

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 7 April 2021

Public Authority: The Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1A 9NA

Decision (including any steps ordered)

1. The complainant has requested documents related to the rollout of Universal Credit.
2. The Commissioner's decision is that the Department for Work and Pensions is not entitled to rely on sections 22, 35 or 36 to withhold the requested information. DWP redacted some information under section 40(2) and the complainant does not dispute this position.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information with the exception of the redactions under section 40(2).
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. On 5 October 2010, the then Secretary of State for Work and Pensions announced the introduction of Universal Credit designed to simplify the benefits system and improve work incentives. It was announced that Universal Credit aimed to simplify the benefits system by moving from the multiple benefits systems to a single streamlined payment. The plan was to migrate recipients from their current benefits and tax credit systems onto the Universal Credit system starting in 2013 and finishing in the next parliament¹.
6. DWP set out its plans for Universal Credit in a November 2010 white paper². This document envisaged completing rollout to around eight million households by October 2017.
7. The Infrastructure and Projects Authority is a cross-governmental organisation that provides expertise to implement major governmental projects³.

Request and response

8. On 28 October 2019, the complainant wrote to DWP and requested information in the following terms:

"In respect of the Universal Credit programme please disclose the following documents created by the Infrastructure and Projects Authority / Major Projects Authority ("IPA"):

RFI1:

*- Health check 2015
(Disclosed to the Work & Pensions select committee)*

*- Health check September 2016
(Disclosed to the Work & Pensions select committee)*

¹ <https://www.gov.uk/government/news/universal-credit-introduced>

² <https://www.gov.uk/government/publications/universal-credit-welfare-that-works>

³ <https://www.gov.uk/government/organisations/infrastructure-and-projects-authority>

*- Project Assessment Review Report ("PAR") March 2017
(Disclosed to the Work & Pensions select committee)*

*- Health check September 2017
(Disclosed to the Work & Pensions select committee)*

Please note that the dates given for the documents above are my estimates based on non-DWP publications. The months may be incorrect from the DWP perspective. For example, if the DWP considers the date of a document I have stated as being September to be August or October it should treat it as falling within the scope of my request.

Given the age of the documents, I trust that the DWP will live up to its claims of being committed to transparency in line with the commitment to Open Government and disclose them without delay?

RFI2:

- Other PARs and Health Checks, not listed above, that were completed by the IPA during the period 01 April 2017 to 31 March 2019."

9. On 10 November 2019, the complainant wrote to DWP and amended the request in the following terms:

"Please disregard my previous RFI2 and replace it with the one shown below. This is because the period 01 January 2016 to 06 September 2018 is covered by an older request (dated 06 September 2018) that the Information Commissioner has not managed to issue her decision notice for.

RFI2:

- Other PARs and Health Checks, not listed above, that were completed by the IPA during the period 07 September 2018 to 31 March 2019."

10. On 22 November 2019, DWP wrote to the complainant to inform him that it was extending the time for compliance in order to consider the public interest test. DWP confirmed that it was considering the public interest test for the following exemptions (as reproduced from the DWP's response):

- Section 22 – For future publication
- Section 31 – Law Enforcement
- Section 35(1)(a) – Formulation of policy
- Section 36 – Damage to public affairs

- Section 42(1) – Legal professional privilege
 - Section 43 – Commercial interest.
11. On 18 December 2019, DWP provided its response. It provided a copy of the Health check April 2015 with personal data redacted under section 40. DWP also provided a link to the 'Health Check September 2016' which had been deposited in the House of Commons library⁴.
 12. DWP confirmed that for 'Project Assessment Review Report March 2017, 'Health check September 2017' and 'RFI2', it was relying on section 22 to withhold the requested information as it is intended for future publication. DWP explained that it has committed to publish Universal Credit IPA reports annually, three years after receipt of the relevant report and provided a link to the Universal Credit IPA publication strategy⁵.
 13. DWP explained that all programmes need to strike a balance between transparency and providing a safe space for officials to give candid advice to Senior Programme officials. DWP explained that the three year period specified in the Universal Credit IPA report publication strategy is intended to allow this balance.
 14. DWP set out its consideration of the public interest. It acknowledged that there is a public interest in reviews of government projects being transparent and available for public scrutiny. DWP explained that Government Departments have a responsibility to make information available to the public having regard to the efficiency and effectiveness of the approach to publication.
 15. DWP explained that it was however satisfied that there is a strong public interest in permitting public authorities to publish information in a manner and form and at a time of their own choosing. It is part of the effective conduct of public affairs that the general publication of information is a conveniently planned and managed activity within the reasonable control of the public authority.

⁴ https://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2019-11-05&td=2019-11-05&search_term=Department+for+Work+Pensions&itemId=119004#toggle-1029

⁵ http://data.parliament.uk/DepositedPapers/Files/DEP2019-0890/51-IPA_report_publication_strategy_15_aug_19.pdf

16. DWP explained that it had carefully considered the Universal Credit IPA reports requested and the Universal Credit IPA publication strategy and it was satisfied that the public interest is best served by these reports being published in line with the strategy, 3 years after their publication.
17. DWP confirmed that whilst it is satisfied that section 22 exempts the information from disclosure, further exemptions might apply to each of the documents. DWP explained that it was satisfied that other exemptions were valid, including section 35(1)(a), section 36(2)(c) and section 40.
18. On 19 December 2019, the complainant wrote to DWP and requested an internal review. The complainant disputed that DWP had a settled intention to publish the requested information. The complainant also considers that DWP failed to comply with its obligations under section 1(1)(a) as it did not confirm exactly what information it held falling within RFI2.
19. The complainant considered that the DWP has failed to meet the public interest balancing test set out in the Upper Tribunal case *Department of Health v ICO & Lewis [2015] UKUT 159 (AAC)*. He confirmed that this states that disclosure under the Act should be approached on a contents and specific information basis and not a class basis. The complainant stated that a contents based assessment must show that the actual information is an example of the type of information within the class description of an exemption and why the manner in which disclosure of its contents will cause or give rise to risk of actual harm to the public interest, and evidence which does not address this is flawed.
20. The complainant considered that DWP's response is clearly a class based response as it had imposed a "3 year moratorium" on disclosure.
21. On 31 January 2020, DWP provided the outcome of its internal review. DWP confirmed that it had a settled intention to publish Infrastructure and Project Authority reports three years after the review and that this was in line with its publication strategy and provided a link⁶.
22. DWP confirmed that it had complied with section 1(1)(a) as its response confirmed that it does hold the requested information.

