

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

B E T W E E N :

THE QUEEN  
on the application of  
(1) T  
(2) WAYLAND  
(3) KEATINGS  
(4) BARROW

Claimants

- and -

SECRETARY OF STATE FOR WORK AND PENSIONS

Defendant

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WITNESS STATEMENT OF KERSTIN PARKER

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I, Kerstin Parker, of the Department for Work and Pensions, Caxton House, Tothill Street, Westminster, SW1H 9NA, WILL SAY AS FOLLOWS:

Introduction

1. I am the Deputy Director for Universal Credit ("UC") Policy in the Department for Work and Pensions ("DWP"). I have worked in the DWP since January 2017. My role has changed over that time, but I have been responsible for policy on Universal Credit since October 2019. I am duly authorised to make this statement on behalf of the Secretary of State for Work and Pensions ("SSWP").
2. I understand that the Claimants challenge part of the Government's response to the COVID-19 pandemic ("the pandemic"), namely, that the rate at which income-related Employment and Support Allowance ("ESA"), Income Support ("IS") and income-based Jobseeker's Allowance ("JSA") are paid were not increased by an amount equivalent to the temporary increase made to UC (equivalent to £20 per week) ("the UC uplift") when

this was extended in March 2021. The UC uplift was first introduced in March 2020 for a 12-month period. In March 2021 the Government decided to extend it for a further 6-month period. The legislation provides that the uplift will apply to assessment periods ending before 6 October 2021.

3. For the reasons that I explain below, the increases sought by the Claimants would (a) be contrary to the Government's specific fiscal and social policy goals in responding to the pandemic, and (b) at the time the decision was taken to extend the UC uplift (March 2021), would have been inefficient and not deliverable via the existing legacy payment systems.
4. In this statement I address the following matters:
  - 4.1. An overview of the social security system
  - 4.2. Employment and Support Allowance
  - 4.3. Income Support
  - 4.4. Jobseeker's Allowance
  - 4.5. Universal Credit
  - 4.6. Personal Independence Payment
  - 4.7. Comparison of ESA/IS/JSA and UC and the Claimants' Individual Circumstances
  - 4.8. An overview of DWP's response to the pandemic, including changes to the social security system
  - 4.9. Increase in the rate of UC in March 2020
  - 4.10. Consideration given to increasing the rate of legacy benefits in March 2020
  - 4.11. Consideration in autumn 2020 of whether to maintain the UC uplift and make an uplift to legacy benefits
  - 4.12. Decision in spring 2021 to extend the UC uplift by 6 months
5. Except where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge. Where facts are not within my own knowledge, I have identified my sources of information or belief. The facts stated in this witness statement are true to the best of my knowledge, information or belief. In making this witness statement, I have drawn upon the collective knowledge of relevant officials within DWP. In preparing this statement I have adopted information contained in the drafts of

witness statements provided to the Court by the DWP in previous litigation relating to similar issues. Where I refer to page numbers in this witness statement, they are to pages of Exhibit KP1 to my statement.

### **Relevant aspects of the social security system**

6. The following aspects of the social security system are relevant to this claim. ESA, IS and JSA are just some of the many social security benefits provided by the state. The welfare system is made up of many different social security benefits which are designed to address specific needs and circumstances and which have different qualifying conditions and are paid at different rates. Some are dependent on having a work record and having “paid in” through National Insurance contributions; others are based around passing a means test; and others around satisfying a very detailed set of circumstances and requirements. Whilst certain social security benefits may have superficial similarities (such as being income-related and taking the form of weekly or monthly payments), different benefits each have discrete purposes and this is reflected in the eligibility and payment rules.
7. The social security system generally follows an overarching principle that there should not be two benefits directed at the same purpose for the same claimant. In other words, there should not be duplicate provision; rather, discrete benefits should assist with discrete needs (such as housing, disability, caring needs, etc.). This principle manifests itself in various ways including that (a) eligibility criteria for social security benefits may limit the extent to which benefits overlap with each other;<sup>1</sup> (b) rules may provide that receipt of one benefit disentitles a person from receiving other overlapping benefits (such as the right of legacy benefit claimants to choose whether to apply for UC instead of (rather than as well as) their legacy benefit); or (c) the rate at which a particular benefit is paid may change if the recipient is also in receipt of other benefits.
8. In addition, the social security system is generally set up in a way which means that a claimant’s position is considered in the round (particularly where there is an entitlement to income-related benefits). This means that certain income-related benefits will take account of other social security benefits that are paid to the recipient. For example, where

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<sup>1</sup> Benefits that are only payable either above or below state pension age are examples of this.

a person receives an income-related benefit (such as UC or income-related ESA), the receipt by that person of certain other social security benefits will lead to a corresponding reduction in the amount payable by way of the income-related benefit. Further, entitlement to certain social security benefits may give rise to a corresponding entitlement to other benefits (or allowances within a benefit). An example of this is that a person who receives income-related ESA who is also entitled to claim Personal Independence Payment (“PIP”), may receive additional disability premiums such as the Severe Disability Premium (“SDP”) as part of their ESA payment in addition to the personal allowance.

9. The social security system has undergone significant reform in recent years with the introduction of UC. In particular, Parliament legislated in the Welfare Reform Act 2012 to introduce UC to replace specified discrete “legacy” benefits.<sup>2</sup> In their place, UC provides a single, simplified benefit that takes account of the different circumstances of individual claimants. The abolition of these legacy benefits has led to some complexities, as certain claimants’ entitlements have continued for a transitional period since the enactment of the WRA 2012, which I address further below.

