



# **Universal credit and access to justice: applying the law automatically**

September 2021



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## About this report

In 2019, Child Poverty Action Group (CPAG) published a report series, *Computer Says No*, which focused on the problems with information provided to people claiming universal credit (UC), and the problems claimants experience when they try to challenge a decision about their UC award. Many of these problems relate to the fact that UC is a 'digital first' benefit, and the vast majority of claimants make and manage their claim online.

Since publishing these reports, CPAG has been conducting research into access to justice and the digitalisation in UC, funded by the Legal Education Foundation and Open Society Foundations. Findings from this research will be published in 2022. This report shares some initial findings emerging from this research together with evidence from our Early Warning System, which collects case studies from frontline practitioners working directly with families on the problems they are seeing with the social security system.

## About CPAG

CPAG works on behalf of the more than one in four children in the UK growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good. We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high-profile legal work to establish and protect families' rights.

## About CPAG's Early Warning System

Our Early Warning System helps us get a better understanding of how changes to the social security system, including the introduction of UC, are affecting the lives of children and families. We gather information from advisers about the experience of children and families, and identify recurring problems. This intelligence informs much of our policy, research and campaigning work on UC, and also feeds into the advice we give frontline staff through our training, publications and advice service. The Early Warning System is supported by the Mitchell Charitable Trust.

For further information or to submit cases to the Early Warning System, please visit [cpag.org.uk/early-warning-system](https://cpag.org.uk/early-warning-system).

## Introduction

The pandemic has highlighted the importance of a strong and well-functioning social security system. When lots of people suddenly needed support we saw how well the universal credit (UC) system can process claims quickly and pay people on time. During the early stages of the pandemic the Department for Work and Pensions (DWP) processed nearly one million claims in a fortnight.<sup>1</sup> This was possible in part because the UC computer system automatically calculates awards.

The use of automated calculations in UC arguably improves the system in many ways. It means the DWP can provide support in a time of national crisis, and it avoids some of the problems that can exist with maladministration and human error in a manual system. However, as evidence shared in this report demonstrates, the use of automation in social security administration is not without problems.

This report focuses on some of the problems UC claimants are experiencing both making a claim for UC and receiving accurate payments, which appear to be caused by the digitalisation and automation of the UC system. Claimants who have specific life circumstances are experiencing similar problems because the UC computer system seems unable to calculate their UC payment correctly and in accordance with the law.

Some of the issues set out in this report may seem niche. But given that the number of people claiming UC in the past year has doubled, from 3 million in March 2020 to 6 million in April 2021,<sup>2</sup> these issues are likely to have implications for many families. Many of those affected will repeatedly experience problems with their UC claim, requiring them to proactively contact the DWP every month to try to resolve them. This causes added stress and difficulty. Some people may not realise there is a problem, which is worrying if it means they are going without the necessary benefit entitlement to meet their needs.

The DWP has shown a willingness to address certain issues, and has put practical solutions in place to assist claimants affected (for example, untidy tenancies, discussed below). However, other issues that appear to require bigger changes to the UC computer system still need to be addressed.

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<sup>1</sup> 'Coronavirus: nearly one million claims in a fortnight', BBC News, 1 April 2020, <https://www.bbc.co.uk/news/uk-politics-52129128>

<sup>2</sup> Department for Work and Pensions, [Universal Credit statistics, 29 April 2013 to 8 April 2021](#), 2021

## 1. No claim without a national insurance number

The social security regulations state that a claim for UC can be made when a person is awaiting a national insurance number (NINo), provided the person has made the NINo application and supplied sufficient evidence for a NINo to be allocated.<sup>3</sup> However, the correct implementation of the regulations is not supported by the UC online claim system, which does not permit a claim to be processed until a NINo has been provided. In evidence submitted to the Early Warning System (EWS), some claimants are being told by DWP staff that their claim process cannot be completed until they have their NINo, therefore they cannot receive any payment.

