



YOU REAP WHAT YOU CODE

Universal credit, digitalisation and the rule of law

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Foreword

The rule of law is one of those things that everyone supports at the level of general principle. The difficulties and disagreements come when the principles have to be implemented in concrete situations. This comprehensive and powerful report has distilled Lord Bingham’s well-known eight principles of the rule of law into three core principles of particular relevance to the social security system and to the administration of universal credit – transparency, procedural fairness and lawfulness.

Those core principles then provide standards by which to judge the first 10 years of the universal credit system, with its heavy reliance on digitalisation. The system is found wanting against all those standards in fundamental ways. The overarching conclusions include that the rule of law has been subtly undermined by the digitalisation. Some might conclude from reading the wealth of evidence presented that the undermining has not been so subtle, but the result of a disregard, maybe casual, maybe careless, but certainly continuing, for those core principles.

Throughout the report, testimony from front-line advisers and claimants provides a vivid reminder of the consequences of the failures to meet the rule of law standards - both financial and in terms of distress, aggravation and of the undermining of the crucial element of security in the notion of social security. In a system supporting millions there will inevitably be mistakes, delays and stupidities that occur, while most claimants will have their benefits paid accurately and on time. However, the sheer cumulation of problems reported means that they cannot be dismissed as mere unfortunate unintended consequences of a fundamentally sound system. Moreover, the many official documents, such as training material, administrative guidance and standard forms of information provided to claimants through their digital accounts, referenced in the report, demonstrate systemic issues that have been built into the design of the UC digital system and not corrected since. Even claimants paid accurately and on time will often have difficulty in working out how their entitlement has been calculated.

Adoption of the “top ten” recommendations in the report would make a significant difference. My background points me particularly towards the issues involving an incompatibility with the decision-based nature of social security adjudication and a mismatch with the terms of the governing legislation, such as the use of the misconceived label of “claim closure” and the overwriting of payment statements. The failure to align the UC digital system with the laws and policies that underpin it has real consequences for claimants’ lives, and places significant barriers in the way of effective challenge when erroneous decisions do occur.

Few of these issues are newly discovered so far as the Department for Work and Pensions is concerned. They are also not an inevitable consequence of digitalisation, as the report shows. Restoration of the primacy of the rule of law principles articulated in this report could be achieved without undermining the real benefits that can flow from digitalisation for many claimants.

John Mesher

Former Judge of the Upper Tribunal (Administrative Appeals Chamber)

Executive summary

Introduction to the research / methodology

This research study examines the extent to which universal credit (UC) adheres to the rule of law principles of transparency, procedural fairness and lawfulness. Our analysis focuses on the claims, decision making, communication of decisions and disputes processes within UC. We investigated how the design and implementation of the UK's first digital-by-design benefit aligns with the social security legislation underpinning it.

We reviewed relevant cases (approximately 2,500 cases) from CPAG's Early Warning System, a bank of over 6,500 case studies from welfare rights advisers on the problems they are seeing in the social security system. We conducted 33 interviews with 28 UC claimants, and 14 interviews with 13 welfare rights advisers (some participants were interviewed twice). We also carried out significant amounts of desk-based research, including obtaining operational guidance, training materials and administrative data via freedom of information (FOI) requests (approximately 50).

What follows is a selection of the findings from our research report.

Key findings from the research

Claims

Information gathering through the digital claims process is inadequate

We have found that the UC digital claim process does not gather all the information needed to correctly calculate claimants' awards. The onus is placed on people in certain circumstances, including those with disabilities and experience of homelessness, to identify whether these specific circumstances apply to them and raise it with the Department for Work and Pensions (DWP) without any prompting. When the DWP knows the complex rules of entitlement and claimants do not, not asking for all the information required means claimants are not provided with a fair opportunity to establish their entitlement, and they risk losing out on their full entitlement as a result. This is a breach of the rule of law principle of procedural fairness.

The architecture of the digital system does not permit certain features of the social security system to operate as intended

The legislation and guidance allow certain groups of people to be able to submit a UC claim up to a month in advance, in recognition that their specific circumstances require this for fairness. However, the DWP has designed a digital system that does not permit any UC claims to be accepted early (and there is no adequate 'work around' outside of the digital system). This means people in specific circumstances, specifically care leavers and prisoners expecting release, can miss out on entitlement if there is any delay in submitting their claims. It is a breach of the principle of procedural fairness and arguably unlawful to fail to provide a mechanism to access the procedural rights that have been granted by parliament through legislation, and by the Minister through guidance.

The design of the digital claim form causes delays in people claiming universal credit

The digital claims process does not allow a claim to be submitted until all the questions have been answered. There are restrictions on the ability to use placeholder answers for certain questions if a claimant cannot answer them (such as the provision of bank details), even though the law does not require answers to these questions in order to make a valid claim. People can miss out on entitlement if there is any delay beyond a day in submitting a claim, which is a breach of procedural fairness. Certain groups may particularly struggle to provide bank details, including those with recent immigration status or experience of homelessness.

Lack of research into delayed and incomplete claims

Between March 2022 and February 2023, two in 10 claimants missed out on at least one day of benefit entitlement due to the length of time it took to reach the end of the claims process, with 5 per cent losing between two and four days, 6 per cent losing between five and 14 days and 4 per cent losing 15 days or more.¹ Over the same time period, approximately one-third of the 2.9 million registrations for UC failed to submit a claim at all.² The DWP does not publish empirical evidence into why people delay or fail to complete the claims process; therefore, it is impossible to rule out that certain groups may be disproportionately frustrated in their attempts to claim UC, and thus more likely to miss out on entitlement.

Decision making

Our research found that in UC, the reasons decisions are taken not in accordance with the law include digital design and implementation choices systematically producing the wrong decisions for claimants in certain situations; the digital architecture not accurately reflecting the legislative decision-making framework; and certain digital design or implementation choices contributing to repeated errors in human decision making.

A failure to use the data available to accurately calculate awards

The DWP has failed to use the data it holds about claimants' entitlement to other benefits to ensure that the UC digital system automatically and accurately calculates UC awards. This means certain groups of claimants, including carers, miss out on their full entitlement to UC and face an administrative burden while they attempt to challenge incorrect decisions. Some claimants are required to repeatedly challenge their miscalculated award decisions because the manual work-around to the automated calculation only lasts for a single monthly assessment period. This is an example of the digital system systematically producing unlawful decisions for certain groups of claimants.

The digital architecture does not capture the legal decision-making framework

The DWP has built the UC system to use the concept of 'claim closure' to encapsulate five distinct legal decision-making mechanisms, which each place different duties and obligations on the DWP, and different rights and responsibilities on claimants in the legislation. This inaccurate terminology creates a lack of understanding for claimants as it disguises the legal basis for decisions, encourages DWP officials to make decisions without first identifying whether they have the power to do so in the legislation, which risks unlawful decisions, and creates a barrier to claimants challenging decisions. The DWP's reliance on the concept of 'claim closure' throughout the UC system design and decision-making guidance creates problems across the three rule of law principles of transparency, procedural fairness and lawfulness.

Digital processes contribute to repeated errors in human decision making

The DWP has designed a single agent-facing 'to-do' (page requiring action) called 'late reporting of a change' to be used in two situations, which are treated differently in the legislation. Our research suggests this design and implementation choice may contribute to DWP decision makers applying the wrong legislation and incorrectly treating some changes in circumstances as reported late, with families with disabled children and carers missing out on their full legal entitlement as a result.

Communicating decisions

Historically, the DWP has notified claimants of decisions affecting entitlement via letters through the post. This communication method is vulnerable to delays and lost or missing information, and can require claimants to wait in telephone queues for different government departments to investigate the status of their different benefits. An

¹ FOI2022/14091, available [here](#)

² See note 1

online account which gives claimants access to up-to-date records and a history of decision making for one combined benefit has the potential to increase adherence to the rule of law principle of transparency. However, this research has found a number of design and implementation choices which prevent this potential from being realised.

Missing claimant-facing audit trail of decisions

When a change is made to a claimant's UC award, their UC payment statement (which provides a breakdown of how the award has been calculated and details of how to challenge the calculation) is overwritten. The amended payment statement replaces the original, rather than making both the original and amended decisions available for comparison. Overwritten payment statements make it difficult for claimants to work out what has changed and presents a false narrative of the payments made. Similarly, if a claimant makes a new claim following the refusal of a claim or the end of an award, the claimant loses access to their previous UC journal when a new one is created, meaning they cannot access any decisions or journal messages that may be relevant to any dispute.

Inadequate reasons for decisions

Payment statements and the accompanying guidance do not contain adequate information about how awards have been calculated, including the different possible elements, exceptions or exemptions that might apply to a claimant if the UC digital system does not recognise them as applicable to the individual. This means that certain groups of claimants, including people with disabilities and those who have been in homeless accommodation, may unknowingly miss out on their full legal entitlement.

Inaccurate information about appeal rights

The notifications provided to claimants about their appeal rights do not accurately reflect the legislation. For example, they do not tell claimants about the possibility of applying for a mandatory reconsideration more than a month after a decision if they provide a reason for the delay. The consequence of this lack of transparency could include claimants unknowingly missing time limits, decisions going unchallenged if claimants wrongly believe deadlines have expired and cannot be extended, or claimants failing to provide reasons why they could not apply for a mandatory reconsideration within the one-month period.

All of these examples highlight deficiencies in transparency, and in some situations give rise to procedural unfairness, particularly in relation to decisions that require a mandatory reconsideration or appeal to be corrected.

Disputes

A fair and effective dispute process is fundamental if UC is to comply with rule of law principles.

Unreliable and ineffective process for challenging decisions

In UC, the legislation requires claimants to request a mandatory reconsideration before they can appeal to the independent tribunal. The DWP has not built a specific function for a claimant to lodge a mandatory reconsideration. Instead, claimants most commonly request a mandatory reconsideration by writing a note in their online journal (or they call the UC helpline.) Our research suggests that the informal communication style of the journal can encourage DWP officials to act as 'gatekeepers' to the mandatory reconsideration process. One of the common reasons for gatekeeping is simply because the DWP official believes the decision to be correct. As a result, claimants can be dissuaded from pursuing a challenge before a decision maker has ever had the opportunity to formally reconsider the decision – a fact that the DWP themselves acknowledged as far back as

2015 when they published a memo on gatekeeping.³ Our research has found that the lack of separation between using the journal for informal communication (such as rearranging appointments) and for the formal mandatory reconsideration process, which has particular legal significance, is unreliable and a breach of the rule of law principle of procedural fairness.

Furthermore, the DWP's decision to freeze a claimant's journal when their claim is refused or their award is ended (what the DWP would describe as 'claim closure'), means that the primary route claimants have been using to communicate with the DWP is suddenly unavailable when they are likely to want to query or raise a dispute about the decision. This is a further example of a lack of procedural fairness.

Conclusion

The central finding from this research is that **the rule of law has been subtly undermined by the digitalisation of the UK's main working-age benefit**. Many of the rule of law breaches raised in this research are likely to be unintended consequences of digital design and implementation choices and none are an inevitability of digitalisation. If the rule of law had been considered at each stage of the design and implementation of UC, these problems for claimants may have been avoided. In particular, the DWP would have prioritised the design and implementation of a fair and effective process for claimants to challenge decisions.

We are particularly concerned that **claimants who are entitled to additional elements, exemptions or exceptions from the standard rules in the legislation for their particular circumstances** (for example claimants with health conditions or disabilities, carers and care leavers) **are more likely to be affected by the issues raised in this research**. This is because the UC system does not reliably capture these aspects of the award calculation, and claimants are missing out on entitlement as a result.

Our research found that **there is a lack of transparency about the design of the UC system**, including the level of automation used within the system, how the system has been designed and implemented, and the process by which features of the system can be added or changed. Trying to unearth information about how the UC digital system works at an operational level and how the problems identified in the research occur has been challenging. This lack of transparency is also problematic when trying to hold the DWP to account regarding changes to the digital system that would address some of the issues claimants are experiencing.

Our research findings demonstrate that **the pace of change is too slow**, with some issues still unresolved years after first being raised with the DWP. In other examples, the DWP can assert that changes to the digital system would be too costly or damaging because of the restrictions of the digital architecture, and without increased transparency about the UC digital system, it is very difficult for external stakeholders to challenge this.

Finally, our research found evidence that choices about **digital design, implementation and costs are leading policy decisions**. There are examples of this happening both in the initial design of universal credit, and in the DWP's approach to making changes to the system. This is concerning when we think about the democratic processes that underpin the development of our laws and policies, but do not exist in the digital world.

Digitalisation presents opportunities to improve public services, and UC is no exception. Our research found that **there are many potential benefits of digitalisation for UC claimants; however, these have not been fully realised**.

³ rightsnet.org.uk/index.php/forums/viewthread/10042

There are also opportunities to improve compliance with the rule of law, rather than reducing it. This can still be achieved with some relatively low-cost changes to the UC digital system.

Top ten recommendations

1. The UC digital claim process should be updated to ask all relevant questions and fully investigate claimant circumstances and entitlement.
2. The appeals notice in UC should be amended to accurately reflect claimants' appeal rights.
3. The payment statement should be updated to provide further information to claimants about how their award has been calculated.
4. 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).
5. The DWP should introduce a 'request a mandatory reconsideration' function on the UC journal, to help claimants exercise their appeal rights.
6. Payment statements should not be overwritten. Original and amended statements should be made available for comparison.
7. The DWP should amend the digital claim process to allow for advance claims.
8. 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 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 DWP should make the source code for the UC digital system publicly available.

Introduction

As of January 2023, 5.9 million people depended on universal credit (UC) for some or all of their income.⁴ Half of the households who received a payment of UC were families with children.⁵ Currently, steps are underway to transfer those remaining on older means-tested benefits to UC. But what are the implications of the digitalisation of social security administration on claimants and their rights? This research analyses the way UC is claimed, decisions are made and communicated, and disputes are handled in the UK's first digital-by-design benefit. We consider the extent to which these processes comply with the rule of law principles of transparency, procedural fairness and lawfulness.

Universal credit, digitalisation and the rule of law

UC wraps six 'legacy' benefits into one monthly payment, with the stated objectives of simplifying the UK's benefits system, reducing fraud and error, and making transitions into work easier, by creating one main working-age benefit for people both in and out of work.⁶ UC is a means-tested benefit made up of different elements for claimants, any children, and their accommodation, as well as taking into account additional costs due to health problems, disabilities, childcare or caring responsibilities. UC can be the entirety of a person's income or a top-up to other income sources deemed too low.

UC should protect families from poverty. Currently, it does not do this.⁷ This is why CPAG, and many others, call for UC rates to be higher and an end to harmful policies such as the benefit cap and the two-child limit, which decouple the link between need and entitlement.⁸ However, the focus of this research is not the adequacy of the benefits system. Instead, it is an investigation into whether UC is administered in accordance with the rule of law. The rule of law consists of a number of principles which, if complied with, should help ensure citizens are treated lawfully and fairly in their interactions with the state. Rule of law principles include systems of governance being accountable to the law, applied equally to all, and with the right to fair and impartial dispute mechanisms for citizens (see more below).⁹

UC is the UK's first digital-by-design benefit. The vast majority of UC claimants make their claims and manage their ongoing awards online, while some processes for calculating awards have been automated, including gathering employees' earnings information directly from HM Revenue and Customs (HMRC). As this marks a major change in

⁴ DWP, *Universal Credit: 29 April 2013 to 12 January 2023*, available at [gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-12-january-2023/universal-credit-29-april-2013-to-12-january-2023](https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-12-january-2023/universal-credit-29-april-2013-to-12-january-2023)

⁵ In November 2022 – see note 4

⁶ DWP, *Universal Credit: welfare that works*, Cm 7957, 2010, available at

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf

⁷ Child Poverty Action Group, *Transforming Social Security: how do we provide secure futures for children and families?*, 2021, available at cpag.org.uk/policy-and-campaigns/report/transforming-social-security-how-do-we-provide-secure-futures-children; *Report from the Commissioner for Human Rights of the Council of Europe on her visit to the UK from 27 June to 1 July 2022*, available at rm.coe.int/report-on-the-visit-to-united-kingdom-from-27-june-to-1-july-2022-by-d/1680a952a5, para 83; 'Call for a landmark change to universal credit so people can afford the essentials', Joseph Rowntree Foundation press release, 27 February 2023, available at jrf.org.uk/pressroom

⁸ The benefit cap limits the amount of UC a claimant or household can receive, regardless of their needs, if the total amount of benefits they receive is over a set limit (currently £1,835 for lone parents and couples outside London) and they do not meet one of the exemptions. Since April 2017, households have only been able to receive UC (and child tax credits) for a maximum of two children unless their third (or more) child meets one of the exceptions, or is entitled to the disabled child element. 'Six years in: the two child limit', CPAG and others, 6 April 2023, available at cpag.org.uk/policy-and-campaigns/briefing/six-years-two-child-limit

⁹ P Craig, 'The rule of law', in House of Lords, *Constitution: sixth report*, 2008, available at publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15115.htm

the administration of the UK's social security system, it is particularly important to assess whether this digitalisation of means-tested benefits has been implemented in a way that adheres to rule of law principles.

What is the problem?

At CPAG, we observe the same mistakes in UC decision making and administration time and time again and the impact this has on claimants. From the evidence sent to our Early Warning System by frontline advisers and members of the public, we see claimants struggling to understand UC decisions and the barriers they face when they attempt to challenge them.¹⁰ While having a single benefit may simplify matters from a claimant's perspective (for example, doing away with the need to engage with three separate institutions, each paying different benefits), it also increases the impact of mistakes. The refusal of a claim or end to an award of UC in error can leave a claimant completely destitute, whereas previously, for example, a person refused employment and support allowance might still have had some income from child tax credit.

In 2019, we published two reports exploring some of the issues with inadequate information provision and challenging decisions within UC.¹¹ Following these reports, with generous support from the Legal Education Foundation and the Open Society Foundation, we decided to conduct a more in-depth and systematic analysis of the claims, decision making, information provision and dispute processes in UC. In particular, we wanted to investigate the extent to which the digital architecture of UC has contributed to the incorrect decisions, inadequate information provision and barriers to claiming UC and challenging decisions that we were seeing.

Lawyers will immediately recognise that notions such as 'inadequate information provision' and 'barriers to claiming UC and challenging decisions' can be examined as potential failures to comply with rule of law principles. But, as anti-poverty campaigners, it is the effect on claimants of failures to administer UC in accordance with the rule of law that concerns us. Our interest in the rule of law as a framework to analyse UC is not born of a concern for rule of law principles in the abstract. Instead, our interest is driven by the knowledge gained by CPAG's work in this area of what happens to individuals and families when the UC they depend on is administered without regard to these principles.

Why does the rule of law matter to claimants?

The 'rule of law' for a benefit claimant is not just a matter of legal theory; it is vital to their day-to-day life. Where UC is all that stands between a family and destitution, they rely on the Department for Work and Pensions (DWP) to calculate the amount correctly and pay it promptly, as laid out in the legislation. If UC is awarded, a claimant needs to understand how much they will receive, what conditions they must meet to remain entitled, and whether those conditions are reasonable given their circumstances. This allows people to budget and understand how any earnings from paid work would affect them, and it provides a basic level of certainty to enable them to plan for the future. Where UC is withdrawn or refused, a claimant needs to understand the reasons for that decision and what they would need to do to re-establish payment or dispute the decision.

These everyday interactions and processes in the operation of the social security system have severe consequences for claimants' lives, often determining whether people can afford food or to heat their homes. Therefore, it is vital that the social security system has a clear legislative basis, which sets out the rights and

¹⁰ cpag.org.uk/policy-campaigns/early-warning-system; see also *Universal Credit for Carers: a briefing from CPAG's Early Warning System*, April 2022, available at cpag.org.uk/sites/default/files/files/policypost/Universal_Credit_for_Carers.pdf

¹¹ CPAG, *Computer Says 'No!' – Stage one: information provision and Computer Says 'No!' – Stage two: challenging decisions*, 2019, available at cpag.org.uk/policy-and-campaigns/computer-says-no-access-justice-and-digitalisation-universal-credit

responsibilities of those accessing the system and the obligations and duties of those administering it, and that it operates in accordance with wider rule of law principles.

Rule of law principles (explored below) provide a framework of lawfulness and accountability for how *all* public services, including UC and other social security benefits, should be delivered. Given the increasing digitalisation across all areas of public services, any failure to adhere to rule of law principles in the name of digitalisation within UC should concern us all.¹²

Digitalisation

Much of the commentary on digitalisation has focused on either digital exclusion on the one hand or artificial intelligence and machine learning algorithms on the other.¹³ But this research is concerned with how simple digital design and implementation choices, such as the way a claimant communicates with DWP officials or how information is stored and presented, can determine the extent to which the system upholds the rule of law.

The vast majority of UC claimants make their claims and manage their ongoing awards online. The main route of communication between UC claimants and DWP officials is an online 'journal', while records of decisions are stored in the digital account. According to the DWP, only 0.48 per cent of awards require a manual calculation by DWP officials, with 99 per cent of awards either paid automatically without any intervention at all from DWP officials or calculated automatically and then manually checked before a payment is made.¹⁴ One prominent feature of UC is the automated gathering of employees' earnings information directly from HMRC's real-time information system (RTI), which uses payroll information reported by employers as opposed to the self-reporting of earnings under legacy benefits.¹⁵ These are new features of social security administration in the UK, and the consequences, intended or otherwise, require investigation.

Although all aspects of the UC entitlement conditions, claims, decision-making and dispute processes are set out in detailed social security legislation, little of this law considers UC's specific digital design and delivery.¹⁶ Other than a few exceptions, including the acceptance of electronic communication between claimants and the DWP,

¹² *The Guardian*, 'Automating poverty', 2019, available at [theguardian.com/technology/series/automating-poverty](https://www.theguardian.com/technology/series/automating-poverty)

¹³ The most advanced use of automated decision making and artificial intelligence within the UC system appears to be in the area of fraud detection, but this is largely outside the scope of this research; Fabian Society, *Bridging the Divide*, 2022, available at fabians.org.uk/publication/bridging-the-divide/; Lighthouse Reports, *Suspicion Machines*, 2023, available at lighthousereports.com/investigation/suspicion-machines/; publiclawproject.org.uk/resources/the-tracking-automated-government-register; Big Brother Watch, *Poverty Panopticon*, 2021, available at bigbrotherwatch.org.uk/wp-content/uploads/2021/07/Poverty-Panopticon.pdf

¹⁴ House of Commons, Written Answer UIN 94787, 1 December 2022, available at questions-statements.parliament.uk/written-questions/detail/2022-11-23/94787. Similarly, DWP training material, *UC27 Calculation of payments*, version 40.0, p5, available at whatdotheyknow.com/request/882602/response/2109995/attach/12/UC27%20Calculation%20of%20payments%20v40.0.pdf?cookie_passthrough=1. The DWP training materials state that the aspects of the calculation which need to be done manually are: housing with shared ownership, non-standard housing, foster caring bedroom entitlement once a child has left, when it is an arrears calculation only, and when there is a minus figure showing in the calculation. However, we assume that other aspects of the calculation which require a determination by a human decision maker are not included in this list, such as the calculation of student finance, which is also part of a UC calculation for some claimants.