### **Employment and Support Allowance**

10. ESA is intended to compensate claimants for at least some of the loss of earnings they might otherwise receive from employment if they did not have limited capability for work. Like UC, IS and JSA, it is one of the ways through which the state supports individuals’ incomes so as to assist them to meet their everyday living expenses.
11. There are two strands to ESA: contributory ESA and income-related ESA. Claimants may be eligible for either or both strands. Contributory ESA is now known as ‘New Style’ ESA. Both legacy contributory ESA and ‘New Style’ ESA are non-means-tested and claimants may be eligible if they have sufficient National Insurance contributions. Income-related ESA is means-tested, with the claimant and any partner’s income taken into account. The First and Second Claimants’ claims relate to income-related ESA.
12. Income-related ESA is a legacy benefit. It is not open to new claimants because it has been abolished for new claims and replaced by UC. Instead of applying for income-related ESA,

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<sup>2</sup> Namely, Child Tax Credit, Housing Benefit, Income Support, Jobseeker’s Allowance (Income-Based), Employment Support Allowance (Income-Related) and Working Tax Credit.

all new claimants have, since 12 December 2018, been required to apply for UC, subject to certain limited exceptions.<sup>3</sup> However, those eligible for SDP (i.e. under state pension age and either registered blind or receiving a qualifying disability benefit, such as DLA or PIP, and are living alone or treated as living alone) could still apply for income-related ESA. This ended on 27 January 2021, when the SDP gateway, which prevented legacy benefit claimants with SDP entitlement from making a claim to UC, was removed by the Universal Credit (Transitional Provisions) (Claimants previously entitled to a severe disability premium) Amendment Regulations 2021, SI.2021/4. The effect of these regulations is that there are no new claims to DWP income-related legacy benefits (ESA, IS and JSA) from 27 January 2021 and all existing claimants in Great Britain can now claim UC.

13. The statutory framework for ESA is a combination of primary and secondary legislation. Part 1 of the Welfare Reform Act 2007 (“**WRA 2007**”) created ESA. The eligibility conditions for income-related ESA are set in sections 1 and Schedule 1 of the WRA 2007, most notably: that the claimant (i) has limited capability for work, (ii) has accepted a “claimant commitment”, (iii) is aged between 16 years old and pensionable age, (iv) is not entitled to a separate income-related benefit (e.g. IS or JSA), and (v) has no or low income (based on thresholds set in regulations). The specifics of these conditions are set in the Employment and Support Allowance Regulations 2008 (“**the ESA Regulations**”).
14. All claimants for income-related ESA (who necessarily have limited capability for work) are placed into one of two groups, depending on the outcome of their Work Capability Assessment (“**WCA**”). Claimants assessed as having limited capability for work (“**LCW**”) are placed in the “Work-Related Activity Group”. Claimants assessed as having limited capability for work and work-related activity (“**LCWRA**”) are placed in the “Support Group”. Those in the Work-Related Activity Group, subject to certain exceptions, are required to attend work-focused interviews and participate in work-related activity, the purpose of which is to improve their capability or readiness for work, with a view to helping their prospects of moving into work at a point when they are able, and to keep them close to the labour market. Those in the Support Group (who have LCWRA) are not

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<sup>3</sup> Certain groups have been excluded from the UC provisions at various times in the past. However, since 27 January 2021, only “frontier workers” (as defined in the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019) remain excluded.

required to attend work-focused interviews or participate in any work-related activity. Claimants can volunteer for certain work-related support at any point during their claim. However, participation remains voluntary. This reflects the Government's position that welfare should facilitate work for the entire population.

15. Section 2 WRA 2007 provides for secondary legislation to specify the rates at which ESA is paid. These are set in Schedule 4 of the ESA Regulations and (broadly) consist of a weekly personal allowance, an additional Support Group component for those found to have LCWRA and additional premiums (Pensioner, Severe disability, Enhanced disability ("EDP"), and Carer Premiums). The rates are calculated based on weekly amounts and usually paid every two weeks. The amount of ESA paid to any given claimant will vary depending on the particular components of the benefit to which they are entitled, which will depend on their individual circumstances. All qualifying claimants will receive the personal allowance. I note that the Claimants say that the personal allowance is designed "to cover" claimants' living expenses. That is not correct; all social security benefits are intended to make a contribution to living expenses, particularly income-related benefits that exist to support people on low incomes. The personal allowance is a core part of this in respect of ESA, but the personal allowance itself is not designed "to cover" those expenses. The same applies to IS and JSA, which I explain further below. Welfare does not operate as an indemnity against needs.

16. There are several different rates for the components but the relevant ones for the present claim are:

16.1. Personal allowance: £74.70;

16.2. Support Group component: £39.40 for claimants in the Support Group (which is paid in addition to the personal allowance);

16.3. SDP: £67.30 for most eligible claimants and £134.60 for some claimants who have a partner; and

16.4. EDP: £17.20 for most eligible claimants and £24.60 for some claimants who have a partner.

17. The SSWP has the power to up-rate these rates each year in s.150 of the Social Security Administration Act 1992. This power is exercised in relation to ESA in the annual Social Security Benefits Up-rating Order, along with most other social security benefits. The same applies to IS and JSA, which I explain below.
18. As I explained at paragraph 12 above, new claims cannot be made for income-related ESA and all existing claimants can choose to migrate to UC. The result is that the number of people receiving income-related ESA is decreasing. Between November 2019 and November 2020, the ESA income-related caseload fell from 1.47m to 1.37m, a fall of approximately 99,000.<sup>4</sup>

### **Income Support**

19. IS is an income-related benefit designed to provide financial support for persons of working-age with no income or a low income to help them to meet their everyday living expenses. As mentioned in paragraph 9, IS is one of the legacy benefits being replaced by UC.
20. The statutory framework for IS is a combination of primary and secondary legislation. Section 123(1) of the Social Security Contributions and Benefits Act 1992 (“SSCBA 1992”) provides that there shall be a prescribed scheme providing for IS. The eligibility criteria for IS are set out in s.124(1) SSCBA 1992, with the specifics set in the Income Support (General) Regulations 1987.
21. IS has the following principal features:
  - 21.1. IS is a benefit with a weekly entitlement that is usually paid every two weeks. It is available to claimants who (i) have no or low income; (ii) work less than 16 hours a week (with some exceptions); (iii) have £16,000 or less in savings; (iv) are 16 years of age or over, and under State Pension age; and (v) have at least one of a range of characteristics (such as being a carer, pregnant or a lone parent).

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<sup>4</sup> DWP Stat-Xplore, Nov 20 caseload data. Note: figures include ‘Income-based’ and ‘Both income and contributions-based’ volumes.