*A 17-year-old in supported accommodation with no parental care claimed UC in October 2020. In January, he still hadn't received a payment due to not having a NINo. He hasn't been able to get an advance, has no income and is reliant on food banks. He will need to find and pay for new accommodation when he turns 18, for which he will need his UC award.*

In many cases, a claimant will already be receiving UC when a spouse or partner joins them. This will cause their original single claim to end, but payments under the new joint claim are delayed if the partner does not have a NINo.

*A Slovakian woman with settled status received UC for a year before she was joined by her partner on a family visa. The partner was added to the UC claim and passed the habitual residence test in December, but he is still waiting for a NINo and the entire UC award has stopped in the meantime. The couple has one child and, at the time of writing, no income.*

*An EEA national was claiming UC as a single person. His partner, who is pregnant, is a non-EEA national. When she was granted pre-settled status, the single person award was suspended and the claimant was told to make a joint claim. His partner does not have a NINo – as a result they have not received any UC payment for months.*

*A family has been told it is not possible to receive UC until the woman has been assigned a NINo. The man was already in receipt of UC, then his family joined him through the family reunion scheme. However, the DWP has stated that they cannot receive UC without the wife's NINo.*

### Resolving the problem

In correspondence with the DWP in relation to this issue, CPAG received the following information:

*"...The DWP computer system requires a NINo in order to process payments. This is a departure from the design in legacy benefits, where payments could be made with a temporary NINo. The previous design presented a number of issues, including for example the thousands of claimants who are currently in receipt of welfare payments using a NINo that does not actually exist...The Universal Credit digital system has also been designed to interact with other databases and, without a verified NINo, the system could not carry out the functions that it currently performs."<sup>4</sup>*

<sup>3</sup> The Social Security Administration Act 1992 sets out the requirement to have applied for a NINo in order to receive a benefit in ss 1(1A) and (1B). A person must have applied for a NINo, and provided the required information to allow a NINo to be allocated, in order to be entitled to a benefit. There is no requirement for the NINo to have been allocated before the person can be entitled to a benefit.

<sup>4</sup> Correspondence to CPAG, dated 25 February 2019

It appears that the computer system requires a NINo in order for the claim to be processed. To rectify this issue, the DWP operates an internal process, whereby the DWP will make a NINo application on behalf of a claimant if they do not have one at the time of their UC claim. The intention is that the application for a NINo will be completed before a decision on entitlement for UC is made, and there will be no delay in the claimant receiving their first payment. This was confirmed in correspondence from the DWP:

*“Upon receipt of an application where the claimant does not have a NINo, DWP staff should refer the claimant via an internal process to complete the NINo application (rather than the onus being on the claimant to telephone and make an appointment). When implemented as intended, this would enable the NINo to be allocated prior to the decision on entitlement... It is those procedures that should ensure a prompt allocation of a NINo so that universal credit payments are not delayed.”<sup>5</sup>*

While this has been effective in some cases, evidence submitted to the EWS shows that in many cases the application for a NINo is not made until near the end of the first assessment period. This means claimants experience delays in receiving their first payment of UC.

*A couple with three young children had their first UC payment delayed because the DWP official responsible for processing the claim did not refer for a NINo until less than a week before the UC payment was due, even though they stated in the journal it could take up to 10 working days. This has caused hardship and anxiety, and doesn't appear to be in accordance with regulations that a payment can be received when a NINo is being applied for.*

*A man already receiving UC made a new application for UC with his partner, who is a refugee. Both have passed the habitual residence test. DWP applied for a NINo on behalf of his partner, but only after the first payment was due. There have now been no UC payments for three months. The couple are in temporary accommodation and are struggling to cover basic costs.*

*An EEA national with a NINo and her husband, a non-EEA national without a NINo, made a joint claim for UC in October 2020. They have a two-year-old child. Their entitlement to UC was confirmed, but the DWP did not apply for the husband's NINo until many weeks later. The family has no income other than child benefit. They have been unable to pay their rent on a new tenancy, risking eviction and homelessness.*

In addition to delays, the EWS has received some cases where the process of the DWP applying for a NINo was not followed at all, resulting in further delays while the claimants tried to resolve the issue themselves.