¹⁵ medConfidential, *The Data Flows of Universal Credit*, Annex 1, available at medconfidential.org/2020/universal-credit

¹⁶ The legislative basis for universal credit includes: [the Welfare Reform Act 2012](#), [the Social Security Administration Act 1992](#), [the Social Security Act 1998](#), [The Universal Credit Regulations 2013 No.376](#) ('UC Regulations 2013'), [The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance \(Claims and Payments\) Regulations 2013 No.380](#) ('Claims and Payments Regulations 2013'), [The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance \(Decisions and Appeals\) Regulations 2013 No.381](#) ('Decisions and Appeals Regulations 2013'), and [The Universal Credit \(Transitional Provisions\) Regulations 2014 No.1230](#) ('Transitional Provisions Regulations 2014')

and specific provisions for the reliance on automated information on earnings from HMRC, most of the legislation underpinning UC is not specific to the implementation of a digital-by-design benefit.¹⁷ This can create the conditions for a mismatch between the legal requirements and how the digital system has been programmed to implement them.

UC is only a partially digitalised system. There continue to be many features and decision-making processes that are fully clerical and completed by DWP officials. Some failures to comply with rule of law principles within the UK benefits system are long-standing and pre-date UC. These problems are largely a result of attempts to administer a highly complex system of entitlements and procedural requirements via frontline or ‘street level’ civil servants who are given little training in rule of law principles or the detail of the law itself.¹⁸ Instead, the DWP attempts to distil the requirements of the law into easy-to-follow processes, which, if followed, should, in theory, lead to lawful decision making. While such processes may work in many cases, this approach risks systematically incorrect results if the process is not designed to be rule of law compliant, or to cater for more complex cases. This research considers whether the digital design and implementation of UC has resulted in these existing problems becoming more ‘hard-coded’ into the benefits system, or exacerbated by the digital environment in which claimants encounter them.

Part of this research attempts to build a picture of which aspects of the UC system are fully clerical, partially automated or fully automated, as this information is not publicly available.¹⁹ It is also an investigation of the extent to which the potential of a digital-by-design benefit has been utilised to maximise compliance with rule of law principles.²⁰

Rule of law principles

So what exactly do we mean by the ‘rule of law’? Lord Bingham, the first President of the Supreme Court, set out a useful starting point in his book *The Rule of Law*.²¹

¹⁷ Exceptions include Sch 2 of the Claims and Payments Regulations 2013, which concerns electronic communication, and reg 61 of the UC Regulations, reg 41 of the Decisions and Appeals Regulations 2013 and s159D of the Social Security Administration Act 1992, concerning alterations in the amount of UC caused by income information from HMRC’s real-time information system (RTI). See Chapter 2 – ‘Decision making’ and Chapter 4 – ‘Disputes’ of this research for more information.

¹⁸ An example of a procedural requirement is the requirement to accept a claimant commitment; M Lipsky, *Street Level Bureaucracy: dilemmas of the individual in public services*, Russell Sage Foundation, 1980

¹⁹ The DWP has not made the computer code for the digital UC system publicly available, despite this being a requirement of the service standards of the Government Digital Service.

²⁰ Following on from Richard Pope’s research, *Universal Credit: digital welfare*, which found that ‘the benefits of digitisation are not being shared equally between the government and the public’. Available at digitalwelfare.report/contents

²¹ T Bingham, *The Rule of Law*, Allen Lane, 2010

Bingham's eight principles of the rule of law

1. The law must be accessible and so far as possible intelligible, clear and predictable.
2. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
3. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.
4. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.
5. The law must afford adequate protection of fundamental human rights.
6. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.
7. The adjudicative procedures provided by the state should be fair.
8. The rule of law requires compliance by the state with its obligations in international law as in national law.

In this research, we take Lord Bingham's eight principles of the rule of law, and condense them into three core principles of **transparency**, **procedural fairness** and **lawfulness**. Although there is a vast literature on exactly which principles form the requirements of the rule of law, and some wider aspects of Bingham's conception of the rule of law are debated (such as the principle of committing to international law), the principles that we focus on are commonly accepted across different definitions of the rule of law.²²

Each principle is considered in more detail below, alongside some examples from our research of how failures to uphold the principle affect claimants.

Transparency – lack of information

Bingham's first rule of law principle is that *'the law must be accessible and as so far as possible intelligible, clear and predictable.'* The social security system is a 'rights-based system'. In a rights-based system, it is essential that claimants know what their rights are and how to access those rights. As Bingham wrote: *'It is not much use being entitled, for example, to a winter fuel allowance if you cannot reasonably easily discover your entitlement, and how you set about claiming it.'*²³

For UC to operate according to the rule of law, four aspects of the system require transparency. First, claimants must be able to access and understand accurate information on the legal requirements they must meet to establish and maintain entitlement to UC and details of how much UC they are entitled to as a consequence of meeting those identifiable conditions (substantive transparency). Second, the DWP must provide claimants with sufficient information regarding the procedures they must follow to demonstrate that they meet those requirements (procedural transparency). Third, claimants must be provided with the information necessary to understand how a particular decision has been reached and how to challenge it, should they wish to (transparency of reasons). Fourth, at a system-wide level, the DWP must be transparent about which aspects of the system are

²² For a brief summary, see P Craig, 'The rule of law', in House of Lords, *Constitution: sixth report*, 2008, available at publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15115.htm

²³ T Bingham, *The Rule of Law*, Allen Lane, 2010, p37

automated or clerical, how the system has been designed and implemented, and the process by which system features can be added or changed (systemic transparency).

To provide an example of a lack of transparency when providing the reasons for decisions, when the DWP changes a UC decision from an earlier date, the payment statements (which provide a breakdown of how the award has been calculated) are automatically updated to display only the new decision in a claimant's UC account. The new payment statements replace the originals rather than making both the original and amended decision letters available for comparison. It is difficult for claimants to tell whether or not a decision has changed at all, let alone the effect of the change, and whether any subsequent overpayments or underpayments have been calculated correctly. One research interviewee described how the overwritten payment statements in her UC account presented a false narrative of the previous decisions and payments.

Martha (claimant) – October 2022

'They agreed they were wrong and they said: "We'll make a payment within X number of days for the rest that we owe you", which was fine... but then I noticed the statement had changed. There's no date on them. So the statement just changed. I had no record of the previous statement. I hadn't saved it or screenshotted it. By looking at that statement, it looked like they'd paid us correctly the first time around on the correct date, which is not what had happened... [So I said] "Well, that's just wrong. You didn't pay me that much on that day. I can show you a bank statement that proves you didn't, but you just changed the statement and have not indicated anywhere that it's been edited... It just changed overnight." The paper trail is just dodgy.'

*All names have been changed.

The claimant no longer had access to the previous award calculation or the information required to check whether the arrears payment was correct, which had happened without warning or notification. This particular claimant is wrong to state that there was no date on the revised payment statement – however, that mistake is an easy one to make, as the revised date is only visible if the claimant expands a section at the bottom of the payment statement to find out how to challenge the decision.

Compared to legacy benefits, overwriting payment statements would be equivalent to the DWP removing and replacing previous decision letters received through the post without leaving copies of the originals.

Transparency is essential in UC. Providing information on legal requirements, procedures and decisions assists claimants in establishing whether or not the outcome arrived at in their case is correct: whether or not their application for UC has been administered and assessed according to the underlying legislation. At a system-wide level, transparency is essential to ensure accountability.

Procedural fairness – barriers to establishing and disputing entitlement

Three of Bingham's rule of law principles concern procedural fairness. First, *public officers at all levels must exercise the powers conferred on them in good faith and fairly*. Second, *adjudicative procedures provided by the state should be fair*. And third, *means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide [genuine] civil disputes*.

For UC to operate according to the rule of law, all claimants must be able to access mechanisms to establish and, where necessary, to dispute their entitlement. Decision making within UC must follow the correct procedures of investigation so that the factual position of the claimant is adequately investigated and determined based on

evidence. This must be accompanied by the correct and fair procedures of adjudication. At its core, that requires that claimants have the opportunity to put their case forward and make meaningful representations at each appropriate stage in the claims and disputes processes, including before an independent adjudicator where appropriate. As Bingham wrote: *'An unenforceable right or claim is of little value to anyone.'*²⁴

In UC, it is mandatory (in most cases) for the DWP to have considered a claimant's application for an internal revision of a decision (known as a 'mandatory reconsideration') before a claimant can appeal that decision to the independent First-tier Tribunal.²⁵ One interviewee described the barrier she faced when requesting a revision because the frontline official she was communicating with via the journal repeatedly refused to accept that the automated calculation could be incorrect.

Chloe (claimant) – October 2022

'I'd reported the childcare as normal but when the statement came through it didn't have any childcare on it at all. So I sent a journal message saying: "This seems wrong. It seems to have been missed off", and I got a message back basically just saying: "No, you're wrong. This is when we pay and this is what you get."

We'd been claiming childcare costs for months. I knew how it worked... I literally wrote all the figures down and laid it out really carefully because I realised that this person responding to me hadn't looked at it properly or didn't understand. He, again... said: "No, your payment will be correct."

I went back again and laid it out even more carefully and then he came back and said: "This has now been amended." It was the same person. There was no apology for being wrong or telling me I was wrong, just: "We changed it."

When there has been an issue, it's very much been their attitude that they are just right and that I shouldn't be questioning whether they're right or not because they are, and there's no acknowledgement that they could possibly be mistaken or that they should be required to explain themselves.'

Our research has found that the informal communication style of the UC journal creates an environment that encourages case managers and work coaches to act as 'gatekeepers' to the mandatory reconsideration process. We've also seen evidence to suggest a bias by officials towards the assumed 'correctness' of the automated calculation may contribute to this gatekeeping. The effect is that frontline officials can discourage claimants from pursuing challenges without a decision maker ever having the opportunity to formally reconsider the decision and before the claimant has been advised of their right to continue their challenge to the independent First-tier Tribunal. Another interviewee described how he was only convinced to continue with a revision by his welfare rights adviser after his repeated requests in the journal were ignored.

²⁴ T Bingham, *The Rule of Law*, Allen Lane, 2010, p85

²⁵ Reg 7 Decisions and Appeals Regulations 2013. The mandatory reconsideration requirement was introduced in 2013. The stated intention was to prevent unnecessary appeals and ensure disputes were raised as the earliest possible stage, as described in *R (CJ) and SG v SSWP (ESA)* [2017] UKUT 324 (AAC), paras 38-40, available at [gov.uk/administrative-appeals-tribunal-decisions/r-cj-and-sg-v-secretary-of-state-for-work-and-pensions-esa-2017-ukut-324-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/r-cj-and-sg-v-secretary-of-state-for-work-and-pensions-esa-2017-ukut-324-aac)

Timothy (claimant) – April 2021

'It goes to show that without Amelia's [welfare rights adviser] help, I would have just believed what they said about "Oh, it's because of the bedroom tax" or "It's because I'm only entitled for the 85 per cent coverage." Well, it must be right because they say it is.'

The rule of law principles we are examining here are interrelated. Procedural fairness relies on transparency, as claimants must first know and understand the rules and the reasons for decisions taken about them in order to assert their procedural right to challenge a decision, while some failures to follow procedures can be unlawful (see below).

Lawfulness – unlawful decisions and decision-making processes

For UC to comply with the rule of law, decisions must be made in accordance with the law. First, according to Bingham's principles, the vast majority of decisions must be decided according to rules and criteria set out in the legislation rather than the exercise of discretion. Second, the same rules and criteria must apply to all equally ***'save to the extent that objective differences justify differentiation'***. Thirdly, ***'the law must afford adequate protection of fundamental human rights'***, such as those contained in the Human Rights Act 1998, including that the law itself must not be discriminatory. To ensure the law is followed and those principles can be met, ***'public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably'***.

As with all social security, UC consists of a rules-based system. In some cases, problems arise not from actions and decisions being taken in a legal vacuum, but rather because the programming and operation of the UC digital system and the legislation do not fully align. In other cases, problems arise when DWP officials exceed the powers they have been granted or use them for a purpose other than that intended by the legislation. A rules-based system written in statute is meaningless if those rules are systematically not applied.

To provide an example, the DWP has not programmed the automated UC calculation to recognise that an award of carer's allowance is sufficient evidence to confirm that a claimant is entitled to the carer element of UC. This is despite UC automatically taking carer's allowance into account as income, reducing the UC award pound for pound. As a result, a whole class of awards are calculated incorrectly, usually if the carer's allowance award starts after the claimant was already in receipt of UC.

Zoe (adviser) – December 2021

'People get carer's allowance, the computer knows that they are receiving carer's allowance, it's deducted from their entitlement but it is not adding the carer element because they did not go through the "report a change" function. And that is unlawful because this is not what the regulations say, so that happens every time. I had nine months until a mandatory reconsideration was successful for one claimant.'

By failing to automate the addition of the carer element, the DWP relies on claimants identifying when the carer element is missing from their award. This means the error is often missed, and carers do not benefit from the additional financial support they are entitled to under the legislation. In the example above, it took nine months for the decision to be revised and paid at the correct higher rate once the adviser identified the error.

In a partially digitalised social security system, unlawful decisions can occur for a number of different reasons: because digital design and implementation choices systematically produce the wrong decisions for claimants in certain situations; because the digital architecture does not accurately reflect the legislative decision-making framework; because certain digital design or implementation choices contribute to repeated errors in human decision making; and because human decision makers apply the law incorrectly with no obvious contribution from the digital design of the system.

Methodology

To examine the extent to which UC meets the three rule of law principles, we have looked at the claims, decision making, communicating decisions and disputes processes. These are each explored in separate chapters, and our analysis is broken down into:

- the substantive rules governing entitlement, as set out in legislation, and the procedures for establishing and disputing it;
- how the UC digital system has been designed to implement the legislation;
- the guidance for officials working within the UC system; *and*
- evidence of failures to comply with the rule of law principles of transparency, procedural rights and lawfulness.

We have used a mixed methodological approach to conduct our investigation. We reviewed approximately 2,500 cases from CPAG's Early Warning System, which is a database of over 6,500 case studies from welfare rights advisers and members of the public on the problems they are seeing in the social security system, to get a broad picture of the recurring issues with decision making and access to justice in UC.

We conducted 14 semi-structured interviews with 13 welfare rights advisers because of their social security law expertise and perspective as frontline practitioners working with claimants. We conducted 33 semi-structured interviews with 28 claimants (some were interviewed twice). During these interviews, we invited claimants to provide documentary evidence from their online UC accounts, including decision letters and copies of journal communication histories. We interviewed a mixture of advised and non-advised claimants due to the potential differences in their experiences with UC. Two additional claimants made a subject access request for all their UC records held by the DWP, which was shared with the research team. CPAG was a research partner for the Covid Realities research project, which investigated the experiences of parents and carers on low incomes during the pandemic. We recorded a video of a 'big question' asking participants to tell us their views and experiences of claiming and maintaining UC as a digital benefit. We received written feedback from 19 participants.²⁶

In addition to this primary research, we carried out significant amounts of desk-based research. We submitted approximately 50 freedom of information requests to access administrative data, DWP training materials and operational guidance, while attempting to discover details of the level of automation within the UC digital system and how the interface appears and works for DWP officials. We examined the relevant social security legislation, as well as DWP guidance, research and management records. In addition, we monitored the Rightsnet discussion forum on *Universal Credit Administration* (a peer-to-peer casework support service) for relevant queries.

Although this research focuses on the digital-by-design nature of UC, the benefit is only partially automated, and many processes remain fully clerical – eg, certain types of decisions are solely taken by a human decision maker.

²⁶ [covidrealities.org](https://www.covidrealities.org)

Therefore, we decided to include some issues that did not have an apparent digital aspect to build a more complete picture of the UC system.

A detailed methodology is included as an appendix to the research report.

About CPAG

Child Poverty Action Group (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. CPAG is a charity registered in England and Wales (registration number 294841) and in Scotland (registration number SC039339), 30 Micawber Street, London N1 7TB.

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Chapter 1: Claims

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1. Claims

1.1 Introduction

This chapter considers the pre-claim and initial evidence-gathering stage of universal credit (UC) until the point a claim is submitted. Our research explores the extent to which the claims process upholds the rule of law principles of transparency, procedural fairness and lawfulness. Claimants require transparency about the underlying legislation and procedures to understand their rights and make meaningful representations when establishing their entitlement to UC. In other words, they should have all the information available to them so they can understand their rights and what is expected of them to make a claim. Claimants must also have access to mechanisms which support them in stating why they are entitled to UC (such as questions in the claim form). In addition to providing the right tools for claimants to navigate the claims process, the Department for Work and Pensions (DWP) must follow the correct procedures of investigation to establish entitlement.

Our research has found that these rule of law principles are at risk within the UC claims process. There are a number of barriers for claimants – in some cases preventing or delaying people from claiming UC when they are entitled to this support, in others resulting in unlawful decisions and miscalculated awards. This chapter begins with an exploration of the information available to a legacy benefit claimant about whether and how to claim UC, followed by a brief overview of the digital claims process, and examples of failures to uphold rule of law principles throughout the claim process for both digital and telephone claims.

1.2 Pre claim

1.2.1 Lack of information and transitional protection for natural migration

The introduction of universal credit

Since December 2018, most people have been unable to make a new claim for the six legacy benefits universal credit (UC) has replaced. A UC claimant might be a new benefit claimant altogether or a person who has, up to the time of claiming UC, been getting these previous legacy benefits. ‘Managed migration’ is the formal process by which the DWP brings a claimant’s legacy benefits to an end and invites them to claim UC. Managed migration has been trialled with initially small numbers of claimants since May 2022 and is currently scheduled to be completed after 2028.²⁷ However, most legacy benefit claimants will have already claimed UC by a process of ‘natural migration’ before the managed migration process is fully operational.

What the law says

The managed migration process from legacy benefits to UC is set out in regulations.²⁸ The DWP will provide claimants with a ‘migration notice’ informing them that their legacy benefits will terminate on a specified ‘deadline day’ (with the possibility of extension) and inviting them to claim UC.²⁹ Those who claim UC as part of the managed migration process are entitled to a transitional element in their UC award which should make up the difference if they are entitled to less under UC on migration day than they previously were under legacy benefits.³⁰ (See Chapter 2 – ‘Decision making’: section 2.3.1 for an explanation of how UC awards are calculated.)

²⁷ HM Treasury, *Autumn Statement 2022*, November 2022

²⁸ The Universal Credit (Transitional Provisions) Regulations 2014 No.1230 (‘Transitional Provisions Regulations 2014’)

²⁹ Regs 44 and 45 Transitional Provisions Regulations 2014

³⁰ Reg 52 Transitional Provisions Regulations 2014. There are some exceptions when a claimant will still be worse off. The transitional element is then ‘eroded’ by the addition or increases of most other elements from the second assessment period onwards. ‘Erosion’ occurs

In addition to managed migration, there are two other migration forms: ‘natural’ and ‘voluntary’.³¹ ‘Natural migration’ is when a claimant has a change in circumstances that results in the ending of a legacy benefit (eg, the child of a lone parent in receipt of income support turns five) or that would have created a new entitlement to a legacy benefit – eg, the birth of a first child which might previously have allowed a claim to child tax credit (CTC) but it is not possible to make a new claim for any legacy benefits. In these circumstances, most people choose to claim UC to protect or increase their income. The vast majority of claimants move on to UC from legacy benefits in this way. However, ‘choice’ is not necessarily an accurate term when the alternative to claiming UC is destitution, as was explored in a challenge brought by claimants who were worse off on UC than legacy benefits: *‘Although it is true that the appellants were not compelled by law to apply for UC, as a matter of practical reality they had no choice but to apply for UC. It is important that the legislation in this country governing social security should be interpreted in a way which conforms to practical reality, given the potential impact on some of the poorest people in society.’*³² Those who claim UC under natural migration are not entitled to receive the transitional element (although some may be entitled to a degree of transitional protection in the form of the transitional severe disability premium (SDP) element if they received the SDP in their legacy benefits.)³³

Finally, the DWP’s concept of ‘voluntary migration’ is when a claimant decides to claim UC at any time, not necessarily because of a change in their legacy benefits, and again with no transitional protection. (Arguably, natural migration and voluntary migration are the same thing; the only distinction is the motivation for the UC claim rather than any difference in the process.) Whichever form of migration, the general rule is that when a person claims UC, all existing legacy benefits are brought to an end and cannot be reinstated. As such, claimants cannot undo the decision to claim UC and return to legacy benefits.³⁴

What the universal credit system looks like and how it works

When a claimant completes a valid claim for UC (whether or not the claim is subsequently withdrawn) a ‘stop notice is issued by the system automatically’ and sent electronically to the relevant government departments to terminate entitlement to legacy benefits.³⁵

What happens in practice

As of April 2022, the DWP estimated that approximately 55 per cent of the then existing legacy benefit claimants (1.4 million) would have a higher entitlement on UC compared to their current benefits, whereas 35 per cent would have a lower entitlement (900,000).³⁶ However, the government has decided not to transitionally protect

when an increase in entitlement (for example, an inflationary increase to the child element) leads to a decrease in the transitional element, rather than an increase in the amount paid to the claimant, until all of the transitional element is eroded away in accordance with reg 55 Transitional Provisions Regulations 2014.

³¹ DWP policy paper, *Completing the Move to UC*, June 2022, available at [gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2](https://www.gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2)

³² *R (TD and Reynolds) v SSWP* [2020] EWCA Civ 618, para 69, available at [judiciary.uk/wp-content/uploads/2020/05/TD-and-Ors-v-SSWP-judgment-Final.pdf](https://www.judiciary.uk/wp-content/uploads/2020/05/TD-and-Ors-v-SSWP-judgment-Final.pdf)

³³ At the time of writing, the government is still considering how to respond to *R (TD and Reynolds) v SSWP* [2020] EWCA Civ 618 and may respond by providing transitional protection to all claimants.