⁶ http://data.parliament.uk/DepositedPapers/Files/DEP2019-0890/51-IPA_report_publication_strategy_15_aug_19.pdf

23. DWP upheld its original response that section 22 was exempt and its public interest had been set out. It was also satisfied that other exemptions are also valid.
24. DWP confirmed that any future request for disclosure of Universal Credit information will be considered on a case by case basis.

Scope of the case

25. The complainant wrote to the Commissioner on 11 February 2020 to complain about the handling of his request for information.
26. The complainant confirmed that he did not dispute the application of section 40(2) to redact the personal data of DWP employees below Senior Civil Servant grade and that he was content to exclude from this investigation two reports which had previously been requested and were already the subject of an investigation by the Commissioner⁷.
27. This investigation will therefore relate only to "*DWP Universal Credit Operational Plan 2019-20 Review March 2019*" and its embedded recommendations document which fall within "RFI2".
28. DWP confirmed to the Commissioner during her investigation that should she determine that section 22(1) is not engaged, it would seek to rely on further sections to redact the requested information.
29. The Commissioner considers that the scope of this investigation is to firstly determine whether DWP is entitled to rely on section 22(1), information intended for future publication, to withhold the entirety of the report (i.e. those documents described at paragraph 27).
30. Should the Commissioner determine that DWP is not entitled to rely on section 22, she will go on to consider the following exemptions in relation to specified information within the report:
 - Section 35(1)(a) – Formulation of Government Policy
 - Section 36(2)(b)(i) – Provision of free and frank advice

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617871/fs50802502.pdf>

- Section 36(2)(b)(ii) – Free and frank exchange of views for the purposes of deliberation
 - Section 36(2)(c) – prejudice to the effective conduct of public affairs
31. The complainant also asked the Commissioner to consider whether DWP complied with section 1(1)(a) and section 17(1) in its original response.

Reasons for decision

Section 1: General right of access

32. Section 1(1)(a) of the Act states that any person making a request for information is entitled:

"to be informed in writing by the public authority whether it holds information of the description specified in the response"

33. The complainant disputes that DWP has complied with section 1(1)(a) of the Act as it did not set out exactly what information it holds falling within the scope of the request. The complainant also considers that DWP has not complied with its obligations under section 17 of the Act for this reason.
34. The complainant set out that when considering prejudice based exemptions, the age of the information at the time of the refusal is an important factor. The complainant considers that the potential age range of information that falls within "RFI2" is considerable and he is therefore unable to fully consider the prejudice set out by DWP as the requested information could be between eight and fifteen months old at the time of the request.
35. The Commissioner notes that DWP refers to the specific reports named by the complainant and "RFI2" when confirming that it holds the information requests. It does not specify exactly what is held falling within the scope of "RFI2".
36. The strict wording of section 1(1)(a) is that a public authority is obliged to confirm or deny whether it holds the information described in the request; it does not require public authorities to list what information is held falling within the scope of the request.
37. The Commissioner considers that whilst confirming exactly what information was held may have been helpful, DWP did comply with

section 1(1)(a) as it confirmed that it held information as described in the request.

Section 17: Refusal Notice

38. Section 17(1) of the Act states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*

39. DWP confirmed in its original response that it was, in the first instance, relying on section 22 to withhold the requested information and gave an explanation as to why. DWP also provided its public interest considerations.

40. As with section 1(1)(a), whilst confirmation of the exact information held would have helped the complainant understand the exemption that DWP is relying on, DWP has not failed to comply with section 17(1) as it confirmed that it was withholding the requested information, the exemption it was relying on and why it considered that the exemption applied.

Section 22: Information intended for future publication

41. Section 22(1) of the Act states that:

"Information is exempt information if –

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

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

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

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

Was there an intention to publish the requested information at some future date? Was the information already held with a view to publication at the time the request was made?

44. In order to correctly rely on section 22, there must have been a settled intention to publish the requested information prior to the request being received.

45. DWP confirmed to the Commissioner that the Universal Credit programme had a settled intention to publish the Infrastructure and Projects Authority (IPA) Performance Assurance Reviews (PARs) at the time of the request. DWP set out that the intention to publish was set out in the Universal Credit IPA publication strategy which was published in the House of Commons library on 12 September 2019⁸.

46. DWP confirmed that the first report was published in the House of Commons library, in line with this strategy, on 5 November 2019. This was the "*Health Check September 2016*"⁹.

47. The Commissioner is therefore satisfied there was an intention to publish the withheld information set out in paragraph 27 before the amended request "RFI2" was made on 10 November 2019.

⁸ http://data.parliament.uk/DepositedPapers/Files/DEP2019-0890/51-IPA_report_publication_strategy_15_Aug_19.pdf

⁹ http://data.parliament.uk/DepositedPapers/Files/DEP2019-1052/Infrastructure_and_Projects_Authority_Health_check.pdf

Is it reasonable to withhold the information from disclosure until the intended date of publication?

48. A public authority must consider whether it is reasonable, in all the circumstances of the request, to withhold the information until the date of the publication.
49. DWP acknowledged and agreed that there is merit in the IPA reviews of the Universal Credit programme being transparent and available for public scrutiny. DWP considers, however, that it is important to strike a balance between transparency and providing a safe space for officials to give honest advice to Senior Programme officials. DWP considers that the three year publication commitment set out in the Universal Credit IPA report publication strategy, and publicly available in the House of Commons library, was introduced to help maintain this balance.
50. DWP believes that it is reasonable to publish Universal Credit IPA reports at regular intervals after the review date in order to balance the need to prioritise resources to address key project priorities with the need to divulge the detail of project review findings to contribute to the improvement of wider project management approaches across government.
51. The complainant raised concerns that previous papers had not been published despite the stated intended publication period having passed. The complainant drew the Commissioner's attention to DWP's IPA publication strategy which states:

"We will be publishing PAR reports in annual batches, three years after they have been produced for the Senior Responsible Officer to consider and take any necessary action."
52. The complainant considers that this means that if an IPA document's publication date is January, but the annual publication does not take place until December, then the document will be almost 4 years old. The complainant suggests that DWP's failure to explain in what month the annual publication of IPA documents will take place means that it intends to vary it in order to maximise the age of the information before it is disclosed. The complainant believes that this undermines DWP's assertion that the publication delay is reasonable.
53. The complainant also provided the Commissioner with the following quote from Universal Credit Programme Board papers that have been published:

"The SRO for UC stated that following a Freedom of Information request for UC Programme Board minutes for April, May and June 2017 they were going to be released, although junior staff names and references to

Security would be redacted. We think this FOI is part of a pattern which might be described as a search for a smoking gun on UC implementation. The earlier request for the PAR reports should be seen in that context. But as procedures and processes were sound, decisions were properly made, which NAO have audited and found to be the case, we think that release of these papers will enhance public confidence.