*An Italian couple claimed UC. The husband did not have a NINo. He received a note on his journal a month after the claim was made stating that he needed to request a NINo himself if he does not have one. He contacted HM Revenue and Customs (HMRC) and was told it would take six weeks, and the couple were left with no income in the meantime.*

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<sup>5</sup> See note 4

*A French citizen and his partner, who is a non-EEA citizen, came to the UK in 2019. He was working until March 2020, when he lost his job due to COVID-19. He made a UC claim as a single person because his partner did not have a biometric card<sup>6</sup> or a NINo. When she received her biometric card they made a joint claim, and the UC statements have been updated to include her as part of the claim. However the couple are only receiving the UC allowance for a single person. The couple were told by the DWP that the claimant's partner could not be included in the claim without a NINo. They were then told that their UC payments for September and October 2020 could not be released until the woman had a NINo. She was told that she would need to go to the Jobcentre Plus to get a NINo, which was not possible at the time (November 2020) as it was closed. The DWP instead registered her as ineligible so that the claimant could continue to receive payments as a single person.*

In its correspondence with CPAG, set out above, the DWP cited the practice under legacy benefits of allowing claims to be processed using temporary NINos, resulting in thousands of claimants continuing to claim benefits using a NINo that does not exist. The DWP also stated that a NINo is required to allow the UC system to interact with other databases. However, these requirements are not supported by the law. Social security legislation is clear that a person can apply for UC while they are in the process of applying for a NINo. This makes the refusal to provide a benefit payment on the basis that the claimant does not have a NINo unlawful.

If the DWP intends to continue to use the internal referral process, rather than resolving the issue at a system-wide level, the internal referral process needs to be much more reliable. The NINo referral must be made promptly and it should be clearly communicated to the claimant that this is being done on their behalf. NINo allocation should happen before the first payment is due in all cases, to avoid the unlawful withholding of benefit payments.

## 2. Missing carer element

When a carer who receives carer's allowance suffers a bereavement and the person they care for dies, they are entitled to continue to receive the benefit for eight weeks following the death. A UC claimant who is receiving carer's allowance also continues to receive the carer element in their UC award for the remainder of the assessment period in which the person died, and a further two assessment periods.

For those who make a new claim for UC following the death of the person they have been caring for, they should have the carer element included in their first UC payment. However, the DWP appears to be failing to calculate their UC payment correctly. This is leaving bereaved carers financially struggling at arguably the worst possible time.

*A 53-year-old woman has spent the last few years caring for her husband, who died of cancer recently. At the time of his death, the couple were reliant on legacy benefits, which stopped immediately. She had no option but to claim UC. The woman continued to receive carer's allowance for the run-on period of eight weeks, so should have had the carer element included in her UC award. However, she did not receive the carer element in her first UC payment. She had to make do with less money than she was entitled to at a difficult time. Her adviser reported that she was extremely upset and anxious about her situation.*

<sup>6</sup> A biometric residence permit is an identity card issued to people who come to the UK for more than six months. It confirms their identity and immigration status.

The UC computer system is able to recognise that a claimant has been awarded carer's allowance, and reduces UC entitlement for this income accordingly, but it does not appear to be able to recognise the linked entitlement to a carer element. According to EWS cases, requesting correction of the error via the online journal can be challenging. Requesting a mandatory reconsideration (MR), the first step in the appeals process in UC, does not always resolve the issue. It can also take a long time as MR processing times vary.<sup>7</sup>

*A man, who was unemployed, was recently bereaved. He and his wife were on legacy benefits until she died in January 2021. He then had to claim UC. He has the run-on of carer's allowance, and his UC award is reduced accordingly, but his UC award does not include the carer element. The DWP advised that he has not claimed the carer element (this is impossible as he is no longer caring for his late wife) and then refused to action his MR request, stating that it would fail.*