³⁴ For IS, HB and tax credits, this happens under reg 8 Transitional Provisions Regulations 2014 unless the claimant is in specified or temporary accommodation for HB to continue. Alternatively, income-related ESA and income-based JSA were abolished by the Welfare Reform Act, but it is triggered for individuals when they claim UC in accordance with the various commencement orders – eg, Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015 No.634.

³⁵ *SK v HMRC and SSWP* [2022] UKUT 10 (AAC), available at [gov.uk/administrative-appeals-tribunal-decisions/sk-v-commissioners-for-her-majestys-revenue-and-customs-and-secretary-of-state-for-work-and-pensions-uc-2022-ukut-10-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/sk-v-commissioners-for-her-majestys-revenue-and-customs-and-secretary-of-state-for-work-and-pensions-uc-2022-ukut-10-aac)

³⁶ Statistics from DWP policy paper, *Completing the Move to Universal Credit*, June 2022, p7, available at

[gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2](https://www.gov.uk/government/publications/completing-the-move-to-universal-credit/completing-the-move-to-universal-credit--2)

the incomes of claimants who are worse off when they ‘naturally’ migrate to UC.³⁷ In addition, the DWP continues to promote voluntary migration to UC for legacy claimants who may be better off by suggesting people take personal responsibility for the decision and check their circumstances using an independent online benefits calculator.³⁸ Benefit calculators are valuable tools, but the calculator makers themselves recognise they are not designed to be able to consider the full complexities of the benefits system and do not cover all relevant aspects of the change to UC, including the effect of student finance, debt deductions or the best time to claim. The calculators also rely on claimants understanding the limitations and knowing how to use them accurately: it is not realistic to expect everyone to be able to use a benefit calculator unaided.³⁹

One participant described how they used a benefit calculator and identified that they would be entitled to £140 a month UC, before finding out once the claim was submitted that they could not simultaneously receive UC and tax-free childcare.

Josie (claimant) – January 2022

‘I like to check the benefit calculators every now and then and because I now work part time my wages are obviously lower. So it [said] that we’d be entitled to universal credit about £140 a month which would have been really helpful... We were only told a couple of days ago via the online journal in our account that we can’t get tax-free childcare and universal credit [at the same time] ... I wish that we’d known that at the start...’

*All names have been changed.

The choice to move to UC is not only a question of considering financial loss or gain. There are other important factors for prospective claimants to consider. Some claimants may struggle to manage an online benefit, have difficulty budgeting with a single monthly household payment compared to multiple legacy benefit payments paid separately and more frequently, or face different conditionality requirements in terms of looking or preparing to look for work or more work.

Finley (adviser) – November 2021

‘One of the things that often comes up is the job centre... will try and persuade people to claim UC... there is so much hyperbole very often they think: “Well I’ll claim UC because I’ll get more money.” But they are completely unaware of conditionality... it certainly doesn’t prepare them...’

Inevitably, many claimants find out once they have claimed UC that they are worse off, financially or otherwise, but they cannot return to their previous benefits. Specifically, people sometimes claim UC on the advice of frontline officials working for the DWP, HM Revenue and Customs (HMRC) or local authorities.

³⁷ Transitional protection allows claimants to keep the same amount of UC as they received in legacy benefits even if their entitlement would be lower if they were a new claimant.

³⁸ [understandinguniversalcredit.gov.uk/help-for-you](https://www.understandinguniversalcredit.gov.uk/help-for-you); see also [understandinguniversalcredit.gov.uk/new-to-universal-credit/is-it-for-me](https://www.understandinguniversalcredit.gov.uk/new-to-universal-credit/is-it-for-me): ‘If you currently receive tax credits, please check the eligibility criteria for universal credit before you submit a universal credit claim. If your tax credit award has not ended, you will need to decide whether remaining on tax credits or claiming universal credit is better for you, based on your own personal circumstances. You can use a benefits calculator to check your possible entitlement.’

³⁹ Joint letter from CPAG, Entitledto, Turn2us and Policy in Practice to David Rutley MP, 29 November 2021 (not public)

Early Warning System: prisoner on remand told to claim UC – September 2022

A contributory employment and support allowance (ESA) recipient had a period on remand in prison with no sentence and no charge. The DWP incorrectly advised the claimant to claim UC when he left prison. It took a year of an MP's involvement to resolve the matter. The MP met with the Minister for Disabled People, Health and Work who confirmed that the DWP was conducting a wider review of how it deals with complex cases (such as prison leavers). The DWP has since confirmed it has made a number of changes after it 'identified failings' in how staff dealt with these types of cases.

Early Warning System: SDP and enhanced disability premium – December 2022

A woman in receipt of personal independence payment (PIP), income-based jobseeker's allowance (JSA) and housing benefit (HB) with the SDP and the enhanced disability premiums included in her JSA was advised to claim UC by her work coach, who said the woman would be no worse off. The woman was previously receiving £200.35 a week JSA (excluding housing costs) and is now receiving the equivalent of £143.05 a week UC (excluding housing costs), so she is considerably worse off.

Early Warning System: request for income-related ESA disability top-up – May 2022

A claimant in receipt of contributory ESA and a new PIP award requested an income-related ESA top-up for the disability premiums. The DWP refused and incorrectly said that only old incapacity benefit claimants can get the income-related ESA top-up and all others must claim UC. It seems DWP staff don't know the rules. The claimant would be worse off on UC because it does not include the disability premiums.

One adviser described how claimants often did not realise they had a choice to remain on their current legacy benefits.

Richard (adviser) – August 2021

'There wasn't a great deal of information ... that [told] you that you shouldn't claim... someone might suggest that they claim universal credit when, actually, they have no need to, they can stay on legacy benefits. There's no check process in place, because we know that loads of people make universal credit claims when they don't have to and then they're stuck...'

The Independent Case Examiner for the DWP reported in the 2020/21 annual report that it sees a 'steady stream' of cases where DWP staff have misdirected legacy benefit claimants to claim UC to their disadvantage, such as the following case.⁴⁰

⁴⁰ Independent Case Examiner for the Department for Work and Pensions: annual report 1 April 2020 to 31 March 2021, available at [gov.uk/government/publications/dwp-complaints-annual-report-by-the-independent-case-examiner-2020-to-2021/independent-case-examiner-for-the-department-for-work-and-pensions-annual-report-1-april-2020-to-31-march-2021](https://www.gov.uk/government/publications/dwp-complaints-annual-report-by-the-independent-case-examiner-2020-to-2021/independent-case-examiner-for-the-department-for-work-and-pensions-annual-report-1-april-2020-to-31-march-2021). There is no legal requirement for the DWP to pay claimants financial redress for misadvice (and other forms of maladministration) by their officials, but 'special payments' can be made on a discretionary basis following the guiding principle that 'individuals should not be disadvantaged as a result of maladministration,

Independent Case Examiner (ICE) annual report 2020/21: Case study 1 – October 2021

‘Complainant A called the ESA claim line and asked to claim ESA. They said they had been on it before, were self-employed and unable to work due to illness. The call handler said they had to claim UC. They were told that the UC claim line might refer them back to the ESA line, but they would be wrong to do so and they must persevere to make a UC claim. When asked if a claim could be made at the job centre, due to Complainant A’s concerns about the charges for a phone claim call, they were told claiming online was easiest and most efficient.

Complainant A and their partner went online and found they had to make a joint claim to UC, so they went to their job centre for more advice, as their only reason to claim was to cover Complainant A’s period of ill health. They told the ICE office that they were told to make a joint UC claim and when asked later, though the job centre staff couldn’t remember the couple, they said they would have advised them that ESA had been replaced by UC.

Complainant A and their partner claimed UC online and in their details said they had savings of more than £16,000, but did not mention Complainant A’s ill health. The website referenced that a complainant can’t claim UC and tax credits at the same time and that if a UC claim was made, tax credits would stop.

The UC claim was accepted and processed – as a result child tax credits (CTCs) were stopped. A month later the couple were told they were not entitled to UC as their savings in excess of £16,000 precluded that, and they visited the job centre for help given the financial position they were now in. They were then advised to close the UC claim and claim ‘new-style ESA’ – Complainant A was told they should have claimed that in the first place...

The couple were told they were unable to make a new claim to CTC and moreover that there had been a CTC overpayment that needed repaying. The couple said had they claimed new-style ESA in the first place, their CTCs would still be in payment.’

There was an increase in the types of cases like the one above during the early months of the Covid-19 pandemic in 2020. CPAG’s Early Warning System (EWS) repeatedly received evidence of legacy benefit claimants making claims for UC without being given an adequate explanation that doing so would bring their current awards to an end, regardless of whether they were entitled to any UC, as described by the adviser below.

Zoe (adviser) – December 2021

‘People don’t realise. Sometimes they claim universal credit but they are surprised that their housing benefit stops... I had people who were really upset that their working tax credit stopped and that they are worse off as a result of the transferring to universal credit. So I am not sure it is absolutely clear to people how claiming universal credit will affect their situation, their finances and benefits they receive.’

Many of those affected were tax credits claimants whose awards ended when they claimed UC but whose savings meant they were over the capital limits for any entitlement to UC. Some claimants described following the general

if there has been a loss of statutory entitlement, a financial loss or for consolation of injustice or hardship’ (*Financial Redress for Maladministration: staff guidance*, available at: gov.uk/government/publications/compensation-for-poor-service-a-guide-for-dwp-staff/financial-redress-for-maladministration-staff-guide). It was decided that the DWP has no duty of care to claimants, as this is incompatible with the available remedies of the statutory scheme of appeals and judicial review; therefore, claimants have no right to sue the DWP for negligence (*Murdoch v Secretary of State for Work and Pensions* [2010] EWHC 1998, available at casemine.com/judgement/uk/5a8ff7d760d03e7f57eb2695).

advice given by the government to claim UC, while others described making UC claims by mistake when they were trying to do a benefits check or update their legacy benefit information. Some were encouraged to claim UC when it was increased by £20 a week during the pandemic, while means-tested legacy benefits remained at the same rate. The then Secretary of State, Dr Coffey, said at the time: *'I encourage people to consider that move, because we are confident as a Department that the majority of people would be better off,'* when she was questioned about the disparity in benefit levels that particularly affected disabled people.⁴¹ However, the £20 increase to UC was only temporary; some claimants will have found themselves worse off after the 'uplift' ended on 6 October 2021. After organisations working with claimants raised concerns, the DWP updated gov.uk to provide claimants with more warning about the risks to legacy benefits if they claimed UC.

Figure 1A: CPAG mock-up of 'Warning about the effect of a UC claim on legacy benefits' page

If you already get other benefits


You should check how applying for Universal Credit will affect your other benefits:

- [Find out how tax credits and other benefits affect each other](#)
- [Find an independent benefit calculator](#)

Universal Credit replaces these benefits:

- Child Tax Credit
- Working Tax Credit
- Housing Benefit
- Income Support
- income-based Jobseeker's Allowance (JSA)
- income-related Employment and Support Allowance (ESA)

These benefits will end if you or your partner makes a claim for Universal Credit, even if the claim is not approved.

 You understand that if you or your partner make a claim, any benefits you get now that are replaced by Universal Credit will stop. You will not be able to submit a new claim for the benefits that have stopped.

I have read and understand

Continue

⁴¹ House of Commons, *Hansard*, Oral answers to questions, 25 January 2021, Vol 688, col 7, available at hansard.parliament.uk/commons/2021-01-25/debates/6FD877B3-9F96-4DCD-A8E2-42A58F9873C1/PovertyLevels

Rightsnet thread [16002](#): tax credits warning – May 2020⁴²

#14 'We're getting more and more calls from disabled families where both working tax credits and child tax credits have stopped due to claiming UC based on pre-April Covid guidance. Tax credits are telling claimants that they can't do anything without a Stop Notice from UC and the UC helpline are telling people to reclaim tax credits! Families have had no income for over a month relying on food banks.'

#15 'I have a case like this, a family where the only earner is self-employed with no work and they claimed UC on 26 March straight after the Chancellor's announcement then withdrew the claim less than 48 hours later when they realised tax credits would stop. They have had no income for eight weeks.'

#16 'Just got my first case of this. Client is set to lose hundreds in tax credits. Applied for UC but is over savings limit due to owning another home. Wish they had told me they were going to apply, I offered a benefit check but they just applied instead... I feel the warning on the UC claim screen needs to be more prominent or something as the client didn't see it at all.'

#17 'That warning has only recently been added – previously there was none.'

These changes are an example of the DWP taking steps to proactively provide claimants with information about their benefits and the consequences of certain decisions, and they appear to have made a positive difference. The Early Warning System has since received less evidence of claimants claiming UC without realising the effect it will have on their legacy benefits.

In response to the concerns, the DWP initially committed to looking into the situation for previous tax credit claimants who had found themselves ineligible for UC at the start of the pandemic. However, the DWP opted to take no action to compensate those who lost their legacy benefit entitlement before they updated the claim form warning.⁴³

Our research has found that the DWP is encouraging legacy benefit claimants to claim a new benefit without transparent, accurate and individualised information about the effects of such a decision, both financial or otherwise, on individuals and households. The lack of transparency in and of itself is a breach of rule of law principles. When combined with misinformation from officials and the irreversible nature of the move from legacy benefits to UC without transitional protection, it also gives rise to a breach of the requirement for procedural fairness. Despite the evidence to the contrary, the government states that job centre staff do not advise claimants whether or not they should claim UC.⁴⁴

1.3 Overview of the digital claims process

What the law says

For a person to receive universal credit (UC), they must make a claim for it 'in the manner, and within the time' set out in the regulations.⁴⁵ The regulations state that UC can be claimed by 'electronic communication', and in some

⁴² Rightsnet thread 16002, available at rightsnet.org.uk/forums/viewthread/16772

⁴³ House of Commons, *Hansard*, 4 May 2020, Vol 675, col 431, available at hansard.parliament.uk/commons/2020-05-04/debates/CEE2A905-7589-40D0-B14C-219F12CCB242/Covid-19DWPUpdate

⁴⁴ David Rutley MP, letter to NAWRA, 11 April 2022, available at nawra.org.uk/wordpress/wordpress/wp-content/uploads/2022/04/NAWRA-Letter-from-MfWD-to-NAWRA-April-2022.pdf

⁴⁵ 'or (b) he is treated by virtue of such regulations as making a claim for it' (s1(1)(a) Social Security Administration Act 1992)

cases by telephone, using the ‘approved method’ set out on the gov.uk website.⁴⁶ Therefore, what counts as a valid claim for UC is subject to change when the gov.uk website is updated.⁴⁷

The Upper Tribunal has explored what the requirements of these regulations mean in practice and concluded that a claim is completed in the prescribed manner when a claimant, *‘having entered all the data required by the online form, and confirmed the truth of that information, clicks on the “submit claim” button, which automatically has the effect of delivering the claim to the Secretary of State.’*⁴⁸ The Upper Tribunal described in detail the procedural steps a claimant must go through to make a claim for UC and identified three stages:

1. setting up an online account;
2. gathering and inputting the relevant data; *and*
3. finalising the data.

Setting up an online account

To begin, claimants must press ‘start’ on the ‘Claim UC Online’ page on gov.uk and confirm they have read and understood a notice stating that any legacy benefits they currently receive will stop.⁴⁹ (The legacy benefit warning was introduced in 2020 during the early stages of the pandemic, which has already been explored above in section 1.2.1 of this chapter.)

⁴⁶ The regulations are the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 No.380 (‘Claims and Payments Regulations 2013’), specifically reg 8 and Sch 2; Direction 4 Social Security (Electronic Communications) Consolidation and Amendment Directions 2011 provides that the approved method is ‘the method... set out on the gov.uk website’; *PP v SSWP (UC)* [2020] UKUT 109 (AAC), para 39, available at [gov.uk/administrative-appeals-tribunal-decisions/pp-v-sswp-uc-2020-ukut-0109-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/pp-v-sswp-uc-2020-ukut-0109-aac)

⁴⁷ gov.uk does not provide a version history for static content on service.gov.uk compared to static pages on gov.uk, which are stored here: nationalarchives.gov.uk/webarchive.

⁴⁸ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), reported as [2020] AACR 24, available at [gov.uk/administrative-appeals-tribunal-decisions/gdc-v-sswp-uc-2020-ukut-108-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/gdc-v-sswp-uc-2020-ukut-108-aac)

⁴⁹ universal-credit.service.gov.uk/start, accessed 28 September 2022

Figure 1B: CPAG mock-up of 'Create UC account' page

Universal Credit online

Use this service to:

- create a Universal Credit account
- make a claim
- join your partner's claim

You must have an email address. You will also need access to your mobile phone (if you have one).

If you have made a Universal Credit claim before

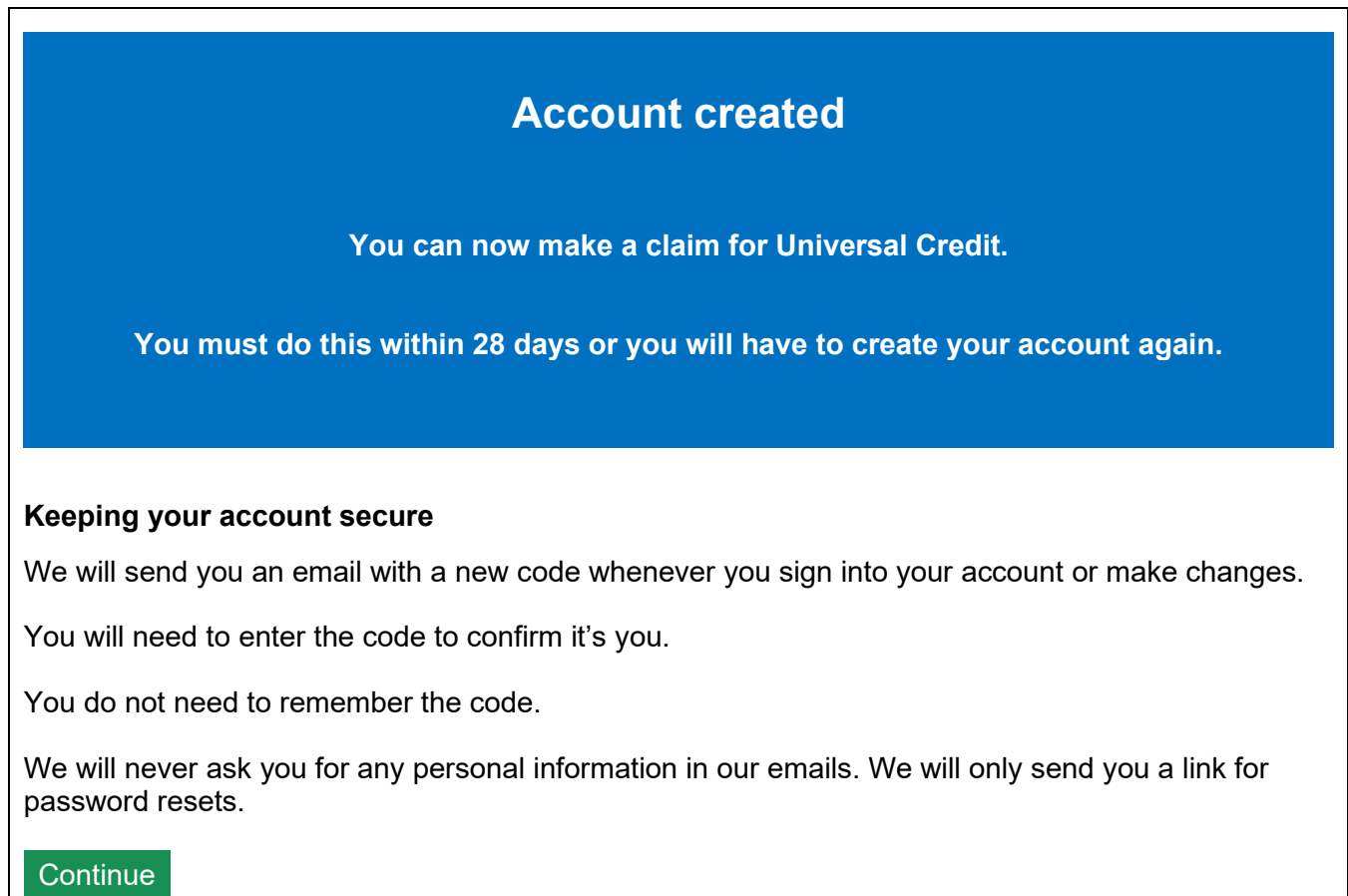
[Sign in](#) to return to an existing claim, report a change or make a new claim.

If you have forgotten your sign in details you can reset them or ask for a reminder.

[Start](#)

Claimants are then required to set up an account, which involves choosing a username, password and security questions; inputting basic personal details, including address; linking the account with an email address and phone number using a verification code; and choosing a preferred contact method. When a claimant completes these steps, they are presented with a screen stating, 'Account created – make a claim within 28 days or you'll have to create your account again', followed by a 'start claim' button.

Figure 1C: CPAG mock-up of 'Account created' page



Gathering and inputting the relevant data

Once the claimant has clicked 'start claim', they are taken through a series of questions starting with 'do you have a partner?' and the possible answers 'yes, and we live together', 'yes, but we do not live together' and 'no, I'm single'.

Figure 1D: CPAG mock-up of 'Do you have a partner?' claim question

Start claim

Relationships

Do you have a partner?
This can be a boyfriend, girlfriend, husband, wife or civil partner.

Yes, and we live together
 Yes, but we do not live together
 No, I'm single

[Continue](#)

The claimant is then shown a screen with a 'to-do list' and a 'journal.' The to-do list comprises a list of the question headings, including housing, work and earnings, education and training, childcare costs, health, caring for someone and bank details. The 'address' question is marked as complete on the to-do list and listed in the journal next to a time stamp of when the claimant completed the task, as they already provided this information when creating an account. Claimants can log in and out again at any point before they click 'submit claim', and the system saves the information.

Figure 1E: CPAG mock-up of the to-do list at the beginning of a claim

To-do list	Journal
Previous address You have completed this to-do.	
Nationality	
Housing	
Who lives with you?	
Work and earnings	
Money, savings and investments	
Income other than earnings	
Education and training	
Health	
Caring for someone	
Bank account details	
See a record of completed to-dos in your journal	

Figure 1F: CPAG mock-up of the journal showing when to-do list items have been completed

To-do list		Journal	
Journal			
You cannot use your journal until you have completed your to-dos.			
Journal entries			
Date and time	Message	Added by	
27 Feb 2023 at 1.21pm	Do you have a partner? completed	Claimant's name	
27 Feb 2023 at 1.01pm	Previous Address completed	Claimant's name	
27 Feb 2023 at 1.00pm	Address completed	Claimant's name	
27 Feb 2023 at 12.55pm	Contact details completed	Claimant's name	

Joint claimants must each create an individual account which they then link together using a 'linking code'. Each member can either be provided with a linking code or enter their partner's linking code alongside their partner's name and postcode.

