

RULE OF LAW SCORECARD

The top ten issues where the rule of law is most at risk within the universal credit digital system

1

The digital claim process does not gather all the information needed to always calculate claimants' universal credit (UC) awards correctly.

For example, the DWP does not ask claimants whether they require a backdate, or about circumstances which qualify for an exemption to the limits on help with housing costs for under-35s (because they receive a disability benefit, for example).

The onus is placed on claimants to identify if these circumstances apply to them and raise it with the DWP without any prompting during the claim process. This depends on claimants having an extensive knowledge of how UC awards are calculated.

This is a breach of the rule of law principle of procedural fairness.

Recommendation: the UC digital claim process should be updated to ask all relevant questions and fully investigate claimant circumstances and entitlement.

2

There is no specific function for requesting a mandatory reconsideration within the UC digital system.

Claimants can request a mandatory reconsideration via a message in their UC journal, but our research found examples of gatekeeping by officials when using this method.

This is a breach of the rule of law principle of procedural fairness.

Recommendation: the DWP should introduce a 'request a mandatory reconsideration' function on the UC journal, to help claimants exercise their appeal rights.

3

When the DWP refuses a UC claim or brings an award to an end, it freezes the claimant's UC journal so the claimant cannot post any new messages.

If a person wishes to challenge the decision to refuse their claim or end their award, they cannot do this via their journal. They must phone the DWP, submit a request in the post or make a new claim. This creates an extra administrative hurdle which is a barrier to claimants accessing their appeal rights.

This is a breach of the rule of law principle of procedural fairness.

Recommendation: at a minimum, the DWP should delay freezing journals for at least one month after closure to allow claimants time to apply for a mandatory reconsideration (the first step in the appeals process in UC).

4

The UC digital system cannot accept advance claims, despite the fact the law allows for certain groups to be able to submit their UC claims up to a month in advance. DWP guidance specifies these groups are prisoners and care leavers.

This is to ensure prisoners and care leavers can make a UC claim before other types of statutory provision are removed. Our research found evidence of young care leavers missing out on entitlement because of the inability to make an advance claim for UC.

This is a breach of the rule of law principle of procedural fairness.

Recommendation: the DWP should amend the digital claim process to allow for advance claims.

5

Notices provided to UC claimants about their appeal rights and the steps they need to take to challenge a decision do not comply with legal requirements.

Statements of appeal rights across the UC system vary slightly depending on the type of decision, but none of them tell claimants about the possibility of requesting a mandatory reconsideration more than a month after a decision.

This may result in claimants wrongly assuming they are out of time to request a mandatory reconsideration and therefore not able to challenge a decision.

This is a breach of the rule of law principles of lawfulness, procedural fairness and transparency.

Recommendation: statements of appeal rights in UC should be amended to accurately reflect claimants' appeal rights

6

The UC payment statement provides inadequate information to claimants about how their award has been calculated.

For example, for students receiving UC, there is a lack of information about student finance and how this has been taken into account as income in their UC calculation.

Limits on information provision to claimants makes it difficult to identify errors in decision making.

This is a breach of the rule of law principle of transparency.

Recommendation: the payment statement should be updated to provide further information to claimants about how their award has been calculated.

7

When a change is made to a claimant's UC award, their UC payment statement is overwritten. The amended payment statement replaces the original, rather than making both the original and amended decisions available for comparison.

Overwritten statements make it difficult for claimants to work out what has changed and presents a false narrative of the payments made.

This is a breach of the rule of law principle of transparency.

Recommendation: payment statements should not be overwritten. Original and amended statements should both be made available for comparison.

8

The DWP's concept of 'claim closure' disguises five distinct legal decision-making mechanisms, which each place different duties and obligations on the DWP, and different rights and responsibilities on claimants.

'Claim closure' creates confusion for claimants, officials and appeal tribunals about the legal basis for DWP decisions.

Claim closure pre-dates UC, but under UC it has become built into the digital system design.

This is a breach of the rule of law principle of lawfulness.

Recommendation: the DWP should take action to remove the concept of claim closure from systems, processes and guidance to ensure language is accurate and reflects the legal framework.

9

The DWP communicates some decisions to claimants via decision letters uploaded to the UC journal, which do not adequately explain the reasons for decisions.

This is a particular problem in relation to decisions about the habitual residence test, and the calculation of overpayments and underpayments of UC.

Inadequate explanations make it difficult for claimants to understand whether a decision is correct and how to challenge it.

This is a breach of the rule of law principle of transparency.

Recommendation: the DWP should conduct a review of the information provided to claimants in decision letters, with the aim of providing more adequate explanations for decisions

10

The Government Digital Service has service standards which require public services to publish their source code because these digital services are built with taxpayers' money.

The source code for the UC digital system is not publicly available, which makes it difficult for interested parties to understand and scrutinise the system.

This is a breach of the rule of law principle of transparency.

Recommendation: the DWP should make the source code for the UC digital system publicly available.

Find the full research, You Reap What You Code: Universal credit, digitalisation and the rule of law at cpag.org.uk/YRWYC