*A man had a joint claim for employment and support allowance with his partner, who passed away suddenly in September 2020. He was her carer and claimed carer's allowance. Housing benefit was in place but the late partner was the claimant so it ended. The man made a new claim for UC but, despite the eight-week run-on of carer's allowance being in place, was not awarded the carer element. He submitted an MR of the decision to which he received the following reply on his journal: "The date on which your partner passed away was before you had a UC claim so we cannot pay any run-on of either the carer's element or the standard allowance. It's policy so I'm afraid there is nothing we can do, we're following the government's policy as laid out in law, if you disagree your best option is probably contacting your MP. There's no mandatory reconsideration to be made because no one has made a decision on anything for you to dispute."*

*A woman under pension age had an older husband who died, resulting in a move from pension credit to UC. She had previously been in receipt of carer's allowance, which continued for eight weeks. To get the carer element included in her first UC payment her adviser helped her to request an MR, which was successful in January 2021. As of July 2021, they were still chasing up payment of the extra money. This has been made more complicated by it being a telephone claim and the fact that her UC claim ended last October, after the period during which the carer element should have been paid. In addition, it was not possible to get the carer element paid at all during the second assessment period, even though carer's allowance was still being paid and taken into account as income for the majority of that assessment period.*

*A woman was in receipt of carer's allowance, as a carer for her husband. She claimed UC after he died. She was receiving the eight-week run-on of carer's allowance, but was told that she was not entitled to the carer element of UC. After challenging this via her UC journal, she appealed to the First-tier Tribunal. The appeal was accepted because a journal entry was treated as an MR notice. The Tribunal decided that the carer element should have been included in the UC award during the period that the carer's allowance run-on was paid, stating that it could not be disputed that entitlement to carer's allowance demonstrates that the conditions of entitlement to the carer element are satisfied. However, the hearing took place almost two years after the death of the woman's husband.*

Bereaved carers should not have to pursue a lengthy appeal process in order to access their correct entitlement to UC. Bereaved carers who claim UC immediately on the death of a partner are already disadvantaged. Their UC award for a single person is much lower than the preceding legacy claim for a couple. If the couple had already

<sup>7</sup> While the DWP does not appear to have target processing times for MR requests, data from freedom of information requests indicates that the DWP expects most requests to be dealt with in 40 days. However, [case studies submitted to our Early Warning System](#) provide examples of claimants waiting up to a year for their request to be resolved.



made a claim for UC prior to the death, the surviving partner would benefit from a run-on which exists in UC after death for up to 3 months. This rule protects the carer from a sudden drop in income at a very difficult time. A person who has no choice but to make a new UC claim following their partner's death and their legacy benefits coming to an end should receive the same level of protection.

As the system is currently operating, people who are already suffering a dramatic loss in income immediately on the death of their partner are also receiving less UC than they are entitled to. They are being obliged to identify the missing element themselves, which can be difficult given the limited information provided to UC claimants about their award and how it has been calculated.<sup>8</sup> They are then required to try to rectify the issue of the missing entitlement with the DWP, either informally or via an MR request, at what is already a difficult and stressful time.

### Resolving the problem

The EWS has received case studies on this issue since 2018. CPAG raised this issue with the DWP in February 2019, in a letter sent in accordance with the pre-action protocol for judicial review. In its response, the DWP acknowledged that the wording of the UC claim questions related to current caring responsibilities did not pick up on people who may be eligible for the carer element following the death of the person they have been caring for. At the time of publication of this report, claim questions about caring responsibilities remain unchanged.

The DWP's reluctance to include additional claim questions, particularly questions that may be irrelevant to the majority of claimants, and even upsetting for some, is understandable. However, the UC system is able to identify income from carer's allowance and reduce entitlement accordingly, which begs the question why not increase entitlement by adding the carer element to the UC accounts where carer's allowance has been identified?