Finalising the data

Once the claimant has completed all the questions on the to-do list, they must confirm or amend each question's answers individually before agreeing on the full details of the claim.

Claimants are then presented with a page titled 'your responsibilities', which vary according to the information collected as part of the claim questions, with some claimants told 'it's important that you tell us immediately if your circumstances change', and others told 'it's important that you understand that in return for your UC payment you're agreeing to look for work'.

Figure 1G: CPAG mock-up of 'Your responsibilities to-do'

Your responsibilities

Thank you,

There are a few things you need to know and do before your application to Universal Credit is complete.

It's important that you understand that in return for your Universal Credit payment you're agreeing to look for work.

You'll need to commit to doing everything you reasonably can to find and take paid work. Your work coach will help you agree your commitments.

Your partner will need to agree their own commitments

I understand these commitments.

Once a claimant confirms that they understand their commitments, they are presented with a page titled 'Declaration'. By submitting a claim, the claimant agrees that the information is correct and that they will report changes straight away via the online account (or by phone) at risk of prosecution, a financial penalty, or UC reducing, stopping or being overpaid. Finally, claimants are presented with a tick box stating 'I understand and agree' followed by the 'Submit claim' button.

Figure 1H: CPAG mock-up of 'Declaration and submit claim button'

Declaration

By submitting this claim, you agree that:

- the information you've given is complete and correct
- while you're receiving Universal Credit, you'll report changes to your circumstances straight away in your online account (or by calling 0800 328 5644 (Textphone: 0800 328 1344) if this is not possible)

Calls to 0800 numbers are free from landlines and mobiles.

! If you give wrong or incomplete information, or you don't report changes, you may:

- be prosecuted
- need to pay a financial penalty
- have your Universal Credit reduced or stopped
- be paid too much Universal Credit and have to pay the money back

I understand and agree

1.4 Claim questions

The vast majority of universal credit (UC) claimants submit their claims for UC online. As outlined already, they do this via the online claim form, which takes claimants through the claim process step by step. There are arguably many advantages to such a system, and some research participants highlighted the ease of claiming online as a particular strength of UC.

Gemma (claimant) – November 2021

'I found UC easier in that there weren't all the questions there were for ESA [employment and support allowance] and PIP [personal independence payment]. I don't know whether you have got experience of looking at the booklets, but they ask you anything and everything. I know it is partly because of Covid, but being able to do it online suited me.'

Peter (claimant) – August 2021

‘Due to IT experience, having no kids, and being unable to work, starting the UC claim - filling in the form online - was quite simple. The complexity of my claim came about because of my long term health conditions and therefore the Work Capability Assessment (WCA). The WCA process is completely paper-based and not digitalised in anyway.’

However, alongside some positive experiences, our research found a number of aspects of the claims process that do not adhere to the rule of law principles of transparency, procedural fairness and lawfulness.

1.4.1 Not all relevant factors are investigated during the claims process

Our research has found that the DWP fails to ask all the relevant questions during the claim process in order to ensure that all claimants receive their full legal entitlement of UC. The DWP knows what information is required to determine a claim for UC, and it is the department’s responsibility to ask the right questions to enable claimants to provide such information. The House of Lords observed that, given the enormous complexity of the rules governing benefit entitlement: *‘The general public cannot be expected to understand these complexities. Claimants should not be denied their entitlements simply because they do not understand them.’*⁵⁰ The House of Lords held that: *‘the system places the burden upon the department of asking the right questions and upon the claimant of answering them as best he can.’* Lady Hale described the system as *‘a co-operative process of investigation in which both the claimant and the department play their part. The department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met. The claimant is the one who generally speaking can and must supply that information.’*⁵¹ But when a decision maker does not take reasonable steps to investigate all the facts before making a decision because it has not ‘asked the questions it needs to ask’, the resulting decision can be wrong. This is a breach of the rule of law principles of procedural fairness and arguably a failure of the duty to make reasonable enquiries (known as the *Tameside* duty).⁵² Any incorrect decisions caused by an inadequate investigation can likely be revised at any time on the grounds of ‘official error’.

Secretary of State for Education and Science v Tameside MBC [1976] UKHL 6

paragraph 18 ‘... the question for the Court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?’

One example of information not gathered as part of the claim process is whether claimants meet any of the exemptions from the shared accommodation rate of the local housing allowance (LHA) for private renters. The general rule is that single claimants under 35 years old without children are only entitled to the lower shared accommodation rate of LHA rather than the higher one-bedroom rate when calculating the housing costs element of UC. However, there are a number of exceptions to this rule, including claimants with certain rates of disability benefits, care leavers between the ages of 18 and 25, and claimants who have lived in homeless accommodation

⁵⁰ *Kerr v Department for Social Development NI* [2004] UKHL 23, para 56, available at publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm

⁵¹ *Kerr v Department for Social Development NI* [2004] UKHL 23, para 62

⁵² *Secretary of State for Education and Science v Tameside MBC* [1976] UKHL 6, available at bailii.org/uk/cases/UKHL/1976/6.html

for three months or more while receiving specific support.⁵³ Despite these exemptions, claimants are not asked whether they meet any of these conditions during the claims process.

The DWP has confirmed that DWP agents have an internal manual process for identifying exemptions to the shared accommodation rate. The private rented sector housing to-do provides a list of the exemptions to the shared accommodation rate, which UC agents complete to verify housing costs. The agent, in completing the to-do, will state if they are exempt from the shared accommodation rate by answering the question “is the claimant exempt”. The exemption is not automatically applied. Claimants need to self-identify that they meet the eligibility for the shared accommodation rate as there is no distinct gather of this information.⁵⁴

The DWP expects claimants to understand the complexities of the regulations and self-identify as having the specific circumstances and characteristics that exempt them from the shared accommodation rate without prompting. Furthermore, the DWP already holds information on whether the claimant would be exempt from the shared accommodation rate due to their receipt of certain rates of disability benefits, but they have failed to automate this aspect of the award calculation.

As demonstrated by the cases below, the consequence of not asking all of the relevant questions, and a failure to automate the exemptions where possible, is that claimants can miss out on their correct legal entitlement.

Rightsnet thread 16972: housing costs paid at wrong rate – January 2021⁵⁵

‘My client is under 35 and is on the daily living component of PIP. UC incorrectly paid his housing costs at the shared accommodation rate instead of the one-bedroom rate. This was corrected when we contacted UC, but the case manager said that the client would have to put a note on his journal every month to prompt UC staff to manually correct his claim. This is not realistic for a client who struggles with day-to-day life.’

Early Warning System: incorrect local housing allowance rate – June 2021

‘My client is a single 29-year-old woman living in private accommodation provided by the council. She was previously staying in homeless accommodation with support before she was rehoused. She only receives the shared accommodation rate of the LHA instead of the one-bedroom rate and she now has arrears of over £2,000. I requested a mandatory reconsideration over a month ago but have had no response.’

Even if claimants self-identify as having entitlement to a higher rate of housing costs, they can only highlight this to the DWP once the incorrect decision has already been made, meaning this group does not get their correct entitlement from the beginning of their award as a matter of course. The examples below demonstrate that claimants can even struggle to establish their full legal entitlement after identifying an error, usually after receiving advice. Claimants can face gatekeeping from DWP officials who misunderstand the shared

⁵³ Sch 4 para 29 Universal Credit Regulations 2013 No.376 (‘UC Regulations 2013’). ‘Disability benefits’ in this research refers to disability living allowance, child disability payment, personal independence payment, adult disability payment and attendance allowance. Claimants currently need to self-identify for shared room rate exemptions for victims of domestic violence and modern slavery, but the DWP indicated that prompts may be added to the system in October 2023 when the IT system is updated – see the Social Security Advisory Committee minutes, 22 June 2022, available at [gov.uk/government/publications/social-security-advisory-committee-minutes-of-meetings](https://www.gov.uk/government/publications/social-security-advisory-committee-minutes-of-meetings).

⁵⁴ Email from DWP to CPAG, 4 April 2023

⁵⁵ Rightsnet thread 16972, available at rightsnet.org.uk/forums/viewthread/16972

accommodation rate rules and fail to treat their request appropriately as an application for a mandatory reconsideration (a request for a decision to be changed by a revision with full retrospective effect). (See Chapter 4 – ‘Disputes’ for more information on the mandatory reconsideration process and evidence of gatekeeping).

Charlie (adviser) – February 2022

‘We raised it with the policy team at the DWP because we were concerned that people were being expected to self-identify as meeting an exception to the shared accommodation rate, and because of the nature of those exceptions, they’re very vulnerable people and they’re very hard to pick out... if you’ve spent three months in a hostel at some point in your past, that’s not necessarily something which you’re going to go and announce... and expect it to result in a change to your benefit...

... There are regularly cases we get where people are getting shared accommodation rate and they’re on PIP... recently a colleague of mine said to the bloke... “That’s not correct... put something on your journal to say ‘can you pay me the one-bed rate?’”... they said, “We are paying you the one-bed rate,” and he said, “No, you’re not,” then they said, “All claimants who are single and under 35 will be paid the shared accommodation rate,” ... my colleague went back a bit more forcefully, and suddenly, they changed their minds... we do regularly get cases where exemptions to the shared accommodation rate aren’t picked up on.

... People aren’t necessarily going to be capable of asserting themselves as saying, “Yes, this does apply to me.” Part of the issue is that often times, when you go on your journal and you say, “I believe I’m entitled to this. Please could you sort it out,” you just get fobbed off.’

Early Warning System: under 35 and one-bed rate of local housing allowance – August 2021

‘I have a client who has been in a B&B from the start of January who then moved in to supported temporary accommodation for those who are experiencing homelessness for 3+ months. He has now moved into his own private rented one-bed property. I am aware that legislation has changed for under 35s; if you have been in homeless hostels for three months or longer, then you are able to claim the one-bedroom rate. I am now trying to liaise with DWP but currently they are refusing and only awarding the shared accommodation rate.’

Similarly, there are a limited number of circumstances when claimants are entitled to an additional bedroom when calculating the number of bedrooms allowed according to the size criteria for LHA (for private renters) and the ‘bedroom tax’ (for social renters).⁵⁶

An additional bedroom is allowed if the claimant or their partner have adopted, fostered or become kinship carers for a child; if the claimant or child is in receipt of certain disability benefits and cannot share a bedroom because of their disability; or if the claimant or a child in receipt of certain disability benefits requires an overnight carer.

The DWP has confirmed that the system only recognises the potential requirement for an additional bedroom if claimants declare in the claim form that they have a child with disability benefits, they have a spare room, and they live in social rented accommodation, in which case the digital UC system automatically presents them with a

⁵⁶ Sch 4 para 12 UC Regulations 2013. Under the bedroom size criteria, a household is entitled to one bedroom each for an adult couple, a single person aged 16 or over, two children of the same sex under 16, two children regardless of sex under 10, and any other child under 16.

‘to-do’ (page requiring action) once the claim is submitted asking whether they require an additional bedroom.⁵⁷ Currently, all claimants in private rented housing and adults with disability benefits in the social rented sector are not presented with a to-do asking them if they require an additional bedroom. Instead, they are expected to self-identify as requiring an additional bedroom because the digital claim form does not collect sufficient information to identify the potential need, including the failure to ask all claimants if they are in receipt of any disability benefits. The DWP has stated that it will update the system so that it asks questions which elicit information to enable the automatic identification of all claimants who might be entitled to an extra bedroom at some point in the future.⁵⁸

When the DWP knows the complex rules of entitlement and claimants do not, not asking for all of the information required to calculate an award of UC correctly does not provide claimants with a fair opportunity to establish their entitlement. This is a breach of the rule of law principle of procedural fairness. The DWP may want to limit the number of irrelevant questions asked to all claimants in the claim form, but they must at least ask the minimum number of questions required in order to identify whether follow-up questions are necessary once the claim has been submitted. When considered in another way, exemptions from the standard UC rules are created for certain groups of people requiring different treatment. For example, many exemptions are for people with disabilities, those escaping domestic violence, and care leavers. If the DWP does not ask claimants whether they meet any of the exemptions, it is only the specific classes of people who could potentially benefit from the exemptions that will be negatively affected. People with disabilities (for example) must identify their entitlement to an exemption and request a mandatory reconsideration or appeal to receive their full legal entitlement or risk missing out altogether. By failing to ask the relevant questions, the UC system systematically discriminates against precisely the groups of people who require exemptions in the first place.

See the following section for another question the DWP does not ask during the claims process.

1.4.2 Claimants are not asked if they want a ‘backdate’ during the claims process

What the law says

Under UC, there are a limited number of circumstances where a claim can be ‘backdated’ by up to a maximum of one month if the claimant ‘could not reasonably be expected to make the claim earlier’ for reasons including having a disability or a system failure.⁵⁹ For joint claimants, it is insufficient if only one member of the couple satisfies any of the conditions listed. These provisions are significantly stricter than legacy benefits, with income-related ESA having a three-month possible backdate without any special reasons and income support (IS) and income-based jobseeker’s allowance (JSA) allowing a three-month backdate if certain conditions are met.⁶⁰

The UC digital claim form does not ask claimants what date they want to claim from; therefore, there is no opportunity for claimants to declare whether they want a backdate or not, as there are no free text boxes. Instead, claimants must self-identify as wanting to claim from an earlier date via journal message or telephone once the claim is submitted, without the DWP prompting them. If a claimant meets one of the limited conditions for a backdate, and asks for one in the month before a decision on the claim is made, the DWP can amend the

⁵⁷ Email from DWP to CPAG, 21 March 2022. Confirmed in email from DWP to CPAG, 4 April 2023.

⁵⁸ Email from DWP to CPAG, 21 March 2022. Confirmed in email from DWP to CPAG, 4 April 2023.

⁵⁹ Although the language of backdating is commonly used and understood by the DWP and claimants, reg 26 of the Claims and Payments Regulations 2013 actually provides for an extension of the time for claiming forwards from the first day of entitlement rather than ‘backdating’ it. If a claimant wanted to claim universal credit on 1 January but only claimed on 30 January, there could be an extension forward from 1 January to submit the claim late on the 30th.

⁶⁰ Housing benefit could be backdated for six months until 2016, and is currently one month with good cause or from the earlier start of an ESA claim if claimed together; reg 19 and Sch 4 para 16 Social Security (Claims and Payments) Regulations 1987 No.1968.

claim with the earlier start date.⁶¹ The situation is more complicated if a claimant asks for a backdate after the claim has already been decided.

The DWP took the legal position that if a claimant had not requested a backdate by the time it decided the claim, it was not possible for the claimant to ask for a backdate at a later date by requesting a mandatory reconsideration (a request for a revision to correct the decision).⁶² The DWP argued that stating the intended start date for the award was a necessary part of the claim itself, despite the fact that there was no opportunity to do so on the electronic form. Therefore, the DWP argued, requests for a revision of the start date had to fail because the earlier start date had not been part of the original claim and could not be added after the claim had been decided. That interpretation of the law was rejected by a three-judge panel of the Upper Tribunal in *AM v SSWP (UC)* [2022] UKUT 242 (AAC).

AM was a young man with autism whose parents asked, after AM's UC claim had already been decided, to have the UC award backdated one month to when the child tax credit award ended. AM (represented by CPAG) argued that whether a claimant meets the conditions for a backdate is one of the determinations a decision maker must make when deciding a claim for UC, rather than a required part of the claim itself.⁶³ The Upper Tribunal held that if the decision maker fails to investigate whether a claimant is entitled to a backdate, because the UC claim form does not ask the question, the claimant is entitled to request a revision to request a backdate.⁶⁴ At the time of writing, the Court of Appeal had granted permission for the DWP to appeal the judgment.⁶⁵

What the guidance says

The DWP has published guidance on applying the judgment of the Upper Tribunal in *AM v SSWP*.⁶⁶ The guidance now acknowledges that an earlier start date can be requested by applying for a revision. However, it still does not inform decision makers they should establish when a claimant wishes their claim to start from in every case.

What happens in practice

Before the decision in *AM v SSWP*, the DWP refused all requests for backdating received after claims had been decided, regardless of whether the claimant met one of the conditions for a backdate.⁶⁷ The fact that a claimant was not asked what period they intended to claim for during the claims process, and it then took a month for claims to be decided, meant that many claimants did not realise they might be eligible for a backdate until it was 'too late' to ask for one.⁶⁸ The cases from the Early Warning System and interview extracts below illustrate the variety of reasons and situations why claimants may delay claiming UC and be unable to ask for a backdate until after the DWP has already decided their claim.

⁶¹ Reg 30 Claims and Payments Regulations 2013

⁶² A mandatory reconsideration is when a claimant asks the DWP if it can correct a decision via a revision. A revision is a way of changing a decision with full retrospective effect if there was an error in fact or law. A mandatory reconsideration must be carried out before a decision can be appealed in front of an independent tribunal. A claimant then appeals the decision 'as revised' or 'as originally made' depending on the outcome of the mandatory reconsideration. Revisions are covered in detail in Chapter 4 – 'Disputes'.

⁶³ CPAG instructed Garden Court North Chambers. Determinations are the individual 'building blocks' which form a decision.

⁶⁴ *AM v SSWP (UC)* [2022] UKUT 242 (AAC), para 57, available at [gov.uk/administrative-appeals-tribunal-decisions/am-v-secretary-of-state-for-work-and-pensions-uc-2022-ukut-242-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/am-v-secretary-of-state-for-work-and-pensions-uc-2022-ukut-242-aac)

⁶⁵ See CPAG's test case page for up-to-date information, available at cpag.org.uk/welfare-rights/resources/test-case/no-requirement-request-backdating-claim-universal-credit

⁶⁶ ADM Memo 3/23, available at

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138543/adm-memo-03-23-claiming-uc-for-a-past-period-effect-of-upper-tribunal-decision.pdf

⁶⁷ The requests for backdating were treated as requests for mandatory reconsiderations, which were refused.

⁶⁸ See askcpag.org.uk/content/207219/too-late-for-a-backdate

Early Warning System: Refusal of backdate after bereavement and Covid – July 2021

'My client's husband passed away at the end of November from Covid. He was the one responsible for their benefits. My client and her three children were all required to self-isolate because of Covid and she was also seriously unwell due to cancer treatment at the same time. She claimed UC on the 20th December, it was awarded on the 20th January and then on the 1st February she requested it was backdated by three weeks to the end of November. The request was refused by the case manager because she failed to meet the criteria for a backdate. The MR [mandatory reconsideration] decision notice stated that it is irrelevant whether the criteria for backdating are met or not because it is not possible to add earlier dates to a claim via a revision.'

Early Warning System: disabled client and refusal of backdate – September 2021

'Our tenant was in receipt of ESA and HB [housing benefit] previously and just moved LA [local authority] area via a mutual exchange of properties. He asked for help with his benefits as he has disabilities and can't use a computer but our early intervention officer was on annual leave so it was missed. His housing officer helped him make a UC claim three weeks later but no backdate request was submitted. The backdate was then submitted explaining it was our fault for the delay but it has been refused as the request was made one day after the claim was decided. The tenant is very angry that he now has rent arrears.'

Early Warning System: refusal of a backdate despite a brain tumour – March 2022

'My client has a brain tumour which affects his functional ability. We requested backdating of UC for a month but he has been told it is too late to request it. We requested a mandatory reconsideration but the DWP have not changed their decision.'

After the decision in *AM v SSWP*, a claimant can have their request for a backdate considered after the DWP has decided their claim, which is a significant development. However, it still only helps claimants that manage to discover the potential for a backdate, possibly after seeking advice. There continues to be no place during the claims process where all claimants are asked if they meet the conditions for a backdate upfront as standard, as described by the advisers below.

Charlie (adviser) – February 2022

'There's no option to identify yourself as wanting backdating... it doesn't ask you on the claim form when are you actually claiming for, which would have been one of the questions you would have been asked on legacy benefit claims. So, if you want your claim backdated, you're going to have to (a) figure out that that's even possible and (b)... in a freeform way, identify yourself as requesting it...'

Rowan (adviser) – February 2022

‘There is nowhere where it asks you whether you want to backdate... that is an issue that you wouldn’t get with any other benefit claim. It says: “When do you want the claim to start?” It’s a really simple thing that they could have in there...’

By not asking claimants about backdating, the DWP consistently fails to gather all the information necessary to ensure correct decisions are made. A lack of transparency means that many claimants are unaware that backdating is even possible. The majority of claimants who may be eligible for a backdate are those with health conditions or disabilities, meaning these are the groups of people who do not receive the correct decision unless they find out about the possibility of backdating, work out how to request a backdate, and follow the additional steps to secure their full entitlement. The right to request a backdate by requesting a revision, which *AM v SSWP* established, does not remedy the procedural unfairness that prevents all claimants from receiving a decision with the correct start date when it is first made. This approach means that, out of all of those entitled to backdating, only those who understand they can ask for it by requesting a mandatory reconsideration (despite having no prompt to do so) will receive their correct entitlement.

1.4.3 Questions cannot be left blank and defective claims are ‘almost impossible’**What the law says**

The UC Regulations make provisions for a ‘defective claim’ if a claimant does not complete a digital or telephone UC claim properly.⁶⁹ Claimants are entitled to a month or longer to correct any defects while their original claim date is protected. In *GDC v SSWP*, GDC (represented by CPAG) argued that when a claimant clicks ‘make claim’ or ‘start claim’ but does not submit it in one session and logs off (eg, because they cannot answer a particular question), they should be considered as having made a defective claim. The defective claim could then be completed within one month.⁷⁰ The Upper Tribunal dismissed this appeal and decided that no claim at all, defective or otherwise, is made until the ‘submit claim’ button has been clicked.