The SRO is looking to adopt a new policy of releasing Programme Board papers after 2 years and will do this every 6 months following the stated retention period. This should stop further ad hoc FOI requests which are time consuming and constitute fruitless activity for all."

54. The complainant believes that this quote is relevant as it suggests a different basis for the publication schedule. He considers that it is reasonable to conclude that the publication schedule was implemented to frustrate requests for information under the Act.

The Commissioner's position

55. The Commissioner has previously issued a decision notice (FS50820378¹⁰) regarding DWP's reliance on section 22(1) to withhold its Universal Credit Programme Board papers. In this decision, she found that it was not reasonable to refuse to provide the requested information until the intended publication date, two years following the papers' creation.
56. Whilst this request is for the IPA PARs rather than the Universal Credit Programme Board papers, the Commissioner considers that the circumstances of each of the requested information is sufficiently similar to maintain her position.
57. The Commissioner therefore provided DWP with the opportunity to amend its position or provide further submissions. DWP confirmed that it was maintaining its position and declined to provide further arguments as it intended to defend its position during the appeal of the above decision notice.
58. The Commissioner acknowledges DWP's concerns regarding the need for safe space for officials. However, she does not accept that waiting three years, potentially longer, to disclose information on the decision making process for Universal Credit is reasonable.

¹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615863/fs50820378.pdf>

59. The Commissioner is mindful that Universal Credit has been in the public consciousness since its announcement in 2010 and concerns have been raised by various charities and news agencies. As set out in FS50820378, the Trussell Trust has reported a correlation between the rollout of Universal Credit and the increase in Foodbank use and the Work and Pensions Select Committee launched an investigation into reports that claimants are resorting to exchanging sex for basic survival needs such as money, shelter and food.
60. The Commissioner understands that there may be information relating to the free and frank discussions of officials held within the information, however, withholding the entirety of the requested information under section 22 for three years is not the appropriate approach to protect this information.
61. The Commissioner notes that there is information on Universal Credit available via Parliamentary Questions, requests under the Act and Select Committee inquiries. However, she considers that this reveals the importance of the subject to the public and the need to provide this information at a sooner rather than later date.
62. The Commissioner considers that DWP has not demonstrated that it would be reasonable to refuse to provide the requested information until the intended publication date, a minimum of three years following its creation.
63. The Commissioner requires DWP to disclose the information withheld under section 22 which is not also withheld under sections 35 or 36.

Section 35(1)(a) – Formulation and development of government policy

64. Section 35(1)(a) of the Act states that:

"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to –

(a) the formulation or development of government policy"

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

'Development' may go beyond this stage to the processes involved in improving or altering existing policy, such as piloting, monitoring, reviewing, analysing or recording the effect of existing policy.

67. Whether information is related to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the content of the information in question and its context.
68. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
 - The final decision will be made either by Cabinet or the relevant Minister;
 - The government intends to achieve a particular outcome of change in the real world;
 - The consequences of the decision will be wide-ranging.

DWP's position

69. DWP explained that the information within the scope of the request related to the co-design of the next stage of the 'Move to UC (managed migration)' policy where DWP is working with key stakeholders to develop a joint approach in policy development.
70. DWP provided a copy of the requested information highlighted with the information it considers exempt under section 35(1)(a).
71. DWP explained that the specific redactions made under this exemption all involve the detailed description of the process and timing of events to develop the 'Move to UC' policy. DWP strongly believes that publishing these details would prejudice relationships with key stakeholder organisations and would damage the effective development of the 'Move to UC' policy.
72. DWP explained that 'Move to UC' is the next phase of the Universal Credit programme. DWP confirmed that a pilot had been set up and it had worked closely with stakeholders and partners, to consider how it could safely move people in receipt of legacy benefits on to Universal Credit.
73. DWP explained that the withheld information relates to the development processes and policies which are part of the pilot DWP is operating to move legacy claimants within the pilot to Universal Credit before rolling them out more widely. DWP explained that as part of this pilot, DWP will

evaluate, test and potentially adapt such processes and policies for moving claimants to Universal Credit.

74. DWP explained that the pilot commenced in July 2019 with a lengthy, small-scale testing period during which up to 10,000 claimants will be migrated. DWP explained that this proposed gradual and steady approach will allow it to engage with both claimants and stakeholders to ensure that the process works for everyone.
75. DWP explained that there is no specific end date for this policy formulation as Universal Credit is a agile programme that has 'test and learn' at the heart of its development. DWP confirmed that the pilot was paused due to the Covid-19 pandemic, however, this occurred after the request was made.
76. DWP confirmed that the decision regarding whether to proceed with 'Move to UC' will be made by a DWP Minister. DWP explained that Ministers approved the 'Move to UC' pilot which allowed for no more than 10,000 claimants currently on legacy benefits to be supported to move to Universal Credit.
77. DWP explained that at the time of the request, Ministers had also given an undertaking to return to Parliament to update the House on the outcome of the pilot and any revisions to the approach to moving people onto Universal Credit, having learned lessons from the pilot.
78. DWP explained that, at the time of the request and prior to the pandemic, the intention was that the pilot would be used to understand, for example, the reasons why current legacy claimants decide not to submit an application for Universal Credit and the actual support needed to help claimants make their transition to Universal Credit. DWP explained that evaluation of the pilot outcomes would have allowed it to learn what worked to safely move people from legacy benefits onto Universal Credit, where and how stakeholders might help with the process, to increase numbers as gradually as necessary and to adapt the processes frequently to get the best possible support to the legacy claimants. DWP confirmed that it had committed to return to Parliament with the findings following the pilot.
79. DWP explained that there are a range of revised policy outcomes and set out various options which may be included in the policy based on the outcome of the pilot.
80. DWP cited the Commissioner's guidance on section 35, which states:

"In some cases, the government may decide to run a pilot scheme or trial to test a potential policy on a small scale before deciding whether to roll it out in full. Piloting a policy is one way of gathering evidence on its

efficacy before making a final decision on whether or not to take it forward. Pilot schemes may therefore form part of the policy formulation process, particularly if the scheme's limits and end date are clearly defined, and no final decision has yet been taken on whether or in what form the policy should be adopted or rolled out more widely".

81. DWP considers that it is clear that the 'Move to UC' pilot is a limited scheme with clearly defined objectives supported by legislation, specifically designed to inform the formulation of the final Universal Credit policy relating to moving legacy claimants to Universal Credit. DWP explained that this was not a pilot to decide how to implement policy, but to determine which policy would be adopted as a result of the pilot.

82. DWP also set out that in January 2019, the draft Managed Migration Regulations were shared with the Social Security Advisory Committee (SSAC) who commented:

"The Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019

You will already be aware that this Committee has agreed that the above regulations may proceed without the need for their formal reference to us.