21.2. Like income-related ESA and the other legacy benefits, since 12 December 2018, it was not normally possible to make new claims for IS, save for those eligible for SDP<sup>5</sup>. The removal of the SDP gateway (which I explained at paragraph 12 above) means that no new claims have been made for IS since 27 January 2021. It also means that all existing IS claimants can apply for UC if they wish.

21.3. IS awards consist of a weekly personal allowance (between £59.20 and £117.40 depending on factors such as age, whether the claimant(s) are single or a couple, or whether the claimant is a lone parent), as well as any appropriate additional premiums relating to the claimant's particular circumstances (such as being a carer or having a disability).

22. The amount of IS payable is reduced if a claimant has savings over £6000 or if they have another source of income (other than income from disability benefits). Like ESA, IS rates are calculated based on weekly amounts and usually paid every two weeks.

### **Jobseeker's Allowance**

23. Jobseeker's Allowance is a benefit for people who are looking for work and unemployed or working less than 16 hours a week. JSA provides financial support for persons of working age to help them meet their everyday living expenses. As mentioned in paragraph 9, legacy JSA (comprising of income-based and contribution-based) is being replaced by UC and New Style JSA.

24. There are two strands to legacy JSA: contribution-based JSA and income-based JSA. Claimants may be eligible for either or both strands. Contribution-based JSA is now known as 'New Style' JSA. Both legacy contribution-based JSA and 'New Style' JSA are non-means-tested and claimants may be eligible if they have sufficient National Insurance contributions and is payable for a maximum of 182 days. Income-based JSA is means-tested, with the claimant and any partner's income taken into account. The Fourth Claimant's award relates to income-based JSA.

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<sup>5</sup> Ibid. footnote 3, page 5.

25. Legacy JSA is not open to new claimants because it has been abolished for new claims and replaced by UC and New Style JSA. Instead of applying for legacy JSA, all new claimants have, since 12 December 2018, normally been required to apply for UC and/or New Style JSA<sup>6</sup>. However, those eligible for SDP (i.e. under state pension age and either registered blind or receiving a qualifying disability benefit, such as DLA or PIP, and are living alone or treated as living alone) could still apply for legacy JSA. This ended on 27 January 2021, when the SDP gateway, which prevented legacy benefit claimants with SDP entitlement from making a claim to UC, was removed by the Universal Credit (Transitional Provisions) (Claimants previously entitled to a severe disability premium) Amendment Regulations 2021, SI.2021/4. The effect of these regulations is that there are no new claims to DWP legacy benefits (ESA, IS and JSA) from 27 January 2021 and all existing claimants in Great Britain can now claim UC. The Fourth Claimant's award relates to income-based JSA.
26. The statutory framework for legacy JSA is a combination of primary and secondary legislation. Part 1 of the Jobseekers Act 1995 created JSA. The eligibility conditions are set in sections 1-3A, most notably: that the claimant (i) does not have limited capability for work, (ii) is available for employment, has accepted a "claimant commitment" which remains in force, and is actively seeking employment, (iii) is under pensionable age, (iv) has paid sufficient National Insurance contributions (for contribution-based JSA only), (v) has £16,000 or less in savings (for income-based JSA only) and (vi) has no or low income. The specifics of these conditions are set in the Jobseeker's Allowance Regulations 1996 ("**JSA Regulations**"). New Style Jobseeker's Allowance differs as set out in the Jobseeker's Allowance Regulations 2013.
27. Section 4 of the Jobseekers Act 1995 provides for secondary legislation to specify the rates at which JSA is payable to a claimant, including their partner if applicable, is an 'age-related amount', as set in regulations, subject to deduction in respect of earning and certain payments. The JSA Regulations provide that for income-based JSA, the amount payable is the aggregate of (i) a personal allowance (of £59.20, £74.70, £89.45 or £117.40 per week, depending on whether the claimant is single or part of a couple), (ii) premiums

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<sup>6</sup> Ibid. footnote 3, page 5.

(such as the Carer Premium) and (iii) housing costs. The rates are calculated based on weekly applicable amounts and usually paid every two weeks. Like income-related ESA, the amount of income-based JSA paid to any given claimant will vary depending on the particular components of the benefit to which they are entitled, which will depend on their individual circumstances. Like IS, where a claimant has over £6,000 in savings or has another source of income (other than income from disability benefits) their income-based JSA award is reduced.

### **Universal Credit**

28. UC is an income-related comprehensive social security benefit designed to assist working-age people on low or no income with everyday living costs and incentivise people to return to, or progress in, work. It was established in the WRA 2012 as a single, simplified benefit that takes account of the different circumstances of individual claimants to replace all of the abolished “legacy” benefits. It has been rolled out in stages. National coverage was achieved on 12 December 2018. DWP expects the final transfer of existing benefits claimants onto UC to be completed in 2024.

29. In summary:

29.1. UC is a monthly benefit, available to claimants who (i) are on low income or out of work or who cannot work; (ii) have £16,000 or less in savings; (iii) are at least 18 years old and under the qualifying age for State Pension<sup>7</sup>; (iv) are in Great Britain; and (v) have accepted a claimant commitment (see paragraph 29.6).

29.2. Prior to the temporary uplift made in response to the pandemic, UC consisted of a standard allowance of between £256.05 and £507.37 per month, plus additional amounts payable in certain circumstances (such as having responsibility for children, or having limited capability for work and work-related activity). Claimants’ circumstances are assessed each month, and so the value of the UC payment can change each month.

29.3. The amount of UC payable is reduced if a claimant has savings over £6,000 or if they have any income. In summary, unearned income (as defined in the

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<sup>7</sup> There are limited exceptions where those under 18 and over State Pension age can also be entitled to UC.

legislation) is deducted pound for pound and earned income is deducted at a tapered rate in accordance with reg.22 of the Universal Credit Regulations 2013.

29.4. In order to incentivise work, UC has a single taper (the rate at which UC is reduced to take account of earnings). Claimants with children or limited capability for work will also benefit from a monthly work allowance (which varies depending on whether an amount for housing costs is included in the UC award); this is the amount that can be earned before any deduction is made from a claimant's UC maximum amount. For net earnings on top of, or in absence of the work allowance, the taper reduces the UC amount by 63p for every additional £1 earned (the taper was reduced from 65p to 63p in April 2017 to improve work incentives).