GDC v SSWP (UC) [2020] UKUT 108 (AAC)

paragraph 89... ‘Ms Fannon, in her witness statement, made the point that the digital nature of the universal credit scheme makes a defective claim unlikely as: (i) the claimant cannot submit a claim without completing all relevant fields; and (ii) the online form uses no free text boxes, with the sole exceptions of those for the person’s name, address and health conditions. Therefore, as Ms Apps put it, the design of the online form itself minimises the scope for error; thus, the defective claim concept “can more readily assist applicants in the context of a form which is capable of being submitted while having been partially completed. However, it will rarely be of assistance where the form does not permit itself to navigate the claimant to the submission page if they have not filled in the necessary information”... This doubtless accounts for the DWP’s statement to the Social Security Advisory Committee [SSAC] that it was “almost impossible to make a defective claim on Universal Credit”.’ [See SSAC Response to DWP: Universal Credit (Managed Migration) Regulations 2018, 13 December 2018]⁷¹

⁶⁹ Reg 8 Claims and Payments Regulations 2013

⁷⁰ *GDC v SSWP (UC) [2020] UKUT 108 (AAC)*, reported as [2020] AACR 24, para 42, available at [gov.uk/administrative-appeals-tribunal-decisions/gdc-v-sswp-uc-2020-ukut-108-aac](https://www.gov.uk/administrative-appeals-tribunal-decisions/gdc-v-sswp-uc-2020-ukut-108-aac): The text was changed from ‘make’ to ‘start’ in December 2019 after DWP user research ‘recommended that the distinction between account creation and making a claim was clarified, as not all users appreciated the difference’.

⁷¹ Social Security Advisory Committee response to DWP: Universal Credit (Managed Migration) Regulations 2018, 13 December 2018, available at [gov.uk/government/publications/universal-credit-managed-migration-regulations-2018-ssac-correspondence/ssac-response-to-dwp-universal-credit-managed-migration-regulations-2018](https://www.gov.uk/government/publications/universal-credit-managed-migration-regulations-2018-ssac-correspondence/ssac-response-to-dwp-universal-credit-managed-migration-regulations-2018)

What happens in practice

The DWP has designed the UC digital claim form to prevent a claimant from leaving a question blank if they cannot answer or provide the required information. This makes it *'almost impossible'* for a defective claim to be made that can be completed later while protecting the initial claim date.⁷² By comparison, legacy benefit claimants could submit paper claim forms with questions unanswered, either by mistake or lack of information, and as long as they corrected the defects within the appropriate time, their award would start from the date they submitted their initial application.⁷³ Difficulty answering the claim questions is not one of the limited circumstances in which claimants are able to get their UC claim backdated by up to a month.⁷⁴

This creates a situation where a claimant is asked a question to which they do not know the answer, any delay in providing the answer leads to a loss of entitlement as the claim cannot be made immediately, and there is no explanation of what to do in this situation.⁷⁵ For example, research interviewees described situations when they struggled to apply particular claim questions to their individual circumstances.

Cleo (claimant) – November 2021

'Do you have this? Yes or no... There isn't a space to say anything about it, and then be able to move on... People's lives aren't yes or no, there are lots of grey areas... It needs to open up for human beings rather than "yes" and "no" ... Even if you want to say something, you can't, because you can't move onto the next page, because the computer actually says: "No."'

Chloe (claimant) – October 2022

*'Answering the questions, like the ones about income and various things like that, I would imagine that, had I been working a regular job, I would have found it very, very easy. But in the event that you do not fit into the boxes, it was chaos. I f***ed it up the first time and I had to do it again because they told me I'd put stuff in the wrong place... I don't fit into any of the boxes that they'd given you, because you're not meant to be a student and applying for universal credit. So, it does not work.'* [**Note:** Those 'receiving education' cannot usually receive UC unless they meet one of the exemptions, such as having a child.]

Our research has found that one of the questions that claimants can struggle to answer is the provision of bank account details.⁷⁶ Advisers described claimants who delayed claiming while they set up a new bank account, a particular problem for those recently granted immigration status or without a fixed address.

⁷² Reg 8 Claims and Payments Regulations 2013; *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 89

⁷³ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 89

⁷⁴ Reg 26 Claims and Payments Regulations 2013

⁷⁵ For a similar point made about the bereavement benefits application form, see House of Commons Work and Pensions Committee, *Support for the Bereaved*, HC 551, 2016, paras 46 and 49, available at publications.parliament.uk/pa/cm201516/cmselect/cmworpen/551/55102.htm

⁷⁶ Although not explored in this report, advisers and claimants interviewed for this research also described difficulties answering the questions on work and earnings, housing costs, council tax, health and childcare costs.

Finley (adviser) – November 2021

'Bank details. Oh God, it's a nightmare if someone hasn't got a bank account... if we've got a homeless person... That's a massive issue. The DWP have to really, really think about like maybe just a box where you tick where you do the [Payment Exception Service] ... There should be something on there where, "If you haven't got a bank account, tick this box.'"

Early Warning System: claimant without a bank account delayed claiming UC – April 2022

'My client is Ukrainian. She followed the advice on gov.uk which said a bank account was necessary to claim UC so she didn't complete her UC claim until she had opened a bank account nine days after she arrived in the UK. There was nowhere which told her that someone else's bank account details could be used as a placeholder.'

Henry (adviser) – October 2021

'There can be issues with people who are recently granted [immigration] status who don't have bank accounts yet. It delays them claiming universal credit sometimes... You should be able to make a claim without the account details and then contact after, otherwise it delays the process. Especially when it takes a long time to get through, to call.'

Claimants cannot complete a UC claim without inputting bank details, which are cross-referenced with the external Bank Wizard IT system to ensure that the account numbers and sort codes match the same bank. The system tells claimants that the details are invalid if they do not match. It is technically possible to progress a claim using generic bank details after three failed attempts, but this information is not communicated to claimants on the claim form itself or published elsewhere.⁷⁷ Claimants are advised to contact the helpline if they 'cannot get any sort of account'. If they call, the DWP should tell claimants to use a friend or family member's bank account for the first payment or the Payment Exception Service, which allows them to collect their benefit from the Post Office or a PayPoint with a card or a voucher code.⁷⁸ However, this additional administrative hurdle in the claim process and the call waiting times to contact the DWP are a barrier for some claimants, which may result in them being unable to complete their claim on the day they start it, which results in a loss of entitlement during the delay.

The law does not require people to have a bank account as a substantive condition of entitlement for UC. The provision of bank details only relates to how the DWP will pay the claimant if entitlement is established. Previously, a legacy benefit claimant could have completed a paper claim form and left this section blank if they did not have bank account details. DWP guidance accepted that such a failure would not have rendered a claim for legacy benefits (such as IS) invalid.⁷⁹

Under UC, the digital claim form requires bank account details to be entered in order to complete the claim. This is highly questionable from a rule of law perspective. As a result of the way the UC online claim process has been designed, there is a barrier to claimants accessing their procedural right to establish entitlement to UC. We would

⁷⁷ para 41 of the DWP witness evidence in *GDC v SSWP (UC)* [2020] UKUT 108 (AAC)

⁷⁸ citizensadvice.org.uk/benefits/universal-credit/claiming/applying-for-universal-credit; gov.uk/payment-exception-service

⁷⁹ R(IS) 6/04 and Vol 1 para 02082 DMG

argue that the inability to progress the digital claim without bank details has the practical effect of artificially elevating having a bank account to a condition of entitlement, despite there being no legal basis for this requirement. Even though the DWP has designed the system to allow claimants to enter generic bank details after three attempts, there is no transparency with claimants about this technicality. Again, even though claimants are told they can phone the DWP if they do not have a bank account, the additional administrative hurdle to finding out how to progress the claim without a bank account, and the potential for delays in submitting a claim and lost entitlement while this happens, is procedurally unfair.

In many cases, the reason someone does not have a bank account will be because of other vulnerabilities (homelessness, cognitive difficulties that make dealing with financial issues difficult, previous financial control by a former abusive partner, etc). Such persons are likely to be in particular need of the support that UC would provide. Therefore, the failure to adhere to the rule of law in this area is particularly concerning as it has the potential to disproportionately affect people with protected characteristics.

1.4.4 Delays in submitting claims and incomplete claims

Between March 2022 and February 2023, two in 10 claimants missed out on at least one day of benefit entitlement due to the length of time it took to reach the end of the claims process, with 5 per cent losing between two and four days, 6 per cent losing between five and 14 days and 4 per cent losing 15 days or more.⁸⁰ For some claimants, a possible explanation for this delay might be that a ‘*UC claimant does not have a clear picture from the outset of how much data will need to be entered across all the fields*’, as was raised by the Upper Tribunal in *GDC v SSWP (UC)* [2020] UKUT 108 (AAC).⁸¹ The submit button is not revealed to claimants until they have completed all the questions, confirmed their answers, and agreed to the legal declaration. By comparison, claimants completing paper benefit claim forms can see each question and action required before they start their claim, and which information remains outstanding. It is also possible to design digital forms which make it more obvious what stage a person is at and how much they have left to complete.

Sandy (claimant’s friend) – November 2022

‘There is lack of instructions and visibility when the questions are done and you don’t know how the application is going to end. When you can see a [paper] form, you know at what point it will be over.’

The interview participants quoted below describe how they missed out on two weeks’ worth of UC entitlement due to their mistaken understanding that they had completed the claim process when they had not yet reached the ‘submit claim’ button at the end of the digital claim form.

Gemma (claimant) – November 2021

‘I was still, well still am, in quite an emotional state. When I applied, I thought I completed all the application form, and I didn’t. But I didn’t hear anything from universal credit, UC, so I went back to my claim, most probably two or three weeks later to find out that I had not pressed the finish button... I didn’t realise. I kicked myself... it was only maybe one or two bits...’

⁸⁰ FOI2023/36483, available from [whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381](https://www.whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381)

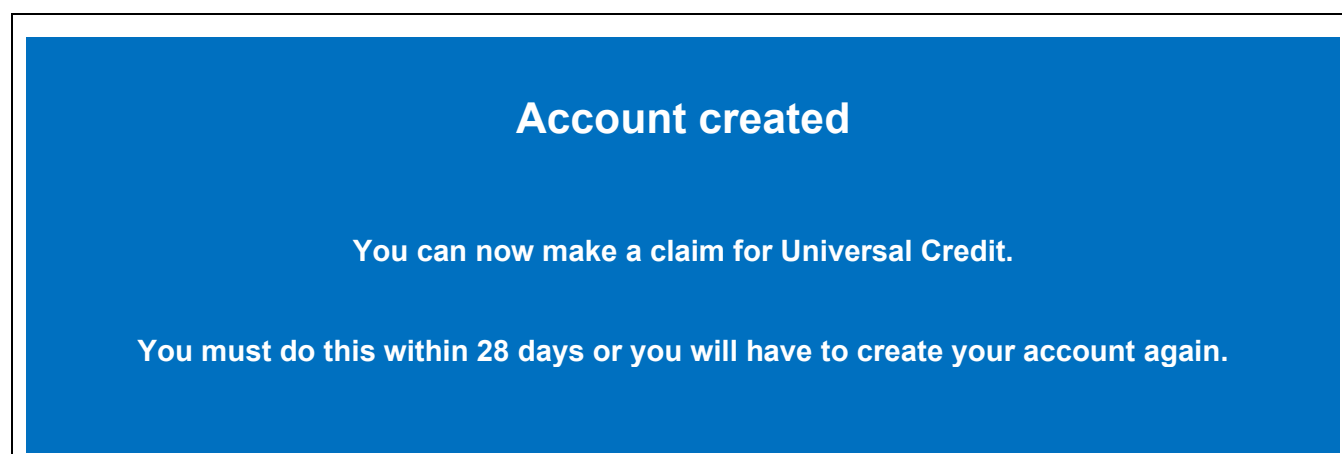
⁸¹ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), footnote 11

Elena (adviser) – November 2021

'About 18 months ago I put in a claim for universal credit for myself and didn't get anything... I thought I had completed it all and had submitted it. It was about two weeks later I realised I hadn't actually done it...'

People often claim benefits at a time of personal crisis – job loss, relationship breakdown or illness. It is, therefore, unsurprising that many people take longer than a day to finalise their claim for UC. However, claimants are not advised during the claims process that their award will not start until their claim has been submitted. Once a claimant has created an account, the system warns them they must complete the claim within 28 days, or they will need to create a new account, but it does not say that any delay in submitting a claim will cause a loss of entitlement.

Figure 11: CPAG mock-up of 'Account creation page without warning that entitlement will not start until claim is submitted'



Even more concerningly, in the year ending February 2023, approximately one-third of the 2.9 million registrations for UC did not result in a UC claim being submitted at all.⁸² In *GDC v SSWP*, the Upper Tribunal picked up on a point raised by the Social Security Advisory Committee that there is a lack of empirical evidence on why people fail to complete the claims process but *'it is difficult to escape the conclusion that a significant proportion of these non-claimants will be vulnerable individuals who lack access to computing facilities and/or lack familiarity with using online systems'*.⁸³ The DWP did commission research into how introducing two-factor authentication for claimants between confirming their email address and providing their address details would affect how many, and at what point, claimants dropped out of the claims process.⁸⁴ When we requested the most recent statistics on the number of claimants who abandoned their claims and the different stages they dropped out via a freedom of information (FOI) request, the DWP responded that the two-factor authentication research had been a distinct piece of work and regular reporting on abandoned claims had not been commissioned.⁸⁵

⁸² 66 per cent completed the declaration from FOI2023/36483, available from whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381

⁸³ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 15

⁸⁴ FOI2020/76641, available at whatdotheyknow.com/request/ab_testing_results_from_universa

⁸⁵ FOI2022/14091, available at cpag.org.uk/sites/default/files/files/policypost/FOI2022_14091_when_claimants_drop_out.pdf

Our research identifies aspects of the digital claim process that claimants can struggle with, such as the requirement to input bank details, as already explored, which might lead to some claimants delaying or abandoning the claim process altogether. Without sufficient research into where and why claimants delay or abandon their claims, it is impossible to rule out that these challenging aspects of the digital claim form may disproportionately frustrate certain groups in their attempts to establish entitlement to UC, resulting in discrimination, which would be a breach of the principles of lawfulness. For although there is a method for claiming UC by telephone, our research has found it is not a reliably effective alternative to claiming online (as explored later in this section 1.5 of this chapter).

1.4.5 The universal credit system can't accept advance claims

What the law says

The regulations provide for advance claims of up to a month for specified groups of claimants and for any other case where the Secretary of State is willing to do so, enabling these claimants to submit their claim up to a month before they expect to become eligible for UC.⁸⁶ The regulations themselves do not specify exactly which groups.

What the guidance says

Advice for Decision Making (ADM) guidance states advance claims are 'restricted to certain prisoners and care leavers where the claim is made one month before the claimant's 18th birthday.'⁸⁷ Care leavers approaching the age of 18 and prisoners expecting release are two groups that cannot currently access benefits (while the local authority or prison provides for them), but at a known point in time this provision will be removed, and there is a risk of a gap in support while they adjust (or readjust) to living independently. This combination of legislation and guidance enables these claimants to make a claim while support structures are in place.

The *Spotlight on: care leavers* guidance (operational guidance for DWP staff) then contradicts the *ADM* guidance by stating the claim cannot be submitted until a claimant's 18th birthday.⁸⁸ Instead, claimants can do 'advanced claim preparation' up to 28 days before and including their 18th birthday.⁸⁹ Similarly, government guidance states: 'A claim to UC cannot be made in advance of a prisoner's release, however it is possible to start getting all the documentation and information needed to make a UC claim... The prison leaver should make the online claim immediately or as soon as possible after their release as claims will not be backdated.'⁹⁰

What happens in practice

The DWP has not programmed the UC digital system to accept advance claims, and our research found evidence of the DWP refusing UC claims from care leavers who submit them in the month before their 18th birthday. This results in care leavers missing out on their entitlement to UC, as it is often impossible to schedule a social work visit on the exact day of a person's 18th birthday to submit their claim (eg, if on a bank holiday), and care leavers might be understandably reluctant to spend their birthday submitting a benefit claim.

⁸⁶ Reg 32 Claims and Payments Regulations 2013.

⁸⁷ ADM, Ch A2: 'Claims', p18. This guidance fetters the discretion in the regulations to allow advance claims from other cases of claimants where the Secretary of State is willing to do so. Fettering discretion is a ground for judicial review when a government body adopts an overly rigid policy that prevents a 'true and proper exercise of the discretion conferred by parliament'.

⁸⁸ *Spotlight on: care leavers*, accessed via FOI2023 19942, available at cpag.org.uk/sites/default/files/files/policypost/Spotlight_on_Care_leavers_FOI2023_19442.pdf

⁸⁹ The system automatically deletes any information after 28 days.

⁹⁰ DWP, *Supporting Prison Leavers: a guide to universal credit*, available at gov.uk/government/publications/universal-credit-and-prison-leavers/supporting-prison-leavers-a-guide-to-universal-credit

Early Warning System: care leavers and advance claims – January 2020

'I work specifically with children in care and care leavers (this does include those in prison). I want clarification on whether the claim can be submitted up to a month before the date or whether we can do the claims and interviews/ID/claimant commitment etc in advance but then have to submit on the 18th birthday or as close as possible afterwards. Some of our young people have birthdays on the 25 December or 1 January and we cannot support on these days obviously.'

Rightsnet thread [13763#1](#): 17 year old's advance claim refused – February 2021⁹¹

'I have a case at tribunal where a 17 year old submitted their advance claim in the month before their 18th birthday. Their claim was refused and it meant that the new claim wasn't submitted until two weeks after the client's birthday.'

One adviser interviewed described how care leavers could lose weeks of income due to the inability to submit advance claims. Care leavers being unable to make a claim on their 18th birthday is not one of the limited circumstances in which claimants can get their UC claim backdated by up to a month.⁹²

Will (adviser) – October 2021

'What we picked up when universal credit was coming in was that the law allows care leavers to make an advance claim... It doesn't mean you'll get your money earlier... But what it does allow, which is very important for that group of people, is... about four weeks before they turn 18... for the social worker to go out, get their ID together, explain what the process is. You press submit, sit back. They turn 18, do whatever it is any young person's going to do on their 18th birthday. And in five weeks' time the money comes. That's the way it should work...

*But they say you can do something called advanced preparation of a claim, but you can't do an advanced claim... If you press submit it all b***ers up. What we find with our young people is, they quite often don't want to, on the morning of their 18th birthday, go through a claim... it can be two or three weeks sometimes longer before they'll come back to engage with the social worker...'*

Where the law allows the Secretary of State to specify certain classes of case where a claim can be submitted in advance, and the guidance specifies that one such class of case is care leavers, then it is arguably unlawful to fail to provide to this group a mechanism to access the procedural rights they have been granted by parliament through legislation, and by the Minister through guidance. In this context, the consequence of failing to provide a mechanism for advance claims is that vulnerable young people may lose entitlement to UC. This is contrary to the purpose of the power to make advance claims, which is clearly to ensure they receive their full entitlement and provide claimants with some financial certainty.

When the inability of the UC digital system to accept advance claims was raised in a pre-action protocol letter to the DWP, the Secretary of State responded that the regulations only provide a power to accept advance claims,

⁹¹ Rightsnet thread 13763, available at rightsnet.org.uk/forums/viewthread/13763

⁹² Reg 26 Claims and Payments Regulations 2013

rather than an obligation to do so.⁹³ When considering prisoners, the DWP has stated: ‘*There is a long-term policy objective to allow prisoners to make advance claims to UC before they leave prison, but this requires substantial new digital infrastructure, both in the UC system and within the prison estate.*’⁹⁴ This statement is a misrepresentation of the situation. The right of a prisoner to make an advance claim is not a ‘long-term policy objective’ but an already existing procedural right. Claimants must be granted the mechanism to establish entitlement in advance if the UC system is to comply with the rule of law.⁹⁵

1.5 Telephone claims

What the law says

Regulations provide that ‘a claim for universal credit (UC) may be made by telephone call... if the claim falls within a class of case for which the Secretary of State accepts telephone claims or where, in any other case, the Secretary of State is willing to do so.’⁹⁶

What the guidance says

DWP officials are expected to ‘ask questions to understand a claimant’s circumstances – why they wish to make a claim by phone and whether they have the support available to make a digital claim possible’ and to ‘explain to the claimant the advantages of a digital claim’.⁹⁷ The *Spotlight on: claims by phone* guidance lists when the option should be available to claimants – eg, if they don’t have access to a digital device or internet access to be able to make and maintain a claim online. However, the guidance also makes it clear that any claimant who insists on claiming by phone ‘must be allowed to do so’, regardless of their circumstances.

What the universal credit system looks like and how it works

The guidance states that if a claimant calls the UC helpline to make a claim by telephone, a DWP agent on the national telephony service should set up the UC account before booking an appointment for a call back from the Claim by Phone Team. If the call is from a DWP visiting officer, an appointee or someone acting on behalf of a claimant who cannot claim themselves, a claimant in distress or with complex needs, or a claimant with no phone number to receive a callback, the national telephony agent should complete the claim themselves.⁹⁸ Telephone claimants still have an online UC account on the DWP system, but they do not have online access to it.⁹⁹ The internal DWP guidance *Spotlight on: claims by phone* (reproduced below) states that non-digital claimants should have copies of all notifications added to their journals posted to them.

⁹³ Reg 32 Claims and Payments Regulations 2013; JR23 from cpag.org.uk/welfare-rights/judicial-review/judicial-review-pre-action-letters/claims

⁹⁴ Social Security Advisory Committee minutes, 13 May 2020, available at gov.uk/government/publications/social-security-advisory-committee-minutes-of-meetings-in-2020

⁹⁵ Its existence is provided for by the power to specify classes of cases where claims can be made in advance and the exercise of that power through specifying that prisoners are one such category in *Advice for Decision Making*.

⁹⁶ Reg 8(2) Claims and Payments Regulations 2013

⁹⁷ DWP, *Spotlight on: claims by phone*, accessed via FOI2023 19942, available at cpag.org.uk/sites/default/files/files/policypost/Spotlight_on_Claims_by_phone_FOI2023_19442.pdf

⁹⁸ DWP, *Spotlight on claims by phone*, p5

⁹⁹ DWP, *Spotlight on claims by phone*, p5

Spotlight on: claims by phone

Any notifications or notes must still be entered in the journal as normal, but the agent must also consider what other methods of contact to use. This also applies to claimant to-dos.

All notifications (letters) from the Resources section in Universal Learning added to the claimant's journal must be posted to the claimant...

The monthly award statement must be posted to the claimant. To prompt this action, a 'Print and post statement' to-do will be generated when the statement is produced. This will be located in the 'Payments due' section of the agent dashboard.

What happens in practice

The *Spotlight on: claims by phone* guidance states that if any claimant insists on making a claim by phone 'they must be allowed to do so'. However, the evidence from the Early Warning System and Rightsnet demonstrates that gatekeeping occurs, with some claimants prevented from making phone claims.