The DWP has accepted that the failure to include a carer element for people receiving the carer's allowance run-on does not comply with the law.<sup>9</sup> They have also committed to "reviewing guidance in this area and taking any steps considered necessary to improve decision making in similar cases."<sup>10</sup>

CPAG has been informed that internal operational guidance on carers was updated in June 2019, and now includes the following wording:

*"When a new claim to universal credit is made by a carer (when the person they cared for has died) and carer's allowance is still in payment (the carer's allowance run-on lasts for eight weeks) - they are entitled to the additional amount for carers in any full assessment period where carer's allowance continues to be in payment for the whole of and includes the last day of that assessment period".<sup>11</sup>*

This is a positive step. However, the main guidance for DWP officials responsible for administering UC, *Advice for Decision Making*, has not been updated. The EWS continues to receive cases where the carer element is not included in the UC award, and the claimant has difficulty challenging the decision not to include it. This demonstrates that further action is needed to address this issue, to ensure carers are able to access the benefits they need and are entitled to.

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<sup>8</sup> S Howes and KM Jones, *Computer Says No! stage one: information provision*, Child Poverty Action Group, 2019

<sup>9</sup> In a letter dated 13 March 2019, in response to a letter threatening judicial review proceedings.

<sup>10</sup> See note 9

<sup>11</sup> Letter from the DWP to Tameside Welfare Rights Service in January 2021, in response to a letter sent in accordance with the pre-action protocol for judicial review.



### 3. Non-dependant contribution exemptions ‘falling off’

If a person claiming UC has a non-dependant living with them in their accommodation (someone other than their partner or their dependent children), they will have the housing cost element of their UC award reduced by what is known as a ‘non-dependant deduction’ or ‘housing cost contribution’ of £75.53 a month. Some claimants are exempt from the deduction because they meet certain criteria. However, the UC computer system doesn’t appear to always pick up on the exemption. And even when it does, the exemption is often only applied for one assessment period before the deduction appears again.

The full list of exemptions is set out in the UC regulations,<sup>12</sup> and can include circumstances such as a non-dependant who is in receipt of certain disability benefits, a non-dependant who is in receipt of carer’s allowance, or a non-dependant who is under 21 years old. If any of the circumstances set out in the regulations apply, the non-dependant deduction should not be applied to the claimant’s housing costs.

When a non-dependant adult usually lives with the claimant, a non-dependant deduction is automatically applied to the UC housing costs element. For the exemption to apply, it appears that a manual override is required to ensure the deduction does not automatically happen. However, based on evidence submitted to the EWS, this manual override does not always take place, and claimants are having their housing costs reduced in circumstances when they should be exempt from this reduction, often without explanation.

*A woman is in receipt of personal independence payment (PIP), therefore no housing costs contribution applies to the non-dependant living with her. At first she was told via the journal that only if the non-dependant is in receipt of PIP will the exemption be applied. The DWP later agreed that a housing costs contribution should not be applied because the client was in receipt of PIP. However, they kept on applying the contribution each month and it became a struggle to get them to reimburse her. Each month it has to be done manually.*

*A person claiming PIP has been claiming UC for some time and has suddenly started getting housing costs reduced for a non-dependant, despite being exempt. The adviser is concerned that people who don't spot the error or have access to advice may suddenly start having their benefits affected in error, for no apparent reason.*

*A woman is trying to get her non-dependant deduction removed from her UC housing costs because she has been awarded the PIP daily living component at the standard rate. However, despite four attempts this hasn't happened. The DWP service centre has told her that this can only be removed manually each month. Worryingly, DWP staff advised the claimant to submit a change of circumstances to remove the non-dependant from her claim.*

These cases show that, even where the calculation is corrected to remove the deduction, often the next UC payment will include the deduction and will require another manual correction. It seems that the default position is that a deduction is applied and the computer system keeps reverting to this, requiring a monthly manual override – and therefore more bureaucracy for both DWP officials and claimants.

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<sup>12</sup> These exemptions are set out in paragraphs 15 and 16 of Schedule 4 of the Universal Credit Regulations 2013 (UC Regs 2013).