29.5. Self-employed individuals are eligible for UC but, to promote self-sufficiency among the self-employed and prevent the long-term subsidy of unprofitable businesses, a 'minimum income floor' is applied to certain self-employed claimants,<sup>8</sup> which represents the amount the self-employed claimant could be expected to earn in employment for the number of hours the claimant would be expected to be available for work paid at the national minimum wage for their age. The work allowance and the taper are applied to the higher of the claimant's actual earnings or their minimum income floor and the resulting amount is deducted from the maximum UC amount.

29.6. Claimants accept a "claimant commitment" setting out the expectations of them in relation to preparing for and searching for work. The commitment is tailored to the claimant's individual circumstances and ability to work, taking into account any caring responsibilities (where the requirement to look for work can be significantly reduced or removed entirely depending on how much care is being undertaken) and physical or mental health conditions. It can include things such as applying for a job or attending a training course. UC payments can be reduced (called a 'sanction') if claimants do not comply with the work-related

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<sup>8</sup> Gainfully self-employed individuals who have been carrying out the relevant activity for over 12 months, and would otherwise be subject to all work-related requirements: reg. 62 Universal Credit Regulations 2013 (SI 2013/376). The minimum income floor is currently suspended, see paragraph 46.3 below.

requirements they have agreed to without good reason. Self-employed claimants who have the minimum income floor applied are treated as meeting their commitments by virtue of being in self-employment, and are not required to look for alternative or additional work.

29.7. From the first day of a claim for UC, an advance payment can be requested which can be payable provided that the claimant is likely to be entitled to UC at the end of their first assessment period. As UC is assessed and paid monthly in arrears to reflect the common payment frequency of employment income, the first payment is otherwise made up to seven days after the end of the first monthly assessment period (i.e. approximately five weeks after a claim is made).

30. As of December 2019, there were 2.7 million UC claimants. However, the number of people claiming UC has increased significantly since the start of the pandemic. In the four-week period ending on 9 April 2020, 1.2 million additional people started a UC claim (around 1 million more than the usual volume of additional claims in one month), and a further 1.1 million people started a UC claim in the five weeks ending on 14 May 2020. As a consequence, the total number of people receiving UC in Great Britain rose from 3 million in March 2020 to 5.3 million in May 2020. By the beginning of May 2020, the rate of UC claims was between 20,000 and 25,000 per day, double that of a standard week prior to the pandemic. In the four weeks to 8 April 2021 there were 39,000 new claims for UC, meaning there were 6 million people in receipt of UC as at 8 April 2021.

31. I note that the Second, Third and Fourth Claimants state that they do not want to migrate to UC. The Second Claimant says that this is because of what he describes as a 5-week waiting period for payments under UC. There are three areas of support that the Government has put in place to address this concern for eligible claimants, the first two of which are initiated automatically if eligible:

31.1. Since July 2020, a two-week run on of Income Support, income-related Employment and Support Allowance and income-based Jobseeker's Allowance was introduced for all claimants whose claim to UC ends entitlement to these benefits to provide additional support for claimants moving to UC;

31.2. Since April 2018, those on Housing Benefit receive an additional two weeks Housing Benefit when they complete a Universal Credit claim; and

31.3. All new UC claimants (whether migrating from a legacy benefit or not) are entitled to apply for an advance payment if they are in financial hardship. This advance payment can be up to 100% of the claimant's estimated UC payment. The advance payment then has to be repaid a bit at a time from future UC payments over several months (up to 24 months). It is also possible to delay repayments by up to 3 months when unexpected hardship arises.

32. I note that the Fourth Claimant states that after having made an application for UC in April 2020, he was advised by the DWP to continue to claim legacy benefits. After reviewing the Fourth Claimant's records in light of his witness evidence, certain errors have been identified in the handling of his case. We are currently working with the Fourth Claimant's legal representatives to reach a solution to those issues.

### **Personal Independence Payment**

33. I note that the First Claimant is in receipt of PIP. PIP is intended to act as a contribution towards the extra costs that arise as a result of a long-term health condition or disability. Entitlement to PIP is assessed on the basis of the needs arising from a health condition or disability, rather than the health condition or disability itself. The precise amount of an award will depend on how a person's health condition(s) affects them in their daily living or mobility. PIP is not deducted from income-related benefits, because it is intended to help towards the additional costs faced by a disabled person.

### **Comparison of ESA/IS/JSA and UC and the Claimants' Individual Circumstances**

#### *Comparison of components of benefits*

34. The Claimants seek to compare one component of ESA, IS and JSA (the personal allowance) with a discrete UC component (standard allowance). This is not a fair comparison. As I noted at paragraph 6 above, there are superficial similarities between benefits, but that does not mean that they are directly comparable.

35. Income related welfare benefits such as these benefits are complex and vary based on individual claimants' circumstances. The division of the benefit into components does not follow a pre-ordained ratio or scale, even if the individual components have broadly comparable aims. A component of one benefit may be larger or smaller than a broadly analogous component of another benefit but that says very little about whether the benefits overall are similar or of similar financial value.

The positions of the Claimants

36. The Claimants' evidence states the benefits they receive, but not all of the amounts of each. Colleagues within the DWP and Her Majesty's Revenue and Customs have confirmed the respective amounts as follows:

36.1. As of 16 April 2021, the First Claimant receives: income-related ESA at **£198.60 per week**, made up of the personal allowance (£74.70 per week), Support Group component (£39.40 per week), and EDP and SDP (£84.50 per week); and PIP at £122.55 per week, made up of the standard living component of £60 and the enhanced mobility component of £62.55. This equates to £321.15 per week for the First Claimant;

36.2. As of 14 April 2021, the Second Claimant receives: income-related ESA at **£131.30 per week**, made up of the personal allowance (£74.70 per week), Support Group component (£39.40 per week), and EDP (£17.20 per week). This equates to £131.30 per week for the Second Claimant;

36.3. As of 29 May 2021, the Third Claimant receives: IS at **£44.80 per week**, made up of the personal allowance (£74.70) and the carer premium (£37.70); Carer's Allowance (£67.60). This equates to £112.40 per week for the Third Claimant but the Carer's Allowance is taken from the IS award on a pound for pound basis;

36.4. As of 16 April 2021, the Fourth Claimant receives: JSA at **£74.70 per week**, made up of the personal allowance (£74.70) with deductions for fines, Council Tax and Social Fund. Total deductions are currently £12.41 per week. This equates to £62.29 per week for the Fourth Claimant.

