to calculate the ongoing financial loss as it is not possible to predict [the complainant's] future entitlement.'*
73. The Department said the IT system in use has no facility that *'allows [calls] to be identified and retained for longer than 14 months.'* The Department said alternative options were considered but found to be *'not technically possible'* and / or a *'breach'* of the General Data Protection Regulations. I shared the

Department's response with the Information Commissioner. I will liaise with the Commissioner to ensure the Department stops the practice of destroying telephone recordings (which are material evidence) before related matters of complaint are resolved.

CONCLUSION

74. I received a complaint about loss of entitlement to WTC. The complainant said he was advised to claim UC on 5 April 2018, and having done so, he found he was no longer entitled to WTC, even though his claim for UC was unsuccessful. WTC was worth £54 per week to him, an amount that he could not afford to lose.
75. I found no evidence that the Department's adviser highlighted the availability of advice, either from its own advice unit '*Make the Call*', or, online via NIDirect, or through independent telephone advice funded by the Department. Neither did the adviser raise any flag, even of a general nature, that making a claim for UC may affect existing benefits. I found this was contrary to the guidance and did not meet the requirements of the first principle of good administration.
76. I found online advice in relation to UC was not clear which did not meet the requirements of the third principle of good administration.
77. I am satisfied these failures constituted maladministration and caused injustice by denying the complainant the opportunity of making a fully informed decision about whether he should apply for UC. I am satisfied that had the complainant been fully informed, he would not have claimed UC and would not have lost out financially. I therefore consider these failures caused the complainant the further injustice of financial loss and upset.
78. I found the premature deletion of the audio recording of the complainant's phone call with the ESA adviser on 5 April 2018 did not meet the requirements of the third principle of good administration. I consider it constituted maladministration and caused the complainant an injustice by denying him access to a full and impartial investigation of his complaint.

79. I therefore uphold this complaint.

Recommendations

80. I recommend:

- The Permanent Secretary of the Department provide the complainant with a personal written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration within **one month** of the date of this report.
- Within **one month** of the date of this report, the Department make a payment to the complainant of £xx,xxxx an amount equivalent to the WTC he would have received from 5 April 2018 to the date of this report.
- The complainant be awarded ongoing loss of statutory entitlement to WTC until his WTC claim would have naturally migrated to UC as part of the national programme, or until his WTC would have ceased or eroded subsequent to transitional protection to UC.
- Where its advisers signpost to UC, callers are made aware of the independent telephone advice that is available through the Welfare Changes Helpline, 0808 802 0020. The language used should make clear that the helpline offers to calculate whether the caller would be better off if they made a claim for UC.
- In addition to current policy, the Department retains audio recordings of calls for the duration of any internal complaints process and, for six months afterwards in the case of a subsequent complaint being made to the Public Services Ombudsman. The Permanent Secretary's letter to the complainant should include an apology for the deletion of the call recording.

81. The Department should produce an action plan to incorporate these recommendations and provide me with a progress update within two months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate,

records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

MARGARET KELLY
Ombudsman

March 2022

Appendix One

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

Appendix Two

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

2. Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3. Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.

- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4. Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6. Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.