Rightsnet thread [17378](#): submitting and maintaining phone claims – June 2021¹⁰⁰

'I have been getting increasingly frustrated and unhappy about UC telephone claims. We (on Help to Claim) have experienced a lot of problems with assisting clients to submit and maintain them. Things came to a head for me this week because it has been nearly impossible to get through to submit a telephone claim. Telephone claims SHOULD be a reasonable disability adjustment but they are not, because (a) difficult to submit, (b) difficult to get through for purposes of ongoing maintenance (waiting times are quite bad), (c) payment statements routinely not sent by post to clients, so it's difficult to gauge if a client is getting correct amount, (d) messages for case managers are taken down by poorly trained staff so there is limited scope to leave a message of a complex nature – unlike if you have a journal. So if your vulnerability, disability or other barriers mean that you have to have a phone claim, you are worse off than those without such barriers, pure and simple.'

Early Warning System – April 2021

'My client has serious learning difficulties and is illiterate. I advised his carer to make a phone claim for him but the DWP refused because he could "write his own name". The call centre worker said someone would phone the client back, but they never got a call. Neither he nor his carer told me and he has missed out on 13 weeks money. I tried to do a phone application too but the helpline refused again, suggesting either I or a social worker should be an appointee instead, which is inappropriate. I explained I have 75+ clients, he doesn't want social work involvement and they are overwhelmed so would delay the claim further. The whole point of a phone helpline is so that you can make a claim by phone because you are unable to use a computer.'

¹⁰⁰ Rightsnet thread 17378, available at rightsnet.org.uk/forums/viewthread/17378

Early Warning System: illiterate client given spelling test – April 2021

'I had a client who is illiterate and I used the DWP's guidelines to insist on a phone claim. They gave him a spelling test! They got him to spell "Stonehaven", which he was able to do because he had an envelope with his address on it. They then asked him to spell "Peter" which he was completely unable to do, so he was permitted to continue.' [NOTE: names and places have been changed].

The guidance states DWP officials should 'ask questions to understand a claimant's circumstances – why they wish to make a claim by phone and whether they have the support available to make a digital claim possible'.¹⁰¹ In response to a freedom of information (FOI) request for 'a copy of the standard script or list of questions that DWP officials read to claimants who call to make a telephone claim for UC', the DWP stated that although they do not have a standard script, they do ask several questions about whether and why an online claim may be more appropriate. The following guidance appears on screen to 'help the agent with the conversation'.¹⁰²

Things to consider

- *Are they getting other benefits?*

Some benefits might stop if they make a claim for universal credit.

- *Are they making the claim on behalf of someone else?*

Check if they are a corporate or personal appointee.

- *Do they have regular access to the internet?*

At home, through friends or family, or somewhere like a local library.

- *Who could help them make an online claim?*

Perhaps friends, family, a support worker or the universal credit helpline.

- *Can they get to a job centre to make a claim?*

They do not need an appointment and can use the computers at the job centre. Expert staff will help them.

Another reason for obstructing phone claims is the callback system. It is inappropriate to organise a callback when claimants have sought help from an adviser and the support will not be available by the time the call is made. Claimants are discouraged from making phone claims by DWP officials, and they do not always have the confidence to insist on a phone claim without the support of an adviser confirming that they have the right to do so. In addition, evidence to the Early Warning System suggests that the DWP's callback system is unreliable, with claimants not receiving the agreed contact within the specified period.

¹⁰¹ DWP, *Spotlight on: claims by phone*

¹⁰² FOI2021/75528, available at cpag.org.uk/sites/default/files/files/policypost/FOI2021_75528_telephone_claims.pdf

Rightsnet thread [17194#20](#): phone claims very hit and miss – April 2021¹⁰³

'[There] is a particular issue with universal credit and the management of phone claims because often (usually) the person you first get through to has to then send a request for someone else to phone the claimant back to address the query. The whole process is really hit and miss – in many cases no callback is made and you're back to square one phoning in, message being taken, etc. Even when callbacks are made the claimants I deal with often struggle to put the issue across fully or to understand properly what they've been told so that they can tell me and I can advise them... and the whole phone situation starts again.'

Two advisers described how the situation had improved somewhat, particularly for Citizens Advice Help to Claim advisers, but they did not know the current situation for claimants attempting to make a phone claim without the support of an adviser.

Natalia (adviser) – November 2021

'Phone claims started off terribly. Really hard to try and persuade UC agents to take phone claims but it's got a lot better. I've not had anyone refuse. First of all, they wouldn't accept them at all. Then we had the whole thing about, "Well, we'll basically set up an account, but then we'll arrange somebody to call the client back to take the details of the claim," which was a nightmare. Because if you've got someone, you managed to get them into the office, they may have mental health issues, or whatever, chaotic lives, you want to do it now. They're not going to come back. Or they haven't got a phone that is reliable and that they will answer. That was probably the worst of all worlds when that happened. But now, pretty much recently every agent has agreed to take the call and take details... using the Help to Claim priority line... If you didn't have that I don't know. Like if you were just Joanna Blogs, if you phoned up the main UC inquiry line and said, "I need to make a phone claim," whether it would be as easy, I doubt it.'

Finley (adviser) – March 2021

'In the early days we had to really assert ourselves and cite the claims and payments legislation. It's got better, but the problem is, with Serco [call handling is outsourced to the private company] it's a hell of a barrier. I hesitate to say it's a gatekeeping, because the Serco staff are not told stuff.'

The non-digital route for claiming UC must be meaningfully available to all who need it. However, this relies on DWP officials following their own guidance and claimants having the capacity to assert their rights when faced with gatekeeping by officials in the manner described above. When combined with the policy of callbacks, phone claimants face procedural unfairness when asserting their procedural right to establish UC entitlement, which can result in claimants (more likely to be those with protected characteristics such as ill health and disabilities) delaying or abandoning the claims process altogether and losing out UC entitlement.

¹⁰³ Rightsnet thread 17194, available at rightsnet.org.uk/forums/viewreply/81643

1.6 Claims chapter conclusions

Rule of law principles have been undermined in the design and implementation of universal credit, but this is not an inevitability of digitalisation

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness during the claims process. These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. The DWP has designed a digital system that cannot accept advance claims, does not ask claimants all the relevant questions during the claims process, and prevents claimants from leaving questions blank if they cannot answer them (which makes it ‘almost impossible’ for claimants to make a defective claim that can be completed later while protecting the initial claim date.) These are all digital design and implementation choices that undermine claimants’ rights. They are also evidence that it is not only the effects of artificial intelligence, or even automated decision making, which should be considered when investigating the impact of digitalisation on claimants and their rights; simple design choices when implementing a digital-by-design benefit can have a significant effect on the extent to which a system complies with rule of law principles.

Claimants entitled to additional elements, exemptions or additions do not receive their full entitlement

Certain groups are often entitled to additional elements, exemptions or exceptions from the standard rules in the legislation, which have been put in place to provide for their particular circumstances. These groups include claimants with health conditions or in receipt of disability benefits, those who have experienced domestic abuse, carers and care leavers, to name a few. Because of the way the universal credit (UC) digital system has been designed, the DWP does not ask claimants the necessary questions to capture whether claimants meet the conditions for these additional elements, exemptions or exceptions in the legislation. Our research identified a failure to ask all claimants if they want to claim from an earlier date (backdating), if they were under 35 and entitled to the one-bedroom rather than the standard shared accommodation rate of local housing allowance (LHA), or if they are in private accommodation and require an additional bedroom due to ill health or disability.

Despite not asking all the relevant questions to calculate entitlement correctly, the DWP makes decisions on entitlement without this missing information. This is a breach of procedural fairness, as claimants have not had a fair opportunity to present their case for entitlement, and a failure of the *Tameside* duty, which requires decision makers to take reasonable steps to investigate all the facts before making a decision.¹⁰⁴

The ‘default claimant’ may receive the correct decision from the outset, whereas claimants entitled to an exemption, exception or addition will first need to discover that additional entitlements exist and that an error has been made in their award decision, which is difficult when transparency is lacking. If the claimant does identify that an additional entitlement exists for their specific circumstances, and they are not receiving it, then they need to challenge a decision in order to secure their full legal entitlement rather than it being accurate from the outset. (See Chapter 2 – ‘Decision making’ for evidence of the failure to automate some of these additional elements, exemptions and exceptions and Chapter 3 – ‘Communicating decisions’ for more information on the lack of transparency about these aspects of UC.)

A gap in knowledge

This research has identified a number of features of the claims process which might explain why claimants either delay or fail to complete the claims process. If the DWP does investigate and monitor the number of claimants and the specific points at which they either delay or drop out of the claims process, then this information should be made public so the DWP can be held accountable for removing the barriers that exist. If the DWP does not carry out such monitoring, then it should start doing so. As the Upper Tribunal observed: *‘It is difficult to escape the*

¹⁰⁴ *Secretary of State for Education and Science v Tameside MBC* [1976] UKHL 6

conclusion that a significant proportion of these non-claimants will be vulnerable individuals who lack access to computing facilities and/or lack familiarity with using online systems.’¹⁰⁵ We need empirical evidence to address the concern that certain features of the claims process may be a barrier to claimants submitting a claim quickly or at all, and that certain groups of claimants may be disproportionately affected. Without such information, it is not possible to know whether the UC claims process discriminates against certain groups, which would be a breach of the lawfulness principle.

1.7 Claims chapter recommendations

Quick fix

- DWP *Digital Design* should change the wording on gov.uk and the universal credit (UC) account creation screen to alert claimants that entitlement will not start until the claim is submitted, which means that any delay in completing the claim may result in lost income.
- DWP *Research* should undertake research into how many people drop out of the claims process, at which points in the claim process, and why. This research should be made public.
- DWP *Digital Design* should amend the payment statement and increase the detail in the payment statement guidance to provide information to claimants about all the possible elements, exemptions and exceptions that exist in the legislation. Ideally, there would be a summary version and an expanded complete version with all the non-relevant aspects of the award calculation greyed out.

Medium-term fix

- DWP *Digital Design* should amend the claims process to ensure all relevant questions for calculating entitlement are asked.
 - DWP *Digital Design* should amend the claims process to ask all claimants if they require backdating or want to claim from an earlier date.
 - DWP *Digital Design* should amend the claims process to ask claimants about circumstances which qualify for an exemption to the limits on help with housing costs for under-35s
 - DWP *Digital Design* should amend the claims process to ask claimants about circumstances which qualify them for an additional bedroom.
- DWP *Digital Design* should introduce a ‘don’t know’ option (or similar) for all claim questions if the information is not required by the legislation, so that claimants are not prevented from making a claim if they do not know or cannot provide some information at the claim stage. Defective claim provisions are then available to protect the claim date if the missing information is provided within the first month or longer if reasonable.
 - Specifically, DWP *Digital Design* should amend the claim form to allow claimants to progress the claim without bank details, without requiring a phone call to the DWP. Our research has found this is a particular barrier to completion for some claimants.
- DWP *Digital Design* should amend the digital claim process to allow for advance claims.
- DWP *Digital Design* should introduce a progress bar for the digital claim process so claimants can see how far through the application they are and what is still required to submit the claim.
- DWP *Digital Design* should amend the claims process to keep all completed questions visible and editable so claimants can go back through and review what they have written.
- DWP *Digital Design* should maintain an up-to-date template version of the digital UC claim that claimants and those supporting them can use to prepare for the questions that will be asked and the information required.

¹⁰⁵ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 15

- DWP *Training* should undertake a review of training and processes relating to phone claims to support DWP officials to more effectively process requests for phone claims and prevent gatekeeping of these claims.

Long-term reform (some recommendations require legislative change)

- The DWP should widen the restrictive backdating criteria to one month with good reason.
 - Specifically:
 - allow time spent completing the claim process as a reason for the month backdate;
 - until the UC system is able to accept advance claims (see recommendation on previous page), expand to those who are not able to make a claim on the first day of entitlement due to the inability to make an advance claim – eg, 18-year-old care leavers.
- The DWP should provide claimants with a predicted UC and transitional protection calculation before they claim so claimants have accurate information to base their decision on. The DWP should be responsible for these calculations, with remedies available if mistakes are made, or claimants are misadvised by DWP, instead of the onus being placed on claimants to seek this information using tools such as independent benefit calculators.
- The DWP should amend the legislation to introduce transitional protection for all claimants who migrate to UC, not just those who are part of managed migration.

Chapter 2: Decision making

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2. Decision making

2.1 Introduction

Like the social security system as a whole, universal credit (UC) is, or at least should be, administered according to a 'decision-based system'.¹⁰⁶ Once a person has applied for UC, the Department for Work and Pensions (DWP) must make a formal and identifiable decision as to whether the claim resulted in an award of benefit or a refusal of the claim. Once an entitlement decision is made to award benefit or refuse the claim, that decision is final unless the DWP changes it by a revision (a correction of the decision with full retrospective effect) or a supersession (a replacement of the decision from a later date, most commonly because circumstances have changed), both of which require a new decision to be made. This decision-based system provides a level of certainty to claimants that if their award is altered, then there will be a new decision that can be identified and challenged if necessary.

This chapter considers the extent to which decision-making processes within UC comply with the rule of law principles of transparency, procedural fairness and lawfulness, from the initial decision on a claim to the ending of a UC award. Many processes for determining eligibility are now digital and, in some places, automated, including calculating awards and gathering employee's earnings information directly from HM Revenue and Customs. However, UC is only a partially digitalised system, and there continue to be many decision-making processes that are fully clerical and completed by DWP officials. Some decisions are taken by DWP officials called 'decision makers' who do not generally interact directly with claimants, but other decisions are taken by 'case managers' (responsible for the general administration of UC, including payments) and 'work coaches' (responsible for a claimant's activities to do with work and finding work), both of which are frontline roles.

This chapter is split into four sections: decisions on claims, calculating awards, changing awards and 'claim closure'. Section 2.2 explores two different reasons the DWP may refuse claims for UC and examples of failures to comply with rule of law principles when making these decisions. Section 2.3 starts with a brief overview of how a UC award is calculated, followed by examples of decision-making and calculation errors for different groups, including employees, people who have migrated from employment and support allowance, students, families with children, and carers. Section 2.4 considers decisions to change an award of UC and introduces the decision-making processes of supersession, suspension and termination. Section 2.5 explores the DWP's concept of 'claim closure' within UC and the multiple reasons why it is so problematic when considered from the perspective of rule of law principles.

2.2 DWP decisions on claims

Conditions of entitlement

In order to qualify for universal credit (UC), a claimant (or joint claimants) must satisfy a number of basic and financial conditions.¹⁰⁷ The basic conditions are that the claimant is over 18 and under pension age, not 'receiving education', is in Great Britain, and has accepted a claimant commitment (although there are exceptions to all of these).¹⁰⁸ The financial conditions are not having savings and capital above £16,000 and having an income below the threshold calculated for a household's particular circumstances.¹⁰⁹

¹⁰⁶ *SS v North East Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 5, available at hbinfo.org/caselaw/2011-ukut-300-aac

¹⁰⁷ s3 Welfare Reform Act 2012

¹⁰⁸ s4 Welfare Reform Act 2012

¹⁰⁹ s5 Welfare Reform Act 2012

The decision about whether conditions of entitlement are met

Once a claim for benefit has been made, the DWP has a legal duty to decide that claim.¹¹⁰ A decision on a claim could be to refuse the claim (because one or more of the conditions of entitlement are not met) or to make an award. In the case of an award being made, the decision will also need to specify the date from which UC is awarded and the amount of entitlement.

In coming to a decision, the decision maker will need to make a finding about each individual condition of entitlement. The finding on each individual aspect in isolation is called a 'determination'. Determinations are the 'building blocks' of decisions, and they are not challengeable until they have been incorporated into a formal decision.¹¹¹

2.2.1 Refused universal credit because of a failure to accept a claimant commitment

What the law says

All of the basic conditions of entitlement for UC are to do with a person's circumstances (such as their age and education status) other than the requirement to have accepted a claimant commitment, which is a procedural requirement. The claimant commitment records what work-related requirements a claimant is expected to do in order to avoid being sanctioned (activities can vary between spending 35 hours per week looking for work and no work-related requirements, depending on individual circumstances) and other general responsibilities, such as reporting changes of circumstances and completing to-dos (pages requiring action).

A claimant must accept their claimant commitment electronically, in writing or by telephone, with the DWP specifying which method is required.¹¹² A claimant must also accept their claimant commitment within a specified period of time, with the length of time left to the discretion of the Secretary of State in the guidance, and with the option of an extension if the claimant asks for a review of their commitments.¹¹³ If accepted in time, the claimant is then treated as though they accepted the claimant commitment on the first day of their claim.¹¹⁴ There are a number of exceptions in which a claimant does not have to meet the basic condition of having accepted a claimant commitment, including if 'there are exceptional circumstances in which it would be unreasonable' to do so.¹¹⁵ A work coach can update a claimant commitment as and when they see fit, and a claimant is only treated as having accepted their claimant commitment if they have accepted the most up-to-date version.¹¹⁶ The contents of the claimant commitment cannot be challenged by revision or appeal; if a claimant wants to dispute the content of their claimant commitment, they must ask for an internal review, make a complaint or use the judicial review process.

What the guidance says

DWP guidance specifies that a claimant must accept an autogenerated claimant commitment 'within seven days' of receiving the electronic prompt in their UC account, and accept a tailored claimant commitment within seven

¹¹⁰ s8(1) Social Security Act 1998

¹¹¹ CIB/2338/2000, para 22

¹¹² Reg 15(4) The Universal Credit Regulations 2013 No.376 ('UC Regulations 2013'), with the Secretary of State required to specify which one will be accepted.

¹¹³ Reg 15(3) UC Regulations 2013

¹¹⁴ Reg 15(1) UC Regulations 2013

¹¹⁵ Reg 16 UC Regulations 2013

¹¹⁶ s14 Welfare Reform Act 2012. Guidance states the DWP should only treat a new claimant commitment as the 'most up-to-date version' once a claimant has been properly notified they must attend an interview, they have attended that interview, and the 'cooling off' period is over. See ADM Ch J1: 'The claimant commitment', para J1036, available at

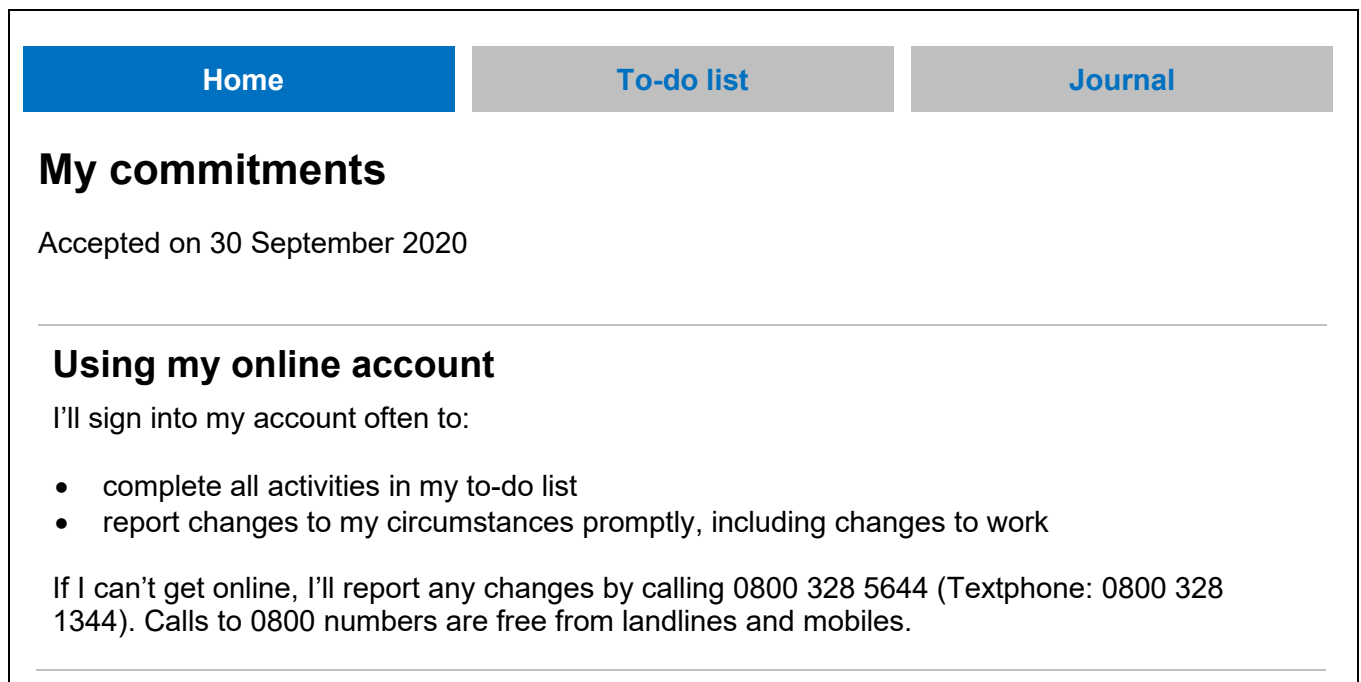
assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109702/admj1.pdf.

days of an initial commitments meeting, which must be booked within one month of submitting a claim.¹¹⁷ The guidance allows for the seven days to be extended if the claimant has complex needs (life events, personal circumstances, health issues or disabilities that could affect a claimant's ability to access and use UC services according to the DWP).¹¹⁸

What the universal credit digital system looks like and how it works

Some claimants with no work-related activities (eg, those caring for a severely disabled person for 35 hours or more a week) are presented with an autogenerated version of the claimant commitment to agree as part of the claims process. Claimants who have work-related requirements will usually be invited to an initial commitments meeting where they are presented with a 'tailored' claimant commitment that should take into account their work background and individual circumstances.¹¹⁹ In both cases, claimants are required to accept the claimant commitment by agreeing a to-do in their online account.¹²⁰

Figure 2A: CPAG mock-up of an automated claimant commitment



Home **To-do list** **Journal**

My commitments

Accepted on 30 September 2020

Using my online account

I'll sign into my account often to:

- complete all activities in my to-do list
- report changes to my circumstances promptly, including changes to work

If I can't get online, I'll report any changes by calling 0800 328 5644 (Textphone: 0800 328 1344). Calls to 0800 numbers are free from landlines and mobiles.

¹¹⁷ Although evidence to the Work and Pensions Committee's report *Benefit Sanctions* (HC 995, 6 November 2018, para 89, available at publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/95502.htm) suggests that tailored claimant commitments are often also 'generic.'