Rate of legacy benefit payments vs UC

37. DWP does not provide advice to individuals on the amount they would receive on UC or legacy benefits or whether it would be advantageous to claim UC rather than legacy benefits. As noted above in respect of the Fourth Claimant, certain errors have been identified in the handling of his isolated case and we are working towards a resolution with his legal representatives. I also note that the Third Claimant states that he was advised not to claim UC in October 2018. The Third Claimant's records have been reviewed, however no record of any alleged advice have been found to verify this statement. Separately, I understand that the First Claimant's solicitors have estimated that she would receive more under UC than under her legacy benefits. As I explained at paragraphs 12, 21.2 and 25 above, all the Claimants can migrate to UC at any point if they wish to do so. It follows that any Claimant who considers that he or she would be better off can simply elect to claim UC.

#### **Overview of the Secretary of State for Work and Pensions' response to the pandemic**

38. I understand that the pandemic, and the broad outline of the Government's response to the pandemic in terms of economic and social security measures, is explained in the witness statement of Lindsey Whyte of HM Treasury ("HMT").

39. As the department responsible for the social security system and related policy areas, DWP has had an important role in responding to the economic consequences of the pandemic. Given the number and variety of social security benefits schemes (and related policy areas) overseen by DWP, DWP has considered a range of possible alterations to its schemes in response to the pandemic.

#### **Overarching principles**

40. The Secretary of State's response to the pandemic has been guided by three overarching principles.

41. First, the role of the social security system for those of working age is, fundamentally, to assist (within certain constraints) those with no or low incomes. The Government decided

to provide further support for individuals and businesses through a broad package of measures, including through the Coronavirus Job Retention Scheme (“CJRS”) and the Self-Employed Income Support Scheme (“SEISS”), which are explained in the witness evidence of Lindsey Whyte. These measures, alongside the UC uplift, are directed at preserving the stability of the economy and labour market in the short-term, so as to allow for a rapid recovery from the pandemic.

42. Second, the approach taken by DWP has been to adapt existing schemes, where options exist at the time of the decisions, rather than create new systems or embark upon the redesign of existing schemes. UC has been designed to allow for such flexibility. This approach has been adopted to ensure that social security provision can be of material support to the greatest number of people in the shortest possible time with the lowest amount of risk as possible. It is neither possible nor sensible to attempt significant, complex or risky alterations to the social security system in the middle of a pandemic given (a) the time that is required to design and implement such alterations (both at a policy and an operational level) and (b) the fact that much of social security policy is complex and inter-related. Social security policy involves balancing a wide range of incentives so as best to achieve the outcomes that the Government seeks (within the inevitable constraints that arise in any large-scale system). A change to incentives in one area can have a ‘knock-on’ effect in other areas.
43. Third, given that DWP has primary responsibility for ensuring that people who need financial support from the benefits system are able to access it, DWP has sought to ensure practical, effective and efficient delivery of financial support. This has meant focusing DWP resources on those who were likely to face the most financial disruption from the start of the pandemic, and also adopting a flexible approach to the way that benefits are administered. This has meant targeting support at those who have lost income as a result of the pandemic, rather than those who may have faced increased costs (which could not have been accurately calculated by the Government). I note that the Claimants’ evidence is that they have faced increased costs because of the pandemic. The Government recognises that this may be the case, but it is likely to be so for very many individuals. The Government focused its response on those who had lost income (who would likely also face increased costs during the pandemic), as it considered they were likely to face the greatest financial disruption. This also assists in providing a cushion to individuals who

have suffered short-term loss of employment or reduction in employment, but who would be expected to return quickly into the labour market.

44. It is essential that any short-term measures are capable of being delivered efficiently, otherwise they simply could not be implemented. By way of illustration:

44.1. The pandemic has led to an unprecedented increase in the overall number of benefit claims being made. At the peak of the outbreak in early 2020 the department received 10 times the normal daily number of UC claims on the benefits system. There were 2.2m UC declarations between 16 March and 19 May 2020, with over 500,000 in the single week when the country went into lockdown (w/c 23 March 2020). The high numbers claiming UC has continued into 2021, with 39,000 UC claims per week in the four weeks to 8 April 2021. As a result, there were 6 million people on UC by 8 April 2021. At the same time, across DWP we were experiencing a significant reduction in staffing levels as a result of absences due to COVID-19.

44.2. A number of policy and operational easements have been made to enable the system to continue to cope with this increased volume of claims, and in response to the lockdown measures which by necessity reduce face-to-face contact.

#### Overview of changes made to social security system in response to the pandemic

45. The Government's response to the pandemic in more general terms (including the CJRS and SEISS) are set out in the witness statement of Lindsey Whyte on behalf of HMT. In the light of the context for DWP's response to the pandemic, which I have summarised in the previous section, I now address specifically the changes relating to the social security system. These principally include a number of changes to UC, but also to other social security benefits, which I also refer to below.

46. The key changes made by DWP in response to the pandemic were:

46.1. The rates of the standard allowance for UC were all raised by £86.67 per month, equivalent to £20 per week (£1040 for the year), for the 2020/2021 tax year. As I

explain below, this temporary uplift was extended from April 2021 to October 2021.