### Resolving the problem

This situation appears to arise because the computer system does not recognise that the claimant's situation is something other than the default position, and that an exception applies. CPAG's understanding from correspondence with the DWP is that officials rely on monthly reminders to remove the deduction from the claimant's housing costs calculation. This is an unreliable process and not all cases are picked up, as the examples above illustrate.

A correction of the automated calculation is needed, which would allow the assumption of the non-dependant deduction to be overridden in cases where an exemption applies. Until such a solution is available, a temporary fix could be implemented. We have seen the DWP take steps to address the issue of untidy tenancies (see below) and a similar solution should be explored in this type of case.

## 4. Taking action to address errors in automated calculations: untidy tenancies

An 'untidy tenancy' is the DWP's term for a tenancy which does not match living arrangements. Most commonly, an untidy tenancy arises where there is a joint tenancy but only one of the joint tenants remains living in the property.

A person who is a joint tenant, but the only tenant living in the property, should be treated as liable for all of the rent for that property. Their UC housing costs element should be calculated accordingly. This is because joint tenants are 'jointly and severally liable' for all the obligations owed under the tenancy. This means that the landlord can pursue all or just one of the tenants in respect of any obligation that is not fulfilled, for example payment of rent. In practice, this means landlords generally ask the occupying tenant to pay all of the rent – they are the tenant who is easiest to contact and against whom the landlord has leverage (eg, repossession of their home) to ensure payment.

However, the DWP had been routinely failing to calculate UC correctly for joint tenants in this situation, resulting in their housing costs element being calculated on 50 per cent liability, rather than the 100 per cent that they are required to pay to avoid possession proceedings.

In UC, the housing costs element is calculated by:

1. Starting with the rent as a calendar monthly amount
2. Calculating the claimant's liability
3. Applying the bedroom allowance (local housing allowance for private tenancies, 'bedroom tax' or under occupation charge for social tenancies)
4. Applying any housing costs contributions (for non-dependants)

To calculate the claimant's liability in a joint tenancy, the regulations<sup>13</sup> provide a formula which divides the full rent by the number of named joint tenants, and multiplies the result with the number of named tenants in the UC claim. For a single person who has a joint tenancy with a now absent ex-partner, the default calculation results in only 50 per cent of their rent being counted in the housing costs element calculation.

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<sup>13</sup> Paragraphs 33-35 of schedule 4 Universal Credit Regulations 2013

The default calculation may be disregarded where it would be unreasonable to use it<sup>14</sup> and a claimant may be treated as liable to make payments in situations where:

- (a) A person who is liable to make the payments is not doing so;
- (b) The claimant has to make the payments in order to continue occupation of the accommodation;
- (c) The claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements; and
- (d) It is otherwise reasonable in all the circumstances to treat the claimant as liable to make payments.

Despite the provisions in law, the default position in UC is that single people who have a joint tenancy with an ex-partner who has left the property only have 50 per cent of their rent included in the calculation of their housing costs.

*A man's partner left him and won't consent to being removed from the joint tenancy agreement, even though she is not paying any rent. The DWP won't award housing costs for more than 50 per cent of the rent even though he is required to pay all of it.*

The EWS had been receiving a significant number of case studies on this issue.

*A woman and her partner had a joint tenancy. She has had to pay the full rent herself after her partner moved out in September 2019. The DWP only included half of the rent in the calculation of her UC award, and she now has substantial rent arrears. Her landlord won't change the tenancy into her sole name until the arrears are cleared. She has reported in her online journal on several occasions that her ex-partner has left the property and has a main home elsewhere, but the DWP responded to say the calculation is correct because he is a joint tenant. She is at risk of homelessness.*

*A single mum of three stopped her self-employment as a beautician in March 2020 due to COVID-19. Over the past year, she has had significant problems claiming UC, which was refused three times due to difficulty proving she has permanent residency. In the meantime, rent arrears accrued and the family were at risk of homelessness. When UC was finally awarded it only included 50 per cent of her rent in the housing costs element because her husband, who left the property in February 2019, remains on the tenancy agreement. The family remain at risk of homelessness until UC has been recalculated and the outstanding 50 per cent is paid.*

### Resolving the problem

Case studies submitted to the EWS this year suggest that DWP staff are better able to identify an untidy tenancy and acknowledge that the default UC calculation is incorrect and needs overriding. However, the solution provided to claimants is not automatic, and relies on the default calculation being manually overridden for every assessment period. In some cases, this has required claimants to prompt the DWP to put this manual fix in place each month.