¹¹⁸ *Claim Closure, internal operational guidance, v 19*, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf; *Complex Needs Overview*, UC internal operation guidance, v 18, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039_Complex_needs_overview_V18.0.pdf; regs 15 and 16 UC Regulations 2013

¹¹⁹ ADM Ch J1: 'The claimant commitment', paras J1010-11

¹²⁰ Reg 15(4) UC Regulations 2013. This is the method specified by the Secretary of State.

Figure 2B: CPAG mock-up of a tailored claimant commitment which takes into account a claimant’s work history

<p>My commitments</p> <p>Accepted on 13 March 2022 by</p>	<p>Travel time</p> <p>I can travel up to 90 minutes to work.</p>	<p>Voluntary activities</p> <p>I have not discussed any voluntary activities.</p>
<p>Work I can do</p> <p>Jobs</p> <p>I’ll look for and take any work that I’m able to do including:</p> <ul style="list-style-type: none"> • Nurse <p>I’ll also apply for any jobs recommended by my work coach.</p>	<p>My availability</p> <p>I’m available for job interviews immediately. I’m available to start work immediately.</p>	<p>Hours per week</p> <p>I’ll spend 35 hours a week looking and preparing for work.</p>
<p>Wage</p> <p>I’ll look for work for the minimum wage or more.</p>	<p>Activities</p> <p>What I’ll do</p> <p>I’ve agreed with my work coach that I’ll:</p> <ul style="list-style-type: none"> • I will book relevant training to be able to get back into my previous job as a Nurse. • I will register with local agencies and take up any relevant work. • I will apply directly through the NHS website for any available positions. 	<p>Meetings with my work coach</p> <p>I’ll attend and take part fully in all meetings with my work coach. I’ll tell my work coach immediately if I can’t do this.</p>
<p>Work hours</p> <p>I’ll look for full-time work.</p>		<p>Using my online account</p> <p>I’ll sign into my account often to:</p> <ul style="list-style-type: none"> • complete all activities in my to-do list • report changes to my circumstances promptly, including changes to work <p>If I cannot get online, I’ll report any changes by calling Universal Credit.</p>

What happens in practice

In 2022, 6 per cent of claims were refused because the claimant had not accepted a claimant commitment.¹²¹ The following examples illustrate the multiple possible reasons a claimant may fail to agree their claimant commitment via the to-do, including digital literacy issues, one member of a couple not realising that both members had to accept a claimant commitment or the belief that the commitments had been agreed in person.

Finley (adviser) – November 2021

‘That’s a massive issue, and some people might leave it a while to make the claims so they are hit financially... A typical one is they haven’t gone to the appointment... to do the claimant commitment... it could be someone where it’s obvious there is some issue that links to health safeguarding where the DWP should really make a concerted effort.’

*All names have been changed.

¹²¹ FOI2023/36483, available from whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381

Early Warning System: refused UC because carer doesn't accept claimant commitment after attending interview – May 2022

'The client was caring for his mother until she died. The carer's allowance ended so the client made a claim for UC with his partner who works. They attended the claimant commitments meeting and he was advised he would need to agree his claimant commitment on his journal. Then he lost his phone, so didn't get the message and didn't accept it in time. The claim for UC was refused.'

Early Warning System: refused UC because partner did not accept their claimant commitment – September 2022

'My client's UC claim was refused because one member of the couple didn't agree her claimant commitment. The husband agreed his but the wife did not realise she also had to agree one. English is not her first language. They have four dependent children.'

Early Warning System: refused UC when claimant couldn't access journal to accept claimant commitment – August 2022

'My client is a lone parent who works part time. Her UC award was brought to an end for not accepting a revised claimant commitment. She is computer illiterate and was previously supported by a family member to manage her UC journal until her family member could no longer help her. She called UC to explain she had a problem with her wifi, needed support to set up a new email address and could not access her journal. The claimant called the DWP twice and neither of the DWP officials she spoke to provided her with the option of agreeing her revised claimant commitment over the phone when she told them she could not access her UC account.'

In the previous example, the claimant's award was brought to an end for a failure to accept a revised claimant commitment. Arguably the DWP should have offered the claimant an alternative method for accepting their claimant commitment or decided that it was unreasonable for them to accept it in the circumstances. In addition, there was clear evidence of complex needs, which according to guidance, should have prevented the award being ended.¹²²

The requirement for all claimants to comply with a procedural condition to be entitled to their benefit, including those who are not required to complete any work-related activities to receive UC, is a new feature of the social security system under UC. Although there was a similar requirement for those claiming jobseeker's allowance to accept a jobseeker's agreement, claimants in receipt of employment and support allowance (ESA) or income support (both benefits where there was no expectation to work or look for work because of ill health, disability or caring responsibilities) were not required by law to comply with procedural requirements that affected their substantive entitlement to benefits.¹²³ Under UC, even claimants with no work-related requirements (eg, those whose health is too poor) are still required to agree to an autogenerated claimant commitment as part of the claims process, which states they must check their journal and update the DWP about any changes. The following

¹²² *Claim Closure, internal operational guidance, v 19*, available from data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf

¹²³ 'A lack of commitment?', *Welfare Rights Bulletin* 274, 2020, available from askcpag.org.uk/?id=200514&fromsearch=true

examples demonstrate the administrative hurdles and financial loss faced by claimants with ill health and disabilities, and their carers, due to the procedural requirement to accept a claimant commitment.

Early Warning System: refused UC because client had not accepted commitments in journal – June 2020

'I have a client who is severely disabled with limited capability for work-related activity (LCWRA) and his wife is his carer. Their employment and support allowance (ESA) was suspended, so they claimed UC in December 2019. The claim was [refused] because the wife didn't accept her commitments in her journal. They both attended the commitments interview but they were not made aware that they both needed to accept the commitments electronically as well, especially considering neither of them has work-related requirements. The original journal now can't be accessed as they have now made a new claim.'

Stella (claimant) – October 2021

'We had to go back for a commitments meeting, although he had read the notes and the ESA assessment said my [adult] son wasn't fit to work, we still had to do the commitments... He said he would take out the "looking for work" because we did have a sick note to say my son was unfit for work. The DWP official sorting out the ESA said that I just had to put the ESA details in, and he would take the "looking for work" commitment out. But then he (DWP official dealing with UC application) went on with, "If you don't look at your journal, and if you don't do this," ... "We will put sanctions". It is not, "If you have any problems...," there was no friendly language.'

Early Warning System: learning difficulties and UC migration – December 2022

'A claimant with learning difficulties and mental health conditions is being migrated onto UC. There have been multiple issues. He was told there was no option for an extension to his deadline date. He was not paid transitional protection, which was only remedied when his adviser challenged the payment amount. He was told he couldn't have his claimant commitment printed out despite having a phone claim. Requests for reasonable communication adjustments have been ignored and the complex needs information was not flagged on his record. There have also been multiple issues with trying to speak to the DWP using "explicit consent".'

When claimants are assessed as having limited capability for work (LCW) or LCWRA due to a new or worsening health condition or disability (see section 2.3.5 of this chapter for more information), they are presented with a new claimant commitment which has a reduced subset of requirements or no requirements in comparison to the earlier commitments they have already agreed. In the following example, a claimant had their award brought to an end for a failure to agree to the new claimant commitment he received after having been granted LCWRA.

Early Warning System: elderly client with memory problems missed accepting commitments – August 2021

'My client is in his 60s, in receipt of UC in the LCWRA group with personal independence payment (PIP). He's had concentration and memory problems after he had a stroke in 2019. I have always needed to help him manage his UC claim as he struggles online. I've just come back from several weeks' annual leave to find not only that he's been very unwell with Covid since the end of July (he is now recovering) but that his UC [award has been brought to an end]. The reason is that he did not complete the "accept your commitments". This happened while he was ill and while I was away. There was a final warning on 6 August and it was [brought to an end] on 13 August. He had received his LCWRA decision on the 30 July with effect from March 2020, so the new commitments he would have been asked to agree would have been for him to have no work-related commitments.'

Arguably, the claimant in the previous example had already agreed the subset of requirements in the new claimant commitment as part of their initial wider set of commitments which he had previously accepted. Given that the new claimant commitment, which the claimant is said to have failed to accept, is simply a document which contains a smaller subset of the conditions they have already agreed to in their existing commitment, it is not clear that such a claimant can be said to have failed to accept a commitment.

Early Warning System: refused UC for failure to accept claimant commitment before seven-day deadline – July 2022

'My client is a survivor of domestic violence and has significant mental health problems inhibiting her ability to manage her UC claim. Despite transferring from ESA to UC, the DWP required her to complete a UC claimant commitment within six days. She did not realise that she was required to complete this, as she did not regularly check her UC journal due to her mental health, and her claim was refused. She requested a mandatory reconsideration but the DWP refused to change the decision. On appeal, the First-tier Tribunal judge held that:

"The instruction in her journal to accept her claimant commitment reads 'you will need to log into your account and accept your commitments ASAP. Failure to do this may result in your claim being closed'. This does not give sufficiently detailed instructions as to the time limit for accepting the commitment (see regulation 15(1) UC Regulations 2013). The claim was closed six days later, where the usual time for actioning such a request is seven days. [Ms X] suffered from mental ill health, she had no experience of the UC system and her English and computer skills are limited. In those circumstances, it was unreasonable to expect her to accept a claimant commitment."

There are some troubling aspects regarding the DWP's approach in this case study. First, the claimant was not notified of the requirement to accept their claimant commitment 'within seven days' as is provided for by the guidance. Second, a decision was made that the claimant had failed to accept their commitments on the seventh day, when such a decision cannot lawfully be made until the eighth day. Third, there was clear evidence of complex needs, which demonstrated it would be unreasonable to expect the claimant to accept her claimant commitment.

These issues are concerning from a rule of law perspective. Although the claimant commitment requirement is set out in legislation, the evidence shows the DWP sometimes applies the law and guidance incorrectly in individual

circumstances – for example, by taking decisions prematurely when a claimant is still within a period provided to agree the commitment.

2.2.2 Refused universal credit for a failure to attend the initial evidence interview

What the law says

Once a valid claim has been made and accepted, regulation 37 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (‘Claims and Payment Regulations’) enables the DWP to request any ‘additional or confirmatory information or evidence’ to ensure ‘claimants are awarded the benefit to which they are shown to be entitled, and not awarded benefits to which they are not’.¹²⁴ Claimants are then under a duty to supply what is required, in the manner requested, within one month, or longer if considered reasonable. If a claimant fails to provide the information or evidence within the deadline (or extended deadline), the DWP is required to make a decision on entitlement based on all of the available information and evidence. The decision maker may decide to refuse the benefit, but only if the lack of evidence means the DWP cannot be satisfied that the claimant meets the entitlement conditions. The DWP does not have a free-standing right to refuse a claim for UC simply because a claimant fails to comply with their duty to provide information or evidence in accordance with regulation 37. The Upper Tribunal confirmed this with regard to information about self-employment and self-employed income.¹²⁵

PP v SSWP (UC) [2020] UKUT 109 (AAC)

paragraph 38 ‘What then of the official explanation given for the “case closure”? This was that “You didn’t book your appointment”. However, as Mr Spencer correctly argues, there is nothing in the 2013 Claims and Payments Regulations that makes attending an interview about self-employment a part of the process of claiming universal credit in the prescribed manner...’

paragraph 40 ‘...a claim for universal credit in the prescribed manner is made before the question of the claimant’s self-employment is fully explored. Any interview regarding self-employment that is felt to be necessary is then requested as part of the Secretary of State’s investigation of the claimant’s entitlement under a claim that has already been properly made. In effect, the request that the claimant arrange and attend an interview about self-employment is no more and no less than a demand for information or evidence under regulation 37(2) of the 2013 Claims and Payments Regulations.’

What the universal credit digital system looks like and how it works

If a claimant fails to attend their initial evidence interview and the appointment is not rearranged, the work coach or case manager should complete the ‘Fail to attend initial interview’ internal agent to-do and select the type of appointment missed.¹²⁶ The work coach or case manager then creates a ‘Fail to attend’ claimant to-do with a due date set for one calendar month from the original missed appointment, which generates a template message to paste into the claimant’s journal. The system can notify the claimant by text or email of the new to-do, alert the agent when the claimant has completed the to-do, and set an internal reminder for one calendar month and one day after the claim was submitted.

¹²⁴ Appeals tribunal decision [CIS 51/07 and CIB 52/07](#), para 10

¹²⁵ *PP v SSWP (UC) [2020] UKUT 109 (AAC)*

¹²⁶ Mock-up of screenshot from UC112 AV version 35, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf

Figure 2C: CPAG mock-up of the 'Fail to attend initial interview' agent to-do¹²⁷

Description

You didn't attend your appointment at 10.30am on 31 July at your local Jobcentre. You need to contact us on 0800 328 5644 to book another one. If you do not attend your appointments, without what we believe is a good reason, your payment could be affected.

Date due

For example, 18 9 2012

Day Month Year

 select date

Time due (optional)

Hours

Minutes

Notify claimant by text or email

Notify agent when claimant completes the to-do

Create to-do

If there is no rearranged appointment, the DWP official is advised they need to refuse the claim the day after the expiry of the 'Failure to attend appointment' to-do and upload a claim refusal letter (unless the claimant has complex needs).¹²⁸ The guidance uses the phrase 'claim termination' and describes the process as 'claim closure', but this is the incorrect terminology, which will be explored in section 2.5 of this chapter. The to-do confirms that case managers can make the refusal decision for a failure to attend an initial evidence interview without requiring a referral to a decision maker. The agent is advised to choose the 'failed to attend initial interview' option as the reason for the refusal.

¹²⁷ Mock-up of screenshot from UC112 AV version 35, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf

¹²⁸ *Claim Closure*, internal operational guidance, v 19, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf: 'If a claimant fails to book their IEI, their claim remains open for one calendar month from the date of their declaration... If no further contact is made the claim is closed one month from the date of their declaration.' See also UC112 AV v35, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf, which states that 'closure action needs to be completed the day after the expiry of the "failure to attend appointment" to-do'.

Figure 2D: CPAG mock-up of the 'Which appointment did the claimant fail to attend?' agent to-do¹²⁹

Which appointment did the claimant fail to attend?

Initial Evidence Interview

Initial Evidence Interview and HRT

Initial Gateway

Initial HRT

A decision maker decision is not required to close IEI, HRT or Gateway Interview

- Closure action needs to be completed the day after the expiry of the 'Failure to attend appointment' to-do
- Complete and upload the 'Claim Termination Letter' to the claimant's journal
- To ensure the document is uploaded correctly it must be saved in this format: Nameoffile_Firstname_lastname
- Notify the claimant by ticking the 'Notify claimant by text or email' box
- On the agent home page, click 'close claim' and complete the claim closure process
- The closure date is the date of declaration
- The closure reason is 'failed to attend initial interview'

Done – complete the to-do

What happens in practice

On average, 6 per cent of claims in 2022 were refused at the application stage for 'not being process compliant'.¹³⁰ These statistics are made up of those who failed to book and those who failed to attend an initial evidence interview. In response to the coronavirus pandemic, the DWP temporarily stopped requiring claimants to book and attend their initial evidence interview at the job centre in person. Instead, it implemented a 'Don't call us – we'll call you' policy. During March and April 2020, less than 1 per cent of claims were refused for failing to book an initial evidence interview, with only 1 per cent of claims refused for failing to book an interview and 2 per cent refused for failing to attend a booked phone appointment in the year between June 2020 and June 2021. By comparison, before the pandemic in 2019, approximately 9 per cent of claims for UC were refused due to a failure to book an initial evidence interview, while a further 2 per cent were refused for failing to attend a booked interview, which is more than one in 10 claims.¹³¹

It is unlawful for the DWP to refuse UC solely because of a failure to attend an initial evidence interview. If a claimant fails to attend the initial evidence interview, the DWP has the power to consider the evidence already available and decide whether it is sufficient to prove that the entitlement conditions are met. If, after a month has

¹²⁹ Screenshot from UC112 AV v35, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf

¹³⁰ FOI2023/36483, available from www.whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381 – The DWP combines refusals for a failure to accept the claimant commitment and a failure to book or attend the initial evidence interview as 'not being process compliant' in its statistics, but we have separated them due to the different requirements of the legislation.

¹³¹ FOI2020/00634, available at cpag.org.uk/sites/default/files/files/policypost/FOI2020_00634_claim_closure_statistics.pdf and FOI2020/62600, available at cpag.org.uk/sites/default/files/files/policypost/FOI2020_62600_closed_claim_statistics.pdf

passed, the evidence is found to be insufficient, a decision maker can refuse benefit for failing to meet one or more of the conditions of entitlement. Simply failing to attend the initial evidence appointment is not, on its own, grounds for refusing UC.

The combination of DWP training and guidance for frontline officials, and the design of the UC digital system, raises serious concerns when viewed through a rule of law lens. DWP officials are arguably being instructed to take unlawful action by a combination of the *Claim Closure* guidance and the option of choosing ‘failure to attend appointment’ as a possible reason for refusing a claim from a drop-down menu, when this is not a ground for refusing an award of UC by itself.¹³² Instead, officials should make a decision on the basis of the available evidence. As a result, up to 11 per cent of cases (hundreds of thousands of claims) were refused in 2019, when potentially there would have been entitlement.¹³³ This demonstrates the scale of problems caused when the DWP designs procedures of adjudication via a digital system that are arguably incompatible with the law.

2.3 DWP calculation of awards

2.3.1 An overview of the universal credit calculation

Universal credit awards

Universal credit (UC) is a single, means-tested payment for a household that is paid in arrears at the end of each month. The amount of UC a claimant gets depends on their needs (their ‘maximum amount’) and how much income and capital they have (individually or jointly in the case of couples).

The calculation

If a claimant meets the entitlement conditions for UC and has no income or capital, they will receive an amount of UC equal to their maximum amount (minus any deductions or reductions – eg, benefit overpayment recovery and sanctions). If earnings or other income (including many other benefits) or savings are taken into account, then the UC award is calculated by reducing the maximum amount (see below).¹³⁴

The maximum amount

A claimant is entitled to different elements depending on their specific circumstances, which are added together to make their ‘maximum amount’ of UC. All eligible claimants receive a standard allowance at either the single or couple rate, plus additional elements, including for children, housing, childcare and caring, if applicable. There is, for claimants who undergo ‘managed migration’, a ‘transitional element’ if legacy benefit claimants are entitled to less benefit when they migrate to UC than they previously were under legacy benefits (see Chapter 1 – ‘Claims’ for more information). There is also a ‘transitional SDP element’ for some claimants who received the severe disability premium (SDP) in their legacy benefits.

Income and savings

Claimants with children or limited capability for work or work-related activity qualify for a ‘work allowance’ in their UC calculation.¹³⁵ A work allowance disregards a fixed amount of earnings before they are taken into account when calculating the UC award.¹³⁶ For those not eligible for a work allowance, or for net earnings above the work

¹³² *Claim Closure, internal operational guidance, v 19*, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf

¹³³ FOI2020/00634, available at cpag.org.uk/sites/default/files/files/policypost/FOI2020_00634_claim_closure_statistics.pdf and FOI2020/62600, available at cpag.org.uk/sites/default/files/files/policypost/FOI2020_62600_closed_claim_statistics.pdf

¹³⁴ Part 6 UC Regulations 2013 states what should be taken into account as capital or income and what should be disregarded.

¹³⁵ Claimants can either be assessed as having limited capability for work (LCW) or limited capability for work-related activity (LCWRA) by a work capability assessment or they can be treated as having LCW or LCWRA based on their health conditions and circumstances.

¹³⁶ Claimants without the housing element have a higher work allowance of £631 compared to £379 for those who do.

allowance, there is a taper rate currently set at 55 per cent, so each pound of earned income reduces the maximum amount by 55p.¹³⁷ Unearned income, on the other hand, reduces UC pound for pound (eg, maternity allowance),¹³⁸ while some other benefit income is disregarded completely – eg, most disability benefits.¹³⁹ Claimants with capital over the lower limit of £6,000 are treated as having a monthly income of £4.35 a month for every £250 over £6,000.01 until they exceed the upper limit of £16,000, which means they no longer meet the financial conditions for UC.¹⁴⁰ If the amount calculated is reduced to zero after the income and capital is taken into account, then the claimant does not meet the financial conditions for UC.¹⁴¹

Assessment periods

UC is calculated based on a claimant's circumstances during a monthly 'assessment period', which starts on the first day of entitlement and lasts for a calendar month.¹⁴² The following assessment periods will usually start on the same day of the next calendar month.¹⁴³ If a claimant makes a new claim within six months of a previous award ending, they will keep the same assessment period dates.¹⁴⁴ UC uses a claimant's circumstances on the last day of the assessment period to calculate entitlement for the whole of that assessment period.¹⁴⁵

2.3.2 Earnings information from HM Revenue and Customs' real-time information system

What the law says

UC takes all net employed earnings (including holiday pay and statutory sick pay) into account in the assessment period they are paid to the claimant, regardless of the period the payment relates to, subject to very limited exceptions.¹⁴⁶ Every pound of earned income reduces the award calculation by 55p starting from the maximum amount, apart from those claimants entitled to a fixed amount of disregarded earnings in the form of the work allowance.¹⁴⁷

Most employers report to HM Revenue and Customs (HMRC) each time they pay their employees via the real-time information (RTI) system. The regulations state that the figure provided by the RTI system should be used to calculate a claimant's earnings during an assessment period, unless the employer is unlikely to have reported earnings 'in a sufficiently accurate or timely manner', the amount reported to HMRC is incorrect, or if no information has been received from HMRC at all.¹⁴⁸ If one of these exceptions applies, then the DWP must decide the amount of earned income received during the assessment period using such evidence as is appropriate – eg, wage slips and bank statements. See the following section for another exception for monthly earners who receive two wages in the same assessment period.

¹³⁷ Reg 22 UC Regulations 2013

¹³⁸ Reg 66 UC Regulations 2013

¹³⁹ 'Disability benefits' in this research refers to disability living allowance, child disability payment, personal independence payment, adult disability payment and attendance allowance.

¹⁴⁰ Reg 72 UC Regulations 2013

¹⁴¹ s5 Welfare Reform Act 2012

¹⁴² s7 Welfare Reform Act 2012; reg 21 UC Regulations 2013

¹⁴³ Unless an assessment period started at the very end of the month and a future month is shorter, in which case the assessment period will start on the last day of the month; reg 21(2) UC Regulations 2013.

¹⁴⁴ Reg 21(3C) UC Regulations 2013

¹⁴⁵ The assessment period in which the changes take effect from depends on whether the change is advantageous and when the DWP was notified.

¹⁴⁶ Regs 54 and 55 UC Regulations 2013. If a claimant receives two sets of monthly wages in one assessment period, it can be reallocated into the previous or following assessment period in accordance with reg 61(6) UC Regulations 2013 – see section 2.3.3 of this chapter.

¹⁴⁷ Reg 22 UC Regulations 2013

¹⁴⁸ Reg 61 UC Regulations 2013

What the universal credit digital system looks like and how it works

Employed earnings information is automatically captured from HMRC's RTI system. Every day the DWP provides HMRC with a list of national insurance numbers (NINOs) of people in employment receiving UC, and HMRC provides the DWP with a copy of the income data held on the RTI system for those individuals.¹⁴⁹ The DWP then adds additional information, such as other benefits in payment, and it becomes the DWP's real-time earnings (RTE) database.

DWP description of universal credit calculation in response to a freedom of information request from Human Rights Watch¹⁵⁰

'DWP's real time earnings (RTE) system receives earnings information for UC claimants from HMRC's real-time information (RTI) at regular intervals. Just after the end of a claimant's assessment period (AP), the UC system automatically asks the RTE system for the claimant's earnings over the dates of the previous AP. RTE then looks up the relevant information in its database, cleans up common problems in the data (eg, removes duplicate reports) and calculates the earnings for that period. RTE returns a summary of earnings in the AP, broken down by employer, to UC. Having received the earnings, and other inputs (eg, claimant-submitted information, information on other benefits received from DWP's Customer Information System (CIS)), UC calculates the claimant's award. At a high level, this involves:

- adding up the positive elements (eg, standard allowance, child element, housing element);*
- adding together all earnings from various sources, minus any work allowance*
- reducing award by amount of earnings after the taper rate is applied (ie, currently £1 in earnings reduces award by 63p) [now 55p];*
- applying other adjustments (benefit cap where applicable, capital, other benefits, other income, overlapping benefits);*
- applying reductions (fraud penalties, sanctions);*
- applying deductions (advance repayments, third-party debts, benefit overpayments);*
- once the award is calculated, the amount is automatically sent to DWP's Central Payments System (CPS) for payment on the claimant's standard UC payment date.'*

What happens in practice

Our research has found that the earnings information gathered from the RTI system does not always match what and when claimants were actually paid. For example, the Early Warning System has received evidence of earnings being taken into account for UC on a later date than they were paid and received. In some cases, the earnings were paid and received before the claimant had submitted a claim for UC, but UC calculated the wages as if they were paid during the first assessment period, therefore wiping out entitlement.

Early Warning System: redundancy payment included as income – August 2021

'My client was made redundant and received final payment of four thousand plus on 28 June 2021 including earnings, payment in lieu and holiday pay. He then claimed UC on 30 June 2021. At the end of the first assessment period he had nil entitlement as the DWP had taken into account the earnings received on 28 June before he claimed UC.'

¹⁴⁹ medConfidential, *The Data Flows of Universal Credit*, Annex 1, available at medconfidential.org/2020/universal-credit

¹⁵⁰ FOI2020/12465, available at whatdotheyknow.com/request/information_sharing_between_dwp

Early Warning System: final wages reported late by HMRC – August 2022

'I had a client who claimed UC after losing their job. His final wages were paid into his account two weeks before they were reported as having been paid on the RTI, which took them into the next assessment period, thus wiping out entitlement. The client has reported the actual date of payment and shown a bank statement to prove it, but the DWP is waiting for info from HMRC.'

One possible explanation for UC taking into account wages paid and received before the claimant ever claimed UC is that the employers input a later date on their RTI submission than the payment date or delay processing payslips. Alternatively, the two interviewees below described a situation where wages were received as normal, but the RTI feed did not identify them at the time of payment, creating overpayments of UC.

Yasmin (claimant) – November 2021

'I alerted [the DWP] to the fact that one of my wages hadn't shown up... I sent them a copy of the payslip. DWP said I'd been paid £300 too much or whatever, which would be deducted monthly... I was like, "Okay". I didn't know anything about this RTI business. That wasn't even mentioned to me at that point. As far as I was concerned it was a one-off...

[Then]... they just dropped four months earnings in my August [assessment period] ... their words are: "Dropped into their system." They immediately turned around and said: "It's either HMRC or your employer. It's got absolutely nothing to do with us..." I spoke to my payroll department who went through the last few months and what they had declared to HMRC... I also spoke to HMRC who said: "Yes, this is what we can see has been declared from your employer for this month. It's not the amount universal credit are saying." I loved my payroll department because they sent over all the receipts from where they had declared to HMRC my wages... so the proof is there.'

Henry (adviser) – October 2021

'There is one issue that we have seen at the moment... the employer pays during the assessment period but it is not being reported to HMRC, or, it is not clear, it is not being processed by HMRC until the next assessment period. So what is happening is every month the client is getting paid for universal credit, then the RTI comes through and they have got an overpayment. So every month the overpayment is increasing by £200.'

Finally, other claimants have had their awards calculated to take into account 'phantom payments' that are not so easily explained. Two of our interviewees described how the UC digital system miscalculated their awards during their first and second assessment periods by taking into account apparent earnings from previous employers they had never received at any time. As a result, both claimants had to wait two months before they started receiving any income from UC after finishing their previous employment, and neither could understand how the error had occurred.

Sarah (claimant) – January 2021

‘The second claim I didn’t get any universal credit. They said I wasn’t eligible. And it happened for two months that they said I wasn’t eligible because I’d had such a huge payment, fictional payment. So then it took quite a long time... I called them and then it was easier via the journal... A few of them looked into it. I had to send in my bank statements and everything... that they eventually realised they’d just made a mistake, but yeah no one seemed to know how it had happened... They gave me two months at once.’

Harriet (claimant) – January 2021

‘The 6th October was when I thought I would get the first payment. Unbeknownst to me, that wasn’t going to happen because I had received my holiday allowance from my work... Then the same thing happened the following month... They said that I’d received an income of £2,555... Which I hadn’t received... They said: “Well we can see that that’s what you’ve received or you’ve paid tax on.” Then I rang my old finance officer and was just like: “Am I still on the books somehow...?” She was like: “No, no, nothing.” ... It was a really bizarre number because it was an amount I’d never been paid before. It was a really specific number, that amount had never gone into my bank account from my work pre or post tax so I don’t know where this number had come from.’

Rhys (adviser) – February 2022

‘I mean, sometimes it’s inexplicable. People get random amounts, which they don’t understand. And Revenue and Customs say: “Look at your personal tax account.” The employer says: “Oh yes, not sure what we’ve done there.” ... Often it’s either on HMRC or the employer’s side who have provided the wrong information. The employer has provided it wrong to HMRC, HMRC have provided it wrong to the DWP... I’ve seen it where the employer has reported their annual pay to date as their monthly pay... it goes through on the feed as this person has earned £12,723 this month. It’s like, how? It might be the DWP’s fault in how long they respond to new information.’

Liam (adviser) – March 2022

‘You get some other anomalies, don’t you? Like, you get gas bills for half a million and things like that. So I can’t really explain it. But usually it is human error. Usually it is a human that has put a... dot in the wrong space or... put the date where the money should be, or something like that.’

Automated earnings information sharing between HMRC and the DWP is considered one of the biggest advantages of UC as a digital-by-design benefit.¹⁵¹ From the DWP’s perspective, automation allows for hyper means testing, which in theory, avoids the inevitable overpayments and underpayments that are built into the annual income reporting structure of HMRC’s tax credits system while hypothetically incentivising claimants to increase their earnings due to the visibility of the effect of the additional income on the amount of UC.¹⁵² From a

¹⁵¹ Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at digitalwelfare.report/contents.

¹⁵² Some research has found that the hyper-means-test can actually disincentivise work for some: ‘For second earners, who were more likely to be women, the taper was often viewed in a negative light, seeming to penalise rather than reward work and additional hours. Because

claimant perspective, there should be a reduction in the administrative burden of keeping benefit departments up to date with any changes in earnings and a reduction in overpayments, underpayments and lost income caused by any delays in reporting or updating income information when compared to the reporting requirements of housing benefit, for example. However, the automated sharing of reported income information does not prevent errors from occurring, and as a result, claimants can receive miscalculated UC awards.

Lord Freud, one of the original architects of UC, is critical of the RTI/RTE system, which relies on employers reporting wages information as *'there would inevitably be discrepancies between the reports from employers and what some employees actually received in their bank accounts – which we dubbed LMI, or 'Late, Missing and Incorrect.'*¹⁵³ Freud's preferred method of calculating earnings for UC, using live salary information from the Vocalink payment system, would have enabled employers to make gross wage payments with accurate tax deductions and benefits calculated before the employee received the net payment. From a rule of law perspective, RTI/RTE errors are an example of UC system implementation producing wrong decisions in an opaque context. It is difficult for claimants to identify the cause of these errors, which can occur due to employers inputting the wrong income information or data errors from either HMRC's RTI system or the DWP's information from the RTE system. Claimants then face a lack of transparency about the dispute process and delays and hardship while these errors are investigated (which is explored in Chapter 4 – 'Disputes').

2.3.3 Interaction of monthly pay cycles and assessment periods

What the law says

The general rule is that UC treats earnings as if they have been paid on the date the RTI system reports them as paid.¹⁵⁴ This causes a problem for claimants whose regular monthly payday falls close to the start and end of their assessment periods, as they can receive two wages in one assessment period followed by an assessment period with no earnings. This can happen if someone receives an early payment of wages due to a weekend or bank holiday or if claimants receive their wages on regular but variable 'banking day' pay dates, such as the 'last Friday of the month'. This causes fluctuations and, for many, a reduction in income due to the loss of the work allowance in the assessment period when there are no earnings to disregard.

Four working single mothers challenged the rigidity of the monthly assessment periods for claimants who were paid monthly. Between them, the claimants fell into rent arrears, defaulted on council tax, incurred bank overdraft charges, borrowed money and became reliant on food banks to make ends meet. One of the mothers had to decline a promotion, while another felt compelled to give up her job to look for alternative employment where there was no clash between her pay date and UC assessment period. The Court of Appeal in *R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778 held that when a monthly paid claimant received a 'double payment' of wages in the same assessment period, rules meaning that both payments had to be taken into account in the one assessment period were so irrational as to be unlawful, therefore breaching the rule of law principle of lawfulness. It was left for the Secretary of State to decide on a remedy.

women were more likely to be the payee for universal credit, it was often women's income that fell when their partner's earnings rose. Knowing that the universal credit payment received by their partner would be reduced or might cease altogether if they earned more could also disincentivise additional hours among first earners. The difficulty of predicting drops in the payment, and the fear of a reduced amount in future months, also discouraged couples from working more hours, taking on extra shifts or accepting offers of overtime.' From R Griffiths, M Wood, F Bennett and J Millar, *Couples Navigating Work, Care and Universal Credit*, Institute for Policy Research, 2022, p9, available at researchportal.bath.ac.uk/en/publications/couples-navigating-work-care-and-universal-credit

¹⁵³ D Freud, *Clashing Agendas: inside the welfare trap*, Nine Elms Books, 2021, pp178-9; see also ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit

¹⁵⁴ Reg 61 UC Regulations 2013

The DWP introduced amending regulations, which gave the DWP the power to treat one of two monthly wage payments received in the same assessment period as earnings in respect of a different assessment period.¹⁵⁵ The DWP decided only to reallocate payments for claimants who were paid monthly rather than for any other pay cycles. The reallocation of one set of monthly wages from one assessment period to another was initially done manually by DWP officials, relying on claimants identifying and notifying the DWP when they needed the adjustment. This was despite a lack of transparency which meant the DWP did not provide claimants with information about the possibility of reallocation. However, in August 2021, the DWP introduced a partially automated fix to identify and reallocate double payments.¹⁵⁶ Correspondence between CPAG and the DWP confirmed the UC system automatically identifies the possibility of two sets of monthly wages within one assessment period and creates a to-do which requires action by the case manager.¹⁵⁷ DWP records show they had initially planned to fully automate the reallocation of the second set of wages but found that *‘in 25 per cent of cases this was not straightforward and would lead to confusion for agents and claimants in understanding which earnings were attributed to which AP, particularly as the rules would be contained in RTE and not visible to users.’*¹⁵⁸

The solution implemented by the DWP appears to have rectified the problem for the majority of affected claimants. However, The Early Warning System continues to receive occasional cases suggesting this partially automated fix does not reliably result in the reallocation of all double monthly payments received during the same assessment period.

Early Warning System: two wage payments received in one assessment period – January 2023

A working parent of two children is paid her wages calendar monthly. In December 2022, due to early pay in the Christmas period, she received two of her wage payments in one assessment period. She submitted a journal entry but received no response until January when she was informed that an RTI dispute had been raised – for which there is no timescale and she was simply to await the outcome. She offered to upload her wage slips but has received no response. The two sets of wages wiped out her UC entitlement for that assessment period, she has no money at all, and is concerned about meeting her family’s basic needs.

Early Warning System: request to correct UC assessment period – May 2022

‘Our client’s normal pay date is the first of each month and his UC assessment period runs from the second of the month to the first of the following month. As such, if his employer notifies HMRC or pays client a day or more late, this is always going to be a problem unless the DWP sorts it out. I asked my client to include the following note in his UC journal on 23rd March and he tells me he did so on that date and has not had any response. He wrote: “I still have not had a response to my request to move my November salary back to the correct UC assessment period so that each assessment period has only one salary payment within it. I have taken advice from Citizens Advice and they have informed me that since August 2021 this adjustment should be happening automatically and I should not need to request that you make the adjustment.”’

¹⁵⁵ Reg 61(6) UC Regulations 2013 (introduced by The Universal Credit (Earned Income) Amendment Regulations 2020 No.1138)

¹⁵⁶ See CPAG’s test case page for more information: cpag.org.uk/welfare-rights/legal-test-cases/universal-credit-assessment-period-inflexibility

¹⁵⁷ Email from DWP to CPAG, 25 August 2022

¹⁵⁸ data.parliament.uk/DepositedPapers/Files/DEP2022-0810/D-UCPB_27.10.20-3-Next_Phase_Product_Development.pdf, p13

Early Warning System: application of R (Johnson and ors) v SSWP – March 2022

The client is a lone parent on UC who gets paid monthly at the end of the month and gets double payments from time to time in her assessment period. The Court of Appeal judgment in R (Johnson and ors) v SSWP [2020] EWCA Civ 778 is not being applied, and she loses UC in following months. She should automatically have the second wages attributed to the next assessment period.

When one case was raised internally with the DWP, its investigation found the to-do was not created automatically because the claimant had received two sets of monthly wages within one assessment period more than once; therefore, the system did not recognise it was 'unusual'. The case manager should have created the manual workaround but failed to do so in this individual case.¹⁵⁹ However, it must be acknowledged that duplicate monthly payments in a single assessment period are 'entirely predictable' based on a claimant's assessment period and pay dates 'because we know for the foreseeable future when the last day of the month will fall on a weekend or on a bank holiday'.¹⁶⁰

In one particular case, the claimant has received two monthly wages in one assessment period, completely wiping out entitlement to any UC, on four separate occasions, and has faced considerable difficulty in getting one of the wages reallocated to a different assessment period.

Early Warning System: multiple failures to reallocate a second monthly payment to a different assessment period – May 2023

'The DWP first failed to reallocate one of my client's two monthly wages received in the same assessment period back in spring 2022. Since then, she has had to raise this issue with the DWP on a further three or four occasions. She is very concerned about the responses she has repeatedly received on these occasions, which she describes as being a like coming up against a "closed door" and "like firefighting". Most recently she was paid slightly early because of a bank holiday and her UC was calculated as £0 for that month. She explained how she stayed up late the night before her UC payment statement was due, in anticipation of the problem occurring again. She sent a journal message to first raise the issue, then followed this up with a phone call two days later to check the journal message was being dealt with. Initially she was told by the DWP there was nothing that could be done. This was later corrected and informed her case had been referred to the invalidation team. She has since chased the issue up multiple times but her case manager has informed her it is not possible to say when the issue will be resolved.'

Under its original conception, the rigidity of the monthly assessment period design and its treatment of two sets of monthly wages received in the same assessment period was considered so irrational as to be unlawful. Some individuals can still face this unlawful treatment of wages because the design and implementation of the solution to reallocate wages does not reliably catch everybody who receives two monthly wages in a single assessment period. Our evidence shows that these individuals face a considerable administrative burden and lack of transparency about the process and timescales involved in resolving the matter.

¹⁵⁹ Email from DWP to CPAG, 25 August 2022

¹⁶⁰ *R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778, para 81, available at cpag.org.uk/sites/default/files/files/C1.2019.0593-2020-EWCA-Civ-778-R-Johnson-and-others-v-SSWP-FINAL-for-HAND-DOWN.pdf

2.3.4 Student income

What the law says

Regulations prescribe how UC should treat student income for those specific groups of claimants entitled to receive UC while ‘receiving education’ – eg, those responsible for a child and those ‘without parental support’.¹⁶¹ If a claimant gets certain grants but does not receive a student loan, the grant is taken into account as income after deductions are made, including for tuition fees, childcare costs and extra costs for disability, books and travel.¹⁶² Alternatively, for claimants in receipt of both a grant and a loan, most grants are disregarded, while the student loan is taken into account as income after fixed deductions in each assessment period.¹⁶³ The student income is divided between each assessment period in which a claimant is ‘undertaking a course’, other than the assessment period in which the ‘long vacation’ starts and those assessment periods which fall fully within that vacation.¹⁶⁴

How the universal credit system looks and how it works

When a claimant reports they are a student, the system automatically generates a to-do to check eligibility and calculate student finance. Work coaches and case managers manually calculate student finance by completing the ‘Calculate student income’ to-do, or they make a referral to a decision maker.¹⁶⁵

What happens in practice

One of the aspects of the UC award calculation that routinely results in unlawful decisions is the calculation of student income. Despite claimants providing all of the information required of them about their student grants and loans, they are regularly subject to calculation errors by the DWP, and presented with large overpayments, which are always recoverable, even when the result of an ‘official error’ by the DWP. The cases from the Early Warning System below demonstrate the impact of these calculation errors and recovery policy for claimants.

¹⁶¹ Regs 8, 12, 14 and 68-71 UC Regulations 2013

¹⁶² Reg 70 UC Regulations 2013

¹⁶³ Reg 69 UC Regulations 2013

¹⁶⁴ Regs 13 and 68 UC Regulations 2013

¹⁶⁵ DWP, *Spotlight on: student income*, accessed via FOI2023/32900, available at whatdotheyknow.com/request/spotlights. When asked via FOI which parts of the UC calculation were still done manually, the DWP did not include calculating student income in its response (FOI 2022/58809, available at whatdotheyknow.com/request/training_materials_for_universal#comment-108008).

Early Warning System: incorrect calculations of student finance – October 2022

'I am getting in touch with two more examples of confusion and error being caused by incorrect calculations of student finance for students who are entitled to UC. These errors have had catastrophic consequences. I first raised this issue in October 2021, and suggested that, apart from there being a major training need for UC staff, the UC breakdown should show how the deduction for student finance is calculated so that claimants can more easily correct DWP errors. This matter is urgent.

The first student has £1,200 student finance deducted each month from her UC. The DWP is taking into account the special support element which should be disregarded, they have divided the annual student income figure by 12 assessment periods instead of 11, and they haven't applied the £110 disregards each month either. She has been underpaid by £545 per month.

The second student has also had the special support element taken into account when it should be disregarded and the annual student finance divided by eight assessment periods when it should be nine.

These are not isolated incidents, but represent a systemic failure to ensure DWP staff are calculating student finance deductions correctly. We have also come across some students who have been incorrectly given a nil entitlement and this is affecting their right to the cost of living payment. In other cases, the NHS students payment of £5,000 is being taken into account.'

Early Warning System: overpayment due to incorrect calculation of student income – December 2021

'I have had several cases in the last year relating to overpaid UC as a result of them not calculating student income correctly. All were down to official error. This particular case is a full-time student and UC calculated her student income incorrectly in 2020/21, resulting in overpayment of £10,000. She had provided all her income details and twice she wrote on her journal asking them were they sure the amount of UC was correct and they stated it was. In 2021/22 academic year, they once again made the same mistakes and she now owes a further £900. There are no grounds even on official error to argue that recovery should not take place. The client is stressed and can't believe it can happen even when it's not their fault. The deductions are putting household finances under pressure.'

Early Warning System: overpayment due to incorrect calculation of student income – February 2021

'The client is a lone parent with a young child. She is studying for a nursing degree and receives £13,642 in her maintenance loan and £7,000 in her bursary. She notified the DWP of the new income in her journal and had a phone appointment. The case manager stated the work coach would be checking the figures to calculate how the student income would affect her UC, but the client wasn't convinced the work coach had the information they needed so asked for an update and offered to provide any further information. After she was paid, the adviser asked if the payment was definitely correct and was advised: "Thank you for letting us know about your income. As students' loans and grants are treated as unearned income and therefore untaxed your award should be correct and without overpayment." She now has an overpayment of £4,552.26 caused by the student income being calculated incorrectly. It is solely a DWP error but the DWP has the power to recover it anyway and it rarely waives recovery of the overpayment.'

Early Warning System: overpayment as a result of DWP delay in calculating student income and expenses – February 2021

'My client is a lone parent of a daughter with serious health problems. My client was a student and submitted her student loan and expenses as requested but the DWP didn't do anything with the information for over two years and now she has an overpayment of £6,000.'

Two interviewees described a particular problem with the calculation of PhD stipends. One had been asked to repay their entire UC award, while the other was waiting to find out if their award is accurate or if the DWP would recover it as an overpayment. This uncertainty prevents claimants from planning their lives securely, while both described their inability to find out what the correct rules were.

Martha (claimant) – October 2022

'They count a third or 30 per cent of a PhD stipend as other income..but there are people who either got told none of it counts and it's all disregarded or people who got told that all of it counts, which then makes them ineligible because they earn too much money... That seems to have been happening for a long time, I've since discovered, just depending on who you dealt with and who you spoke to and which person assessed your claim... so they now owe the DWP thousands of pounds because they reclaim money that they have overpaid you even if they were the ones who made a mistake and you provided them all the information they asked for.'

I know this has happened to other people who are in my position, who have just been approached at random, without warning by the DWP to say: "We've reassessed your claim and there was a mistake." So I'm now waiting to see if that happens to me or not, because no one seems to know if it was actually a mistake or if the thinking it was a mistake is the mistake, because people are still being told with new claims, these three different things are happening, depending on who they're talking to.'

Chloe (claimant) – October 2022

'I received a stipend from a university... for a government-funded PhD... So, the government was technically... paying me my money. But they had no way to understand that, at