- 46.2. Claimants were not required to attend job centres for face-to-face meetings.
- 46.3. The minimum income floor has been effectively disapplied for gainful self-employed claimants during the coronavirus outbreak, which means that the DWP will not use an assumed level of earnings in the calculation of their UC. Actual earnings will be used instead.
- 46.4. The local housing allowance rate (including shared accommodation rates) for private renters claiming the UC housing costs element or housing benefit was increased to the 30th percentile of local market rents from April 2020. We are maintaining LHA rates at the same cash level in 2021/22 rather than reverting to previous rates which were less generous. This means the local housing allowance rate now covers the lowest 30% of local rents (subject to maximum caps) ensuring financial support better reflects housing costs.
- 46.5. The additional earnings disregard in housing benefit was increased by £20. The effect of this is to offset the weekly increase by £20 of Working Tax Credit rates, which is treated as income in the calculation of housing benefit. The increase to Working Tax Credit was not extended by HMT beyond March 2021 but instead a one-off additional payment of £500 was made to Working Tax Credit claimants.
- 46.6. Work search and work availability requirements were not imposed on claimants receiving UC or new style JSA for an initial period of three months starting on 30 March 2020. From July 2020, requirements were reintroduced for new claimants and began to be gradually reintroduced for the existing UC caseload.
- 46.7. Claimants in receipt of income-based JSA were treated as available for work and actively seeking work so that they did not lose entitlement to JSA for an initial period of three months starting on 30 March 2020. From July 2020, requirements began to be gradually reintroduced.
- 46.8. In normal circumstances, JSA claimants lose entitlement to JSA if they exceed a certain number of permissible periods of sickness. These provisions have been

dis-applied for periods of sickness related to COVID-19, with the effect that no one will lose entitlement to JSA because of COVID-19. This has been extended to 31 August.

46.9. Carers are currently allowed to retain their entitlement to CA if they have a temporary break in caring as a result of COVID-19. This includes cases of both infection with the virus of the carer or cared-for person, and cases where parties have stayed apart to comply with Government guidance in order to limit the spread of the disease. The guidance on the types of care that contribute to the 35-hour threshold has been expanded to include “emotional support” in recognition that face-to-face care may not be possible while social distancing/isolation measures remain in place.

46.10. ESA claimants affected by COVID-19 can be treated as having ‘limited capability for work’ without a requirement for medical evidence or to undertake a work capability assessment. Again, this provides additional support for such claimants, and also removes the need for face-to-face contact with those who are affected by COVID-19-related matters.

46.11. The ESA waiting day period (normally 7 days) has been removed for those affected by COVID-19. Again, this ensures that support is provided as early as possible to those who are affected and seeks to remove incentives for people to keep working and/or fail to isolate.

47. The Government is wholly committed to supporting those on low incomes, including by increasing the living wage, and by spending an estimated £113 billion on welfare support for people of working age in 2020/21. This included around £7.4 billion of Covid-related welfare policy measures.

48. For the purposes of this case, it is necessary to deal with four issues in further detail, namely (i) the increase in the rate of UC and rationale for adopting this change in March 2020, (ii) consideration given to increasing the rate of legacy benefits (such as ESA, JSA and IS) in line with increases in UC and rationale for not adopting any change at the time of the original UC uplift, (iii) consideration in autumn 2020 of whether to maintain the UC

uplift and make a similar uplift to legacy benefits, and (iv) the decision in spring 2021 to extend the UC uplift for a further 6 months. I deal with these in turn.

#### Increase in the rate of UC in March 2020

49. The most relevant change made to UC in the context of the Claimants' challenge was the temporary increase in rate by the equivalent of £20 per week in response to the pandemic.

50. As the Government explained at the time, the purpose of this increase was not to cover all the lost income that claimants would likely face as a result of the pandemic. Indeed, when making the announcement on 20 March 2020 of various policy decisions, the Chancellor of the Exchequer recognised that there would nonetheless be "*hardship in the weeks ahead*" for some people and that it would not be possible to address everyone's financial difficulties. Rather, the decision to increase UC by the equivalent of £20 per week in response to the pandemic achieved three fiscal and social policy objectives.

51. First, the financial support measures were primarily designed to assist those likely to face the most significant financial disruption during the pandemic, for example, those who had lost or were at risk of losing employment or significant income, and who as a result were making new claims for social security benefits for the first time having previously been financially self-sufficient. This objective was not considered to apply in the same way to those who had already been on existing income-related DWP benefits for some time and were less likely to have any reduction in income (as is the case for the Claimants). This, therefore, was specifically designed to cushion the impact of sudden unemployment or reduced employment with the objective of facilitating a rapid return to the labour market (thereby benefitting the economy and tax base in general). However, the Government was required to consider which investments would be most efficient and represent the best use of taxpayers' money. Although the investments made were substantial, that in turn simply highlighted the need to ensure that public money was being spent for the best possible effect.

52. Second, the Universal Credit service has been developed by an in house product team using agile principles, this means that the service can be very adaptive to change. At the height of the pandemic we were able to introduce changes such as the £20 uplift very

quickly so that the changes could reach our claimants immediately. The change to UC could be rapidly implemented and safely introduced without risk to the stability of the system, or delays (in contrast with changes to the legacy systems which I deal with below). Indeed, this was one of the reasons why UC was originally introduced. The substantial IT investment was intended to deliver a system that could adapt rapidly and, therefore, it made sense to use that system.

53. Third, the change provided a clear and strong message which the Government could deliver at a time of crisis to provide reassurance to society and improve morale. The Government's aim in responding to the pandemic was to identify policy changes that could swiftly and safely be implemented so as to provide support to the greatest number of people in the shortest possible time. The policy changes also had to be clear and capable of being simply presented to the public. This is often a consideration when announcing policy, but it was especially important at the time of the decisions (shortly before 20 March 2020) because of the very substantial (and understandable) concern amongst society as the pandemic unfolded. The concern about uncertainty also applied to businesses and the announcement helped to provide macroeconomic stability by confirming the public would have access to additional funds. The Government needed a clear and reassuring message to address this concern and to emphasise the message that, in a time of acute need, the Government was prepared to make a substantial investment of public monies in the short term, so as to ensure the stability of the economy for when the pandemic recedes.
54. These were obviously matters requiring judgement as to which policies would best achieve these interlocking aims.

**Consideration given to increasing the rate of DWP legacy benefits in March 2020**

55. Consideration was given by the Government to an increase in some legacy benefits in March 2020, in a similar manner to the change in rate for UC.
56. In short, the reasons why the uplift in UC was not also applied to DWP legacy benefits such as income-related ESA, IS and income-based JSA were that this was not consistent with the fiscal and socio-economic policy objectives summarised above and was impracticable.