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<sup>14</sup> Paragraph 35(5) of schedule 4 Universal Credit Regulations 2013

*A housing association has seen an increasing number of untidy tenancies. Their tenants must submit a formal request for MR of their award every month (following an incorrect decision). This means they are constantly in rent arrears due to DWP error. DWP staff have said there is “no workaround”. The housing association notes that this places a huge burden on both claimants and case managers, and does not help the most vulnerable who really struggle with the MR process. This also obliges the housing association to carry a significant amount of debt on behalf of their tenants, which could affect their own operations.*

*A housing association is concerned that the onus is on their tenants to call and request the additional payment each month. The DWP has accepted that these tenants are liable for 100 per cent of the rent but nonetheless awards only 50 per cent, and does not award the remaining 50 per cent until an MR request has been processed.*

In June 2020, CPAG sent a letter to the DWP in respect of a UC claimant who was required to make a note on her journal each month stating that she had an untidy tenancy and was responsible for 100 per cent of the rent. The DWP’s response confirmed that the situation required a manual work-around each month and stated:

*“We have discussed with the relevant UC site to ensure that we process this without needing to rely on the claimant in subsequent assessment periods.”<sup>15</sup>*

This provided a solution for that particular client, but it was not an automated solution, and others were still in the position of having to proactively contact the DWP to request the manual adjustment each month. As the examples above illustrate, for some claimants this required submitting an MR request each month.

On 23 June 2020, the DWP introduced a new ‘record a change in joint tenancy costs’ on the ‘to-do list’,<sup>16</sup> which indicates a DWP official can record how many tenants live at the property and the amount of rent/service charge that the UC claimant pays. This should help ensure that the payment is correct without requiring a manual correction each month. In addition, new guidance was issued to work coaches and case managers to make them aware of the changes. This was reported by the National Housing Federation on 16 October 2020.<sup>17</sup>

With the introduction of the new to-do list, claimants with untidy tenancies should be able to make this clear at the outset of their claim, or after a change in circumstances, ensuring that the correct amount of housing costs is paid without the need for them to take action each month. While we still receive the occasional submission to the EWS on this issue, the solution implemented by the DWP appears to have gone a long way towards resolving this issue for many claimants affected.

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<sup>15</sup> Correspondence to CPAG, dated 19 June 2020

<sup>16</sup> The ‘to-do list’ is a list of questions a UC claimant must answer, in order for their claim to progress. Not completing the ‘to-do list’ can affect a person’s UC payment.

<sup>17</sup> [New advice from the DWP about complicated Universal Credit calculations](#), National Housing Federation, 2020

## Conclusion and recommendations

The issues discussed in this report are caused by the fact that the UC computer system, which supports the administration of UC, has been designed in a way that does not appear to always accurately reflect the law. While these issues may only affect a minority of claimants, with millions of people receiving UC these errors can cause real and repeated hardship for individuals and families.

UC claimants are already living on a low income. If their payments are reduced because elements are not included, or if they are unable to access their benefits at all, they are unlikely to have the financial resources to meet their basic needs while the issue is resolved. In these situations, the DWP appears to rely on claimants to spot missing or incorrectly-calculated elements of their entitlement, and places the onus on them to raise the issue. This situation is exacerbated by the often lengthy and complex processes they have to overcome to resolve the problem, and the barriers some claimants experience when trying to exercise their basic appeal rights. For example, if DWP officials do not submitting MR requests when asked, or follow incorrect processes.<sup>18</sup>

More broadly, it sets a worrying precedent with regard to the government's duty to comply with the law. The examples set out in this report demonstrate that aspects of the UC computer system cannot operate in compliance with the law. This raises the question, to what extent was the law prioritised in the design of the UC computer system? And now that the problem is visible, what can be done to fix it?