We welcome the introduction of a cap into the regulations and the commitment to review whether the process is working as intended after the pilot has ended. As you will know, we have previously recommended that the department should be prepared to make some fundamental changes, including to the legislation if necessary, following the initial test and learn phase."

83. DWP set out that the SSAC refers to fundamental changes and the likelihood of changes to legislation. DWP believes that this provides an independent view which supports its position that 'Move to UC' is an ongoing policy issue.

The Commissioner's position

84. Having reviewed the withheld information and DWP's submissions, the Commissioner accepts that the 'Move to UC' policy was still being developed at the time of the request and the withheld information forms part of the development of this policy.

85. The Commissioner accepts that a large scale project such as Universal Credit will have different phases of the project at implementation, development and formulation stages. Therefore, whilst Universal Credit has been implemented for new claimants, the Commissioner accepts

that DWP is still developing its policy on how, or if, legacy claimants should be migrated to the new system.

86. The Commissioner therefore considers that section 35(1)(a) is engaged in relation to the specific withheld information. As section 35 is a qualified exemption, the Commissioner will now consider the balance of the public interest.

Public interest in favour of disclosure

87. The complainant considers that the age of the information at the time of the request is such that the need for safe space will have passed; therefore the public interest favours disclosure.
88. The complainant disputed that there is sufficient information already in the public domain. He explained that this is an argument that has been used by DWP in every complaint and appeal regarding Universal Credit that he had been involved in since 2012 and that the Commissioner and the Tribunal have yet to apply significant evidential weight to it.
89. The complainant considers that the information that is in the public domain does not reflect the reality of the programme and the problems that claimants face. The complainant considers that DWP's argument that information is already available fails when bodies such as the Public Accounts Committee (PAC) and the Work and Pensions Committee (W&P) argue for greater transparency in the IPA and "*are surprised by the contents of the PARs (that they wouldn't have seen if it were not for the FOIA)*".
90. The complainant explained that the media had been critical about what the PARs disclosed in 2018 contained about the Universal Credit programme. He gave examples of two typical stories:
- "*Universal Credit all-party report raises fears over workability of system*" The Guardian (08 February 2018)¹¹
 - "*Tories finally release humiliating secret reviews of Universal Credit in major benefits U-turn*" The Mirror (08 March 2018)¹²

¹¹ <https://www.theguardian.com/society/2018/feb/08/universal-credit-all-party-report-raises-fears-over-workability-of-system>

¹² <https://www.mirror.co.uk/news/politics/tories-finally-release-humiliating-secret-12148873>

91. The complainant considers that the information in the public domain about the Universal Credit Programme has invariably been released on DWP's own terms and rarely reflects reality. He gave the example of DWP's advertising campaign about Universal Credit between May and June 2019 and stated:

"It claimed that it was to raise awareness of benefits and that a lot of what was written about UC was incorrect. In what can only be described as a scathing report the Advertising Standards Authority found that the DWP breached the advertising code 42 times¹³. It seems that the DWP is correct when it claims that some of what is written about UC is incorrect. It is just that DWP is responsible for a significant amount of it."

92. The complainant explained that there are multiple critical reports about Universal Credit from the PAC, W&P and the National Audit Office (NAO). The complainant states that despite DWP's claims that the introduction of Universal Credit does not lead to an increase in foodbank use, the Trussell Trust's statement of 26 October 2018¹⁴ states that on average there is an increase of 52% in foodbank use in areas where Universal Credit has been operational for 12 months.

93. The complainant explained that one story to emerge is that some women resorted to sex work in order to survive or avoid Universal Credit. This was termed "survival sex" in the report by the W&P¹⁵ of 25 October 2019. The complainant considers that the opening paragraphs of the conclusions and recommendations are "damning" and "show the mind-set and culture that still operates within the DWP":

"1. The Department's initial written evidence submission to our inquiry sought to disprove the presence of a "direct causative link" between Universal Credit and "survival sex". In taking this approach, it missed the wider point. The fact that people with complex needs and precarious financial situations turned to sex work before Universal Credit does not mean that the design of Universal Credit does not present additional problems for people who are already vulnerable. (Paragraph 16).

¹³ <https://www.asa.org.uk/rulings/department-for-work-and-pensions-G19-1021769.html>

¹⁴ <https://www.trusselltrust.org/2018/10/26/public-accounts-committee-universal-credit/>

¹⁵ [Universal Credit and "survival sex" - Work and Pensions Committee - House of Commons \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2016/universal-credit-and-survival-sex/)

2. The Department's initial submission displayed little interest in the lived experience of claimants and would-be claimants. People with first hand, personal experience told us and widely available media sources that Universal Credit was a factor in their decision to turn to, or return to, sex work. The Department also chose not to make use of the expertise and experience of multiple support organisations. Its initial written response was defensive, dismissive, and trite".

94. The complainant considers that finding out what is actually happening within the Universal Credit programme has been a significant challenge and that DWP has "*carefully crafted a narrative about UCP that is only believed within a DWP bubble. When challenged the DWP dismisses external views as biased, immediately looks for evidence to try to prove that problems are not due to UCP and remains far too defensive in the face of public scrutiny*".
95. The complainant considers that the human cost of implementing the Universal Credit programme is proving far higher than the financial cost. In addition to the food bank usage and "survival sex" reports, the complainant drew the Commissioner's attention to an article in the Lancet on 20 March 2020¹⁶ as he considers that this shows why it is imperative that the public is allowed to see how the Universal Credit programme is actually being run, what is and isn't being considered and what decisions are being made.
96. The complainant explained that Universal Credit is supposed to make life easier for many of the most vulnerable people in society by helping them to live, if they cannot work, or find and stay in work. He considers that for it to cause clinically significant psychological distress in 63,674 people, of whom 21,470 might reach the diagnostic threshold for depression is "*utterly perverse*". The complainant raised concerns that these figures would grow further when DWP completes its managed migration of claimants on legacy benefits.
97. DWP recognised that there is an inherent public interest in transparency and accountability of public authorities. It also recognised the broad public interest in furthering the public understanding of the issues which public authorities deal with such policy considerations in implementing welfare reform in the UK. DWP acknowledged that there is a clear public interest in the work of Government departments being transparent and open to scrutiny to increase understanding of the issues it deals with.