57. As explained above, a principal policy objective during the pandemic was to prioritise delivering additional financial support to those suffering the most disruption. Of all the income-related benefits, it was overwhelmingly new and existing Universal Credit claimants and existing Working Tax Credit claimants who were most likely to have experienced an unexpected loss of income, having previously been financially self-sufficient. The overwhelming majority of legacy benefits recipients were unlikely to experience similar disruption (namely a significant loss of income) especially given the very narrow circumstances in which new claims for legacy benefits could be made at that time.
58. The DWP has substantial expertise in evaluating the effects of unemployment on society. Sudden and short-term unemployment is capable of triggering other social problems and affecting mental health. This can result in a situation in which a person becomes dependent on welfare and hamper a return to employment, even where there are vacancies. These effects are likely to be exacerbated by the pandemic. It follows that seeking to prevent these social problems from arising following sudden unemployment can benefit individuals and society.
59. Further, it was not operationally practicable to deliver an increase in legacy benefits, such as IS, within a meaningful timescale within the existing legacy IT systems. The systems and processes used to deliver UC and legacy benefits (in particular the IT systems) are fundamentally different and the IT system for legacy benefits does not have the capability to uplift benefits mid-year without a number of risks, including that there would be significant mistakes in benefit payments or payments would stop altogether. The view of DWP was that the risk of system failure was too high to proceed with the change.
60. The difficulties in increasing the rate of legacy benefits were considered by Ministers in March 2020. Consideration was given to increasing the standard allowance of ESA, JSA and IS, but, as well as not serving the policy objectives, which I explain further below, this was not operationally deliverable as the rates for April 2020 had already been input for all of the legacy benefit systems and could not be changed until the following year without considerable delivery risks. This is because of the ageing nature of the DWP's legacy IT systems. It was considered that any changes to the rates input into the legacy systems as part of a further, out-of-cycle exercise carried major delivery risks. Rates can only be

changed when the relevant system is not being used by frontline staff, which confines available windows to weekends. Moreover, once they are set it is not possible to change them in-year without a high level of risk of incorrect payments being made to customers. There are a large number of 'benefit overlaps' which occur where one benefit rate is linked to another. Any errors could rapidly create a 'domino effect' where the IT team would not have the capacity to predict or correct the knock-on implications. This would therefore carry a high level of risk that payments would be made at an incorrect rate, or that customers would not receive any payments at all.

61. Consequently, it was decided that increasing the standard allowance of ESA, JSA and IS was not feasible as it posed a danger to the whole system. This decision prioritised the safety and stability of the benefits system overall.

62. While claimants on legacy benefits are only required to claim UC when they have a change of circumstances that results in the need to claim a new benefit that UC replaces, there is no general bar on claimants electing to make a new claim to UC. The DWP does not advise claimants on whether they are better off on UC or legacy benefits, so it cannot actively recommend this course of action for claimants, although there are links to online benefit calculators on the Government's webpages that provide estimates of the benefits that may be payable. Claimants who consider they would benefit from this change financially can claim UC if desired.

63. These matters have also been explained in publicly available material. The SSWP explained on 30 June 2020 that an uplift of legacy benefits was not operationally possible, in an answer to a written Parliamentary Question. The Question was: *"To ask the Secretary of State for Work and Pensions, for what reason employment and support allowance was not increased in line with the uplift in universal credit in March 2020."* The SSWP explained **[KP1/002-003]**

*"The Government has announced a suite of measures that can be quickly and effectively operationalised to benefit those facing the most financial disruption during the pandemic. The Department was experiencing significantly increased demand and had to prioritise the safety*

*and stability of the benefits system overall. The IT system which supports Universal Credit has more capacity to make the necessary changes than the systems that support legacy benefits. It also uses different technology from other DWP systems and these older systems have complex interactions and interdependencies. We estimate that 2.5m households receiving Universal Credit will have benefited straight away from the increase in the standard allowances which was announced on 20 March, and which is additional to the planned annual uprating. New claimants who have either become unemployed, or whose earnings or work hours have decreased because of the outbreak, will benefit too; subject to their eligibility.*

*We have also made a number of changes to legacy and other working age benefits in response to the COVID-19 outbreak, including increasing certain entitlements, such as Local Housing Allowance. Up-to-date information about the employment and benefits support available, including Employment and Support Allowance, can be found here: <https://www.understandinguniversalcredit.gov.uk/employment-and-benefits-support/>*

*Taken together, DWP's pandemic measures represent an injection of over £6.5 billion into the welfare system and, along with the other job and business support programmes announced by the Chancellor, represent one of the most comprehensive packages of support introduced by an advanced economy in response to COVID19."*

64. The Minister for Welfare Delivery provided a similar answer in relation to legacy JSA on 26 June 2020 [KP1/004-005].

**Consideration in Autumn 2020 of whether to maintain the UC uplift and make an uplift to legacy benefits**

65. The decision in March 2020 to uplift UC was for a 12-month period (i.e. until shortly before the next annual up-rating took effect in April 2021). As mentioned at paragraph 17 above, each autumn the SSWP conducts an up-rating review to establish whether benefit rates have kept pace with price inflation and the rates are then set for the next tax year. The up-rating exercise takes place in the autumn due to the lead time required for the legal and practical steps to increase legacy benefits. This lead-in time is especially important when considering the possibility of changing legacy benefit rates because of the IT issues I noted above (namely, the risks and difficulties with changing legacy rates more than once in a year and the significant time it takes to input new rates for legacy benefits into the system). The up-rating review took place in autumn 2020 and was announced via a written

ministerial statement on 25 November 2020 which confirmed “*the statutory annual review is separate from the temporary £20 uplift*” [KP1/006-007].