It is concerning that, where the system design doesn't comply with the law, there are frequent examples of the matter being ignored or dealt with via workarounds. Instead, problems should be fixed at a system-wide level. While the UC computer system appears to work well for the vast majority of claimants, it should be able to deal with the circumstances of *all* claimants, not just the 'default' claimant. The UC system needs to be able to apply the law correctly to ensure all claimants receive the benefits they are entitled to.

More positively, the DWP has shown that effective action can be taken, for example, in the case of untidy tenancies. Once an issue affecting a significant number of claimants, it now appears to have been largely resolved as a result of the DWP making changes to the way claimants apply for and manage their UC claim. We need to see further action like this to address the issues identified in this report. We also need to prepare for the possibility that more issues relating to automated calculations in UC may emerge in future. We welcome the steps the DWP has already taken, and have set out a number of practical recommendations for how to build on this.

### Recommendations for the DWP

National insurance numbers:

- Amend the online claims process to support claims where an application for a NINo has been made, in line with the legislation.
- In the meantime, improve the internal referral process so that NINOs are allocated promptly, and initial UC payments are not delayed.

Missing carer element:

- Amend the UC computer system so that UC calculations include a carer element for claimants in receipt of carer's allowance and/or amend the claim questions so all the relevant information is gathered to ensure claimants don't miss out on this entitlement.

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<sup>18</sup> S Howes and KM Jones, [Computer Says No! stage two: challenging decisions](#), Child Poverty Action Group, 2019

- Update and publish guidance to support DWP officials to understand and implement the regulations regarding entitlement to a carer element.

#### Non-dependant deduction exemptions:

- Amend the UC computer system to recognise cases where the non-dependant deduction should not be applied.
- In the meantime, introduce a technical solution, similar to that which has been introduced to deal with untidy tenancies, to be applied in these cases.

#### Untidy tenancies:

- Ensure that liability for rent is recorded accurately at the outset of the claim, or when a change (such as the breakdown of a relationship) is reported.
- Ensure staff are aware of the updated guidance and how it should be used.

**Until these matters have been resolved, claimants, with the help of a welfare rights adviser, could consider the following remedies:**

#### National insurance numbers:

- Use the template pre-action letter on the CPAG website to challenge the refusal to process the claim without a NINo.<sup>19</sup>

#### Missing carer element:

- Request an MR of the decision not to include a carer element.
- If the MR process does not resolve the issue, consider progressing to First-tier Tribunal.
- Consider sending a pre-action protocol letter.<sup>20</sup>
- Consider raising a complaint with the DWP.

#### Non-dependant deduction exemptions:

- Request an MR, and for details to be updated so that no deduction is applied in future months.
- If told that a monthly revision is needed, consider sending a pre-action protocol letter.<sup>21</sup>

#### Untidy tenancies:

- Inform the DWP when the claim is made, or when the untidy tenancy is created (if that is after the initial claim) that there is an untidy tenancy, so that this can be recorded using the new 'to-do list'.
- If the housing costs calculation is still incorrect, request an MR of the decision to include only 50 per cent of the housing costs, and request that tenancy information is updated citing the 'Record a change in joint tenancy costs' to-do list.
- Consider sending a pre-action protocol letter, particularly if the DWP is asking for confirmation of the untidy tenancy each month.<sup>22</sup>

<sup>19</sup> Judicial review pre-action letters: [national insurance numbers](#), Child Poverty Action Group

<sup>20</sup> Judicial review pre-action letters: [carers](#), Child Poverty Action Group

<sup>21</sup> CPAG does not currently have a template on this issue but support may be available from our judicial review project if you do need to draft a letter. More information on the project is available [here](#).

<sup>22</sup> Judicial review pre-action letters: [housing costs](#), Child Poverty Action Group