¹⁶ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30026-8/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30026-8/fulltext)

Public interest in favour of maintaining the exemption

98. DWP considers that there is public interest in protecting the Government's ability to discuss and develop policies and to reach well-formed conclusions. DWP explained that policy development needs some degree of freedom to work effectively and it considers that there is a strong public interest in protecting information where release would be likely to have a detrimental impact on the ongoing development of the processes and policies relating to the 'Move to UC' pilot.
99. DWP provided the Commissioner with arguments specific to the nature and content of the withheld information. As these arguments reveal the contents of the withheld information, she has not reproduced them here.
100. DWP's arguments can, however, be summarised as follows:
- Disclosure of the withheld information could lead to it being "*forced*" to release further details about the development of the pilot.
 - Interested individuals would want to obtain further details regarding the development of the pilot and would likely lobby their Member of Parliament (MP) to request more information or contact DWP directly for this information.
 - Due to the numbers of claimants in scope of the "Move to UC" policy, this is likely to be a significant volume of queries with requests from constituency MPs.
 - DWP considers that this would lead to Parliamentary pressure to release information before it is reasonable to do so.
 - Disclosure could damage relationships with stakeholders.
101. DWP acknowledged that the withheld information itself does not identify or reveal the further information that DWP is concerned it will be "*forced*" to disclose.
102. DWP considers that any speculation by the media on what the process may look like, before it is properly tested, may cause legacy benefit claimants to fear moving to Universal Credit. DWP explained that it is aware from research that this 'scare-mongering' has had an impact on new claimants to Universal Credit, preventing them from claiming immediately and adding to their financial pressures.
103. DWP explained that it believes early release of the information is a cause for concern. DWP stated that it has insight which shows that individuals have delayed claiming Universal Credit due to a number of

reasons, including fear generated by the media. Release of the withheld information, before DWP has had the opportunity to consider and resolve issues arising within the programme, is likely to increase anxiety and concern amongst some claimants. DWP considers that although there is merit in greater transparency within government, the need to protect the safe space in which DWP can develop ongoing live policy outweighs the public interest in disclosing the information.

Balance of the public interest

104. The Commissioner accepts that significant weight should be given to safe space arguments – ie the concept that the government needs a safe space to develop ideas, debate live issues and reach decisions away from external interference and distraction – where the policy making is live and the requested information relates to that policy making.
105. However, the Commissioner is mindful that the withheld information only consists of high level information regarding events that had already occurred and planned next steps. The withheld information is not controversial and does not debate live issues. In fact, the Commissioner considers that its absence from any disclosed decision making is likely to be more controversial than its inclusion.
106. The Commissioner also notes that at the time of the request, more than six months had passed since the report was created and in that time the pilot scheme had begun.
107. As set out in the Commissioner's consideration of section 22, the Commissioner considers that there are significant public concerns regarding the implementation of Universal Credit and this leads to a strong public interest in disclosure of information relating to the decision making process. Having reviewed the withheld information, the Commissioner considers that it is more likely to provide reassurance to the public regarding how DWP developed its 'Move to UC' pilot scheme than it is likely to cause disruption to those claimants still receiving legacy benefits. Indeed, it is not apparent to the Commissioner how the withheld information could increase concerns about moving to Universal Credit.
108. The Commissioner does not accept that disclosure of the withheld information would lead to DWP being "forced" to disclose further details about the pilot. The disclosure of this information does not automatically require the disclosure of further information and any future requests would be considered on their own merit. As DWP has acknowledged, the withheld information does not reveal the further information that DWP is concerned about disclosing and it is not apparent how disclosure of the

withheld information would prejudice DWP's position that the further information should not be disclosed.

109. The Commissioner understands DWP's concerns that disclosure could lead to further queries and, given the number of people likely to be affected by the 'Move to UC' policy, this is unlikely to be an insignificant figure. However, as the Commissioner considers that disclosure of the withheld information would aid the public's understanding of how the policy was developed, the large number of people affected lends significant weight to the public interest in disclosure as this information is likely to reassure those affected that DWP took appropriate steps during the development of the pilot.

110. DWP's arguments regarding the damage to relationships with stakeholders are based on the potential disclosure of further information which, as set out above, the Commissioner does not accept. The Commissioner does not therefore consider that this argument carries much weight.

111. The arguments related to speculation by the media regarding what the process may look like do not appear related to the specific information that has been withheld. Whilst the withheld information forms part of the development of the 'Move to UC' pilot, it does not include information on the process of the pilot itself.

112. The Commissioner considers that the arguments regarding the early release of information leading to individuals delaying claiming Universal Credit also carries little weight for the same reasons. It is not apparent how the withheld information would cause potential claimants concern leading to some individuals preferring not to claim.

113. Having considered DWP's arguments and the withheld information, the Commissioner considers that the public interest lies in disclosure of the withheld information to aid the public's understanding of how DWP developed the 'Move to UC' pilot.

114. The Commissioner requires DWP to disclose the information withheld under section 35(1)(a).

Section 36: Prejudice to the effective conduct of public affairs

115. Section 36(2) of the Act provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effect conduct of public affairs.

116. In order to establish that the exemption has been applied correctly, the Commissioner considers it necessary to;

- ascertain who acted as the qualified person;
 - establish that an opinion was given by that person;
 - ascertain when the opinion was given; and
 - consider whether the opinion was reasonable.
117. DWP advised the Commissioner that a submission regarding section 36 was sent to the Qualified Person, Baroness Stedman-Scott, Parliamentary Under Secretary of State for Work and Pensions on 29 July 2020. The Minister provided her opinion on 30 July 2020, which essentially confirmed that she agreed with the points set out in the submissions. The Commissioner has inspected the submission and accompanying information provided to the qualified person.
118. Section 36(5) of the Act sets out who may act as the qualified person in relation to a public authority. In the case of government department, any Minister of the Crown may act as the qualified person.
119. The Commissioner is therefore satisfied that Baroness Stedman-Scott was authorised to act as the qualified person in this case.
120. The Commissioner notes that the Qualified Person's opinion was obtained during her investigation rather than at the time of the request. DWP relied on section 22 in the first instance and the Commissioner considers that DWP's late reliance on section 36(2) does not render the opinion unreasonable. She does however consider that DWP should not have cited section 36 in its original response as it had not obtained the qualified person's opinion.
121. In determining whether the exemption is engaged, the Commissioner must consider whether the qualified person's opinion was a reasonable one.
122. The Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.

123. DWP confirmed that it was relying on sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) and provided an annotated copy of the withheld information setting out which limb of the exemption applies to the various elements of the information. DWP confirmed that for all three limbs of section 36, it was relying on the "*would be likely to*" threshold of prejudice.
124. DWP explained that the report under consideration was provided by an IPA review team to provide essential information, advice and recommendations to the Universal Credit senior leadership, specifically the Senior Responsible Owner.
125. DWP considers that disclosure of the information withheld under section 36(2)(b)(i), the free and frank provision of advice, would be likely to inhibit the reviewers and the staff they speak to from expressing themselves openly, honestly and completely.
126. DWP considers that disclosure of the information withheld under section 36(2)(b)(ii), the free and frank exchange of views for the purposes of deliberation, would be likely to inhibit the reviewers and the staff they speak to from expressing themselves openly, honestly and completely.
127. DWP explained that in relation to both limbs, disclosure would have a "chilling effect" and any reduction in the candid nature of the information provided would weaken future individual reports and in turn the Government's assurance of major projects.
128. DWP explained that it considered that section 36(2)(c) was engaged as disclosure within a short period following the report's publication is likely to increase the level of queries and concerns directed to DWP from claimants and other interested parties. DWP explained that these concerns will cause a rise in the workload for each case manager and other staff, stretching their capacity and goodwill and potentially impact their mental health as well as that of claimants who may worry. DWP considers that the impact on staff members could also result in industrial action, damaging the effective delivery of Universal Credit.
129. The submissions provided to the Qualified Person included the following arguments:
- The quality of the reports would suffer, if the authors and audience thought their comments would become part of public discussion.
 - Given the high level of public interest in the Universal Credit programme, DWP has made an exceptional agreement with the IPA to release the reports after three years. The IPA does not permit this arrangement for any IPA reports into other Major

Government Programmes. The IPA policy is that review reports are confidential as they create an environment that allows for constructive challenge for project leaders. Confidentiality also ensures that the evidence gathered during the assurance review is complete and of high quality. The confidentiality of views is essential to the assurance review process from the perspective of all interviewees. Disclosure of the withheld information could therefore be damaging to the whole assurance review framework and detrimental to the value of this kind of exercise.

- DWP confirmed that it had considered the individual elements of information within the report, rather than claiming an exemption for the whole report.
- The authors of the report state that its purpose is to provide *"assurance to the UC Programme Senior Responsible Owner (SRO), UC Programme Board and UC Operations Director General that the 2019/20 plan is deliverable as the service continues to improve and scale to meet the needs of UC claimants. The review will also inform the ongoing scrutiny of UC by HM Treasury colleagues"*.
- At no point does it state that the report is intended to provide public scrutiny of the Universal Credit programme. It is implicit that this function is already well-served by organisations such as the National Audit Office and the Work and Pensions Select Committee.

130. The submissions included specific examples which the Commissioner will not reproduce as to do so would undermine the purpose of withholding the information.

131. DWP explained that the examples were a representative sample of candid advice offered by the report. The Universal Credit programme can act on these comments, and as a result, improve the Universal Credit service for the public. DWP explained that if these issues were made public, it would divert resources into defending and explaining aspects of the report and away from effective delivery of Universal Credit to claimants.

132. The submission states that the report makes a number of frank recommendations and advice about key areas for improvement. DWP considers that these offer the Universal Credit senior leadership the advice it needs to hear and its disclosure would inhibit the reviewers and staff they talk to from expressing themselves openly, honestly and completely.

The Commissioner's position

133. The complainant provided detailed arguments regarding why he disputes that section 36(2) can be engaged, particularly why the Qualified Person's opinion cannot be deemed reasonable. The Commissioner has included these arguments in her considerations.
134. As set out above, the Commissioner is of the view that in assessing the qualified person's opinion, 'reasonableness' should be given its plain and ordinary meaning. An opinion that a reasonable person in the Qualified Person's position could hold will suffice. The opinion is not rendered unreasonable simply because other people may have come to a different and equally reasonable conclusion.
135. The Commissioner considers that the exemptions at section 36(2)(b) are about the processes that may be inhibited, rather than focussing only on the content of the information. The issue is whether disclosure would inhibit the processes of providing advice or exchanging views. In order to engage the exemption, the information itself does not necessarily have to contain views and advice that are in themselves notably free and frank. On the other hand, if the information only consists of relatively neutral statements, then it may not be reasonable to think that its disclosure could inhibit the provision of advice or the exchange of views. Therefore, although it may be harder to engage the exemptions if the information in scope consists of neutral statements, circumstances might dictate that the information should be withheld in order not to inhibit the free and frank provision of advice and the free and frank exchange of views. This will depend on the facts of each case.
136. The Commissioner considers that the nature of the withheld information is largely as would be expected, varying from fairly anodyne information to potential issues and concerns raised by interviewees and reviewers. The Commissioner considers that, in relation to the process of giving advice and having frank discussions, it is not unreasonable to conclude that there is a real and significant risk that officials would be less candid in future when offering similar information to senior officials should they consider that information given in relation to the implementation of departmental policy could be disclosed. The severity and extent of the impact this is likely to have on the quality of such advice is however another matter. This is not significant in assessing the reasonableness or otherwise of the Qualified Person's opinion in the circumstances of this case. They are however relevant in assessing the balance of the public interest which the Commissioner has considered below.
137. The Commissioner considers that sections 36(2)(b)(i) and 36(2)(b)(ii) are engaged to the relevant withheld information.

138. With regards to DWP's reliance on section 36(2)(c), the Commissioner accepts that disclosure of the withheld information would be likely to lead to an increase in queries and divert DWP from delivering the Universal Credit programme aims to answer these queries. She therefore accepts that the Qualified Person's opinion is a reasonable one.

139. As with sections 36(2)(b)(i) & (ii), the severity and extent of this impact will vary. This will be considered in the balance of the public interest below.

140. The Commissioner is satisfied that DWP is entitled to engage section 36(2)(c) in relation to the specific withheld information.

Public interest test

141. As mentioned, the exemption is subject to the public interest test set out in section 2(2)(b) of the Act. Therefore, the Commissioner must also consider whether in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the withheld information.

Public interest in disclosure

142. The complainant's public interest arguments set out in section 35 are also relevant to the public interest considerations here. To aid brevity, the Commissioner will not repeat these arguments.

143. The complainant considers that DWP's arguments regarding 'safe space' and 'chilling effects' are likely to be generic and lack evidence proving a causal link to the prejudice it anticipates incurring.

144. The complainant considers that DWP maintains these arguments despite them being repeatedly rejected by the Commissioner and Tribunals. He considers that the appropriate line to take was made in clear in *Department of Health v ICO & Lewis [2015] UKUT 159 (AAC)*¹⁷ at paragraph 48:

"My reading of their witness statements led me to the same overall conclusion. As I commented to Mr Eadie, much of what they said warranted a "Mandy Rice Davies" side note. They are remainders of the secretive culture of the public service that the House of Commons Select Committee reported that FOIA would help change for good (see

¹⁷ <https://www.bailii.org/uk/cases/UKUT/AAC/2015/159.html>

paragraph 1-033 of the 4th edition of Coppel in Information Rights Law and Practice) and this of an approach that there should be transparency but only on departmental terms which the civil service find convincing but which courts often did not. They leave out important factors and, taken overall, lack objectivity in that they advance a "party line"..."

145. The complainant disputed that the chilling effect has had as significant an effect on officials as has been claimed. He explained that a UCL Constitution Unit's 2009¹⁸ report concluded that record keeping had deteriorated but that this was due to a decrease in record keeping resources rather than fear of disclosure and that 'sofa government' was due to Ministerial preferences.
146. DWP acknowledged that there is merit in greater transparency within government, in particular, there is a public interest in understanding the effectiveness with which government works and the successful delivery of key projects and programmes to time, scope and budget.
147. DWP explained that in recognition of this, DWP introduced the Universal Credit IPA report publication strategy which commits to publishing reports at a defined point in the future.
148. DWP acknowledged that there is a public interest in releasing the withheld information which includes information about Universal Credit's delivery record, discussion of risks and opportunity for consolidation. DWP considers that transparency in the way in which government operates and increased accountability of the how progress is measured increases the public's in understanding the effectiveness with which government works and the successful delivery of key projects and programmes.

Public interest in favour of maintaining the exemption

149. DWP considers that balanced against the public interest in disclosure is the public interest in protecting the government's ability to effectively manage the Universal Credit programme and the IPA review process.
150. DWP explained that the IPA's assurance process is designed to provide fast, independent and internal advice and recommendations to the Senior Responsible Owner. Independent assurance reviews are a key

¹⁸ The Commissioner was not provided with a link to this report but believes that the complainant is referring to: <https://www.ucl.ac.uk/constitution-unit/research/research-archive/foi-archive/impact-foi-whitehall>

tool to continuing improvement in the delivery of major projects or programmes and sharing good practice.

151. DWP considers that if officials could not be sure that information and advice provided openly and confidentially was protected from disclosure before a reasonable amount of time has passed, there would be a strong incentive to omit, or diminish, the significance of negative information to minimise the prejudice likely to be caused by disclosure.
152. DWP confirmed that interviews were undertaken on the understanding that the information would not be released in order to protect the effectiveness of the IPA review process.
153. DWP explained that even though civil servants adhere to the Civil Service code¹⁹, disclosure could create a strong incentive to use more careful language and be less robust about flagging risks and issues.
154. DWP considers that this would be likely to weaken the quality of the information being provided to the reviewers which in turn would damage their ability to identify problem areas and produce essential recommendations. DWP gave examples which cannot be reproduced in this notice as to do so would reveal the contents of the withheld information.
155. DWP explained that had the withheld comments been omitted or reported differently, it is likely that the resulting decisions would be less robust and therefore weaken the IPA assurance process. DWP explained that the resulting decisions would be flawed as the Senior Responsible Owner would not have been presented with the complete picture. DWP considers that it is fundamental to the effective delivery of the IPA review process that the Senior Responsible Owner and the senior team are alerted to this type of information in order that it can be considered when making key decisions about the most effective delivery of the programme.
156. DWP also explained that in order to run the programme effectively and make informed decisions, it is important that the Senior Responsible Owner is made aware of divergent views amongst interviewees about areas within the programme so that all advice and views can be considered and a comprehensive recommendation created. DWP considers that had this not occurred, a poorer contingency document is likely to have been developed.

¹⁹ <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

157. DWP explained that candid inputs are required in order to ensure that the most informed and effective recommendation is developed for taking specific areas of the programme forward. DWP considers that less frank inputs would be likely to damage both the IPA review process and the successful delivery of the programme.
158. DWP explained that these are frequently used to identify and address problems and inefficiencies. DWP considers that any release of information likely to damage the free and frank exchange of views for the purposes of deliberation in these report would significantly harm the effectiveness of the IPA assurance process.
159. DWP explained that if information was released soon after the report was written, it could cause the perception that the Universal Credit programme had key delivery issues which needed to be addressed quickly and so create doubt and this may concern the external lobby, support groups and Parliament. DWP considers that this would be likely to lead to calls for the Universal Credit programme to be paused or halted. DWP explained that this would divert senior officials into work rebutting the claims, detracting from delivery and ultimately could lead to claimants having to wait to benefit from a move to Universal Credit or be denied completely. DWP explained that this could also impact the return expected by HM Treasury leading to a weakening in public finances.
160. DWP confirmed that it had no direct examples of previous disclosures under the Act leading to increased queries resulting in services being negatively affected. However, DWP explained that it is responsible for managing the risks associated with delivering Universal Credit. DWP explained that within risk management, mitigations are developed in order to prevent risks becoming harmful issues. Release of information at a planned and appropriate point, for example, in line with the public schedule for Universal Credit IPA reports, is a good project management discipline and potentially prevent disruption to the service.
161. DWP explained that where candid information has been volunteered, there is a significant risk that contemporaneous release could cause industrial relations issues, damage relationships with stakeholders or reduce claimant confidence in delivery. DWP considers that all of these factors would be likely to disrupt the delivery of Universal Credit due to withdrawal of labour, unplanned queries from claimants caused by concern about their claim processing and increased media attention detracting from DWP's ability to resolve issues.
162. DWP also explained that disclosure of some of the information would lead the Trade Union side to question whether staff are being put under excessive pressure due to issues or concerns raised. DWP considers that the resulting concern about staff wellbeing would be likely to lead to

industrial action in order to apply pressure on DWP to protect staff wellbeing and provide assurances in advance. DWP explained that this would cause severe disruption to claimants, such as late payments and potential legal action against DWP. DWP provided the Commissioner with an example of previous industrial action undertaken following a dispute over insufficient staffing levels, workloads, number of phone calls handled by staff and a lack of consultation on changes to workload. DWP considers that any industrial action undertaken as a result of disclosure would reduce DWP's ability to deliver Universal Credit to claimants effectively.

163. DWP also considers that disclosure would cause unnecessary alarm to claimants where they are made aware of issues about the Universal Credit service but not informed about the resolutions.

Balance of the public interest

164. If the Commissioner finds that the Qualified Person's opinion was reasonable, she will consider the weight of that opinion in the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would be likely to occur but she will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming her own assessment of whether the public interest test dictates disclosure.

165. There will always be a general public interest in transparency. In particular there is a significant public interest in understanding how governmental projects are implemented, as DWP has acknowledged. However, the Commissioner considers that DWP has failed to acknowledge the strong public interest in disclosure of information relating to the Universal Credit roll out.

166. As set out in the section 22 considerations, the Commissioner is mindful that Universal Credit has been in the public consciousness since its announcement in 2010 and various charities and news agencies have raised serious concerns regarding increases in poverty in areas in which it has been implemented. The Commissioner is mindful that the implementation of Universal Credit not only affects a significant proportion of the population, including the most vulnerable in society, it could potentially affect any member of the public below pensionable age should they need to submit a claim during their working life.

167. The Commissioner therefore considers that the public interest in disclosure is particularly strong in the circumstances of this case. In order for the Commissioner to determine that DWP is entitled to withhold the information, she must determine that the public interest in

maintaining the relevant exemption outweighs the strong public interest in disclosure.

168. The Commissioner understands that the interviews were undertaken on the understanding that the information would not be released. However, the information gained from these interviews is not set out directly in the review and is not attributable to any individual. Consequently the Commissioner does not agree that disclosure would remove the confidentiality under which the interviews took place.
169. With regards to DWP's "chilling effect" argument, having considered the withheld information, the Commissioner is not persuaded that disclosure of the information would cause this effect to a significant degree.
170. The Commissioner has issued guidance on "chilling effect" arguments in relation to section 36²⁰. Civil servants and other public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. It is also possible that the threat of future disclosure could actually lead to better quality advice.
171. Chilling effect arguments operate at various levels. Whether it is reasonable to think that a chilling effect would occur would depend on the circumstances of each case including the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.
172. The Commissioner notes that at the time of the request, Universal Credit had been implemented for all new claims and for people needing to make a new claim due to a change in circumstances.
173. Managed migration of existing legacy benefits claimants was still being piloted and developed at the time of the request.
174. The Commissioner also notes that the report was approximately six months old at the time of the request.
175. DWP's arguments regarding the chilling effect were fairly generic and simply stated that if the reviewer had thought the information would be disclosed soon after the report's creation they may not have been as robust in their advice. DWP did not explain why disclosure of the specific

²⁰ <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

information would cause a chilling effect, instead relying on the generic argument that disclosure would lead to a reduction in frankness.

176. Having reviewed the withheld information, the Commissioner considers that a significant proportion of the withheld information includes fairly high level recommendations, anodyne statements and, at times, self-evident information. The Commissioner is not persuaded that disclosure of this information would cause Civil Servants to provide lower quality advice in future is a particularly compelling argument.
177. Some of the withheld information includes advice on matters that the public would expect to be considered as part of a large scale project. Whilst the Commissioner has accepted the Qualified Person's opinion as reasonable, she considers it equally reasonable that redaction of this advice would be more likely to cause increased queries and negative comment due to concerns that there is no evidence that these matters were included in the advice given.
178. The Commissioner does accept that some of the withheld information may cause a chilling effect as it includes specific advice or candid discussions regarding concerns raised about the programme. However, the Commissioner considers that in the circumstances of this case the public interest in maintaining the exemption in relation to this small amount of information does not outweigh the strong public interest in scrutiny and understanding of this same advice.
179. The Commissioner does not accept DWP's argument that disclosure could create a false perception that the programme had key delivery issues. The Commissioner has reviewed the withheld information and has not found it difficult to understand. It is also well established that the Commissioner does not accept arguments that information may be misunderstood or misinterpreted by the public, DWP would have the opportunity at the point of disclosure to put the withheld information into context and DWP has not provided any information regarding why it would be unable to do so in this case. Equally, where DWP considers that disclosure will cause alarm to claimants, it is not apparent why DWP would not be able to confirm what solution had been put in place to rectify the issues raised.
180. The Commissioner does not accept the DWP's arguments that disclosure could lead to industrial action. DWP's arguments appear to be based on an idea that the relevant trade unions will move directly to industrial action following disclosure in order to force DWP to provide assurances about its actions to protect staff wellbeing. DWP has not explained why it would not be possible to liaise with the relevant trade unions to provide these assurances prior to the Trade Union side balloting for industrial action. The Commissioner is also not persuaded that this

information is not already known, to some degree, by the relevant trade unions. The information was gathered from staff interviews and any concerns raised regarding staff well being is likely to be shared by the general staff population as they will have first-hand experience of the work undertaken implementing the Universal Credit programme and its impact on staff. The Commissioner considers that it is not unreasonable to assume that members of the Trade Union side will have provided these concerns to their trade union as the recognised staff representatives.

181. The Commissioner also notes that some of the withheld information relates to a scheme which had been announced and implemented prior to the request.
182. The Commissioner is mindful that she has previously issued decisions in relation to Universal Credit reports from 2013²¹ and 2017²². Both of these decisions found that the public interest favoured disclosure. DWP's appeal of the 2013 decision was dismissed²³ by the Tribunal and DWP initially appealed the 2017 decision notice before ultimately withdrawing the appeal.
183. As set out above, the Commissioner is also mindful that the Universal Credit programme has been in the public consciousness since 2010 and is likely to affect millions of individuals. She recognises that this creates conditions where frank analysis and the identification of risks need to be protected whilst they are being addressed. However she is also mindful of the accountability and transparency that is required with such a programme, especially one that has been subject to a number of high profile concerns and controversies.
184. It is evident that the Universal Credit programme is already subject to scrutiny from the NAO, and the Work and Pensions committee. However,

²¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2013/870308/fs_50448587.pdf

²² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014762/fs50640285.pdf>

²³

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1239/Slater,%20John%20EA.2013.0145%20\(24.03.14\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1239/Slater,%20John%20EA.2013.0145%20(24.03.14).pdf)

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1739/Slater,%20John%20EA-2013-0145%20\(11.03.16\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1739/Slater,%20John%20EA-2013-0145%20(11.03.16).pdf)

it is clear that the IPA PAR reports provide valuable information that has greatly affected the implementation of the Universal Credit programme. The reports go beyond what is already available in the public domain and provide useful information about the governance of the Universal Credit programme, which allows for greater transparency into the workings of the programme and greater understanding of the difficulties that are encountered.

185. The Commissioner recognises that the age of the report at the time of the request is just over six months and that this will increase the public interest in protecting the safe space to discuss the project. However, she does not consider that this is sufficient to outweigh the significant public interest in disclosure. She considers that six months is likely to have provided DWP with sufficient time to have addressed and sought solutions for the issues raised.
186. The information withheld under section 36 provides a much greater insight than any information already available about the Universal Credit programme; there are strong arguments for transparency and accountability for a programme which may affect millions of UK citizens and process billions of pounds.
187. The Commissioner's decision is that the balance of the public interest favours disclosure of the information withheld under section 36.
188. The Commissioner requires DWP to disclose the requested information set out in paragraph 27 with the uncontested redactions made under section 40.

Right of appeal

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

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

Tel: 0300 123 4504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

190. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

191. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Victoria Parkinson
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