66. At that time the SSWP considered various options for whether to continue the UC uplift and whether to introduce a similar uplift for legacy benefits. None of these options were implemented, either at the time or subsequently and so I do not address them further in this statement. Ultimately, the Government decided that it was not in a position to decide in autumn 2020 on whether to extend the UC uplift and apply an uplift to legacy benefits. The Chancellor of the Exchequer explained this publicly at the time of the Spending Review as follows [KP1/014]:

*“The temporary uplift in universal credit runs all the way through to next spring, providing security for those families. Of course we will look, when we come to next spring, at the best way to support people and their families when we have a better sense of where the economy is and where we are with the virus”.*

67. The reason for this was that the pandemic was evolving during autumn 2020; in particular, there was a spike in Covid-19 cases in autumn and Ministers were not sure at that time what the public health or economic state of affairs would be in March 2021. Evidently, the financial and public health situations into the longer term future is difficult to predict during a pandemic; how the welfare system can best respond to that future situation is also hard to predict. Instead of making that decision in advance, the Government thus decided that it would need to consider the situation closer to the time of the end of the uplift. The cost of the uplift at £6bn a year is very significant so not an amount that the Government would decide to spend way ahead of time and before the full economic and Covid situation at the end of the 12 months UC uplift was clearer, i.e. closer to the time. The advantage to this is that the conditions of the pandemic could then be considered; if it were still necessary to maintain the uplift, that would be known with a greater degree of certainty in March 2021 than could be the case in November 2020. In relation to legacy benefits, the process of inputting the rates into the IT system for the following year needs to take place several months in advance: the rate to be paid up to March 2022 had to be programmed from November 2020. That would not have enabled the Government to

respond to the rapidly-evolving demands of the pandemic with the latest and most accurate understandings of the situation.

68. As a result, the Government made no decision in November 2020 on whether (and, if so, how) to maintain the UC uplift and whether to apply an uplift to DWP legacy benefits.
69. This did not change the fact that the SSWP still needed to conduct her statutory up-rating review to determine whether benefit rates had kept pace with price inflation. This is because of the need for a lead-in time, which I explained above. At that time (autumn 2020), the UC uplift was due to expire in April 2021, with the standard allowance returning to the pre-pandemic rate, subject to the annual up-rating. The legacy benefit rates, including the personal allowance for ESA, IS and JSA, were also due to be paid at their pre-pandemic rates, subject to an up-rating. The SSWP, therefore, decided to up-rate all these benefits by a routine amount in November 2020. This was implemented through the Social Security Benefits Up-rating Order 2021/162. This was made on 23 February 2021 but, in order to have sufficient lead-in time to prepare the legacy benefit IT system, the substantive decisions on the amount of the legacy benefits for 2021/2022 were made in the written ministerial statement of 25 November 2020.
70. Due to the need for a lead-in time, and the serious difficulties with making in-year changes to legacy benefit rates, this was the only opportunity to change the rate of the personal allowance for ESA, IS and JSA. It would not, however, have been viable or sensible for the Government to uplift the personal allowance at that time; there was no policy reason to decide to change the rate of legacy benefits in particular, particularly given that the UC uplift was due to expire in April 2021 and the Government had not decided to extend it.

#### **Decision in spring 2021 to extend the UC uplift by 6 months**

71. By the end of December 2020 the situation with Covid had deteriorated rapidly and in early 2021 it became clear that Covid was still a significant problem and indeed another lockdown was announced on 4 January 2021. The SSWP therefore decided she wanted to extend the UC uplift. By this stage, it would not be possible to adjust the rate of legacy benefits for 2021-2022.

72. The Government ultimately decided on a temporary extension of the UC uplift of an equivalent of £20 per week for 6 months, until October 2021. It was implemented through the Universal Credit (Extension of Coronavirus Measures) Regulations 2021. The Government decided that although some groups with protected characteristics might benefit to a lesser extent from the changes than other groups, any differential impact was justified due to the aims of the measure and its importance. The 6 month extension of the £20 per week uplift gave economic reassurance and financial support to those likely to experience the most financial disruption due to the pandemic, including a significant number of people only making benefit claims due to a loss of, or significant reduction in their income due to Covid-19 restrictions. As the pandemic and its effects were continuing, it was not considered an appropriate time to withdraw that support.
73. It was not known in November 2020 whether the uplift would be continued, how long the Covid-19 restrictions were due to last and the progress on the vaccination programme. By the time these facts were known and a decision on the future of the uplift was taken, it would not have been possible operationally to include new legacy rates into the benefit system by April 2021. In any event, the extension of the uplift was temporary and not for a full financial year. The extension of the uplift to legacy benefits would be an extension of the policy intent. Legacy claimants would not now be facing a drop in the benefits they receive as they were never in receipt of the £20 uplift and all existing legacy benefit claimants in Great Britain are able to make a new Universal Credit claim at any time to benefit from the temporary uplift (as the Severe Disability Premium (SDP) gateway which prevented claimants who received SDP from making a new Universal Credit claim was removed on 27 January 2021, which I explained at paragraphs 12, 21.2 and 25 above).
74. The reasons for this matched the original reasons for the UC uplift (which I addressed at paragraphs 49-53 above). Further, for the reasons I explained at paragraph 70 above, it was not possible to make changes to the rates of legacy benefits for 2021/2022 as part of the budgetary process in spring 2021. In addition, even if changes could have been made to the legacy benefit rates at that time, it would not have been possible to make an equivalent decision to that made in respect of UC (a 6-month uplift). This is because it is practically difficult and operationally risky to change benefit rates in-year (i.e. to move from an uplifted rate to a default rate in October 2021):

74.1. Once rates have been input into the legacy IT systems, they cannot be changed until the following year without a very significant risk to the safety and stability of the IT system. Such risks would include IT system failure, the risk of payments not being made to claimants or incorrect claims being made to claimants. These risks arise because of the ageing nature of the legacy IT system and complex interactions and interdependencies between different parts of the system, together with the fact that programming an up-rating to legacy benefits outside of the annual up-rating exercise is un-tested.

74.2. Given that DWP was experiencing a significant increase in claims since the start of the pandemic, the Government's priority was to make sure it could continue paying legacy benefits. Changing legacy benefits outside of the annual up-rating exercise would present an unacceptable risk to the safety and stability of the benefits system overall.

75. Even if each of these problems could have been overcome, the Government nonetheless considered that it would be undesirable from a policy perspective to change the rates at which legacy benefits are paid in the 2021/2022 year for the reasons I explained at paragraph 56 - 57 above (when this issue was considered in March 2020) and as set out in the Ministerial Submissions of 11 March 2021 [KP1/048-054] and the accompanying Equality Analysis [KP1/055-065]. In short, an increase in legacy benefits in an analogous way to the temporary UC uplift would not have served the Government's policy objectives in responding to the pandemic.

#### **STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

**Personal Data**

Dated: 22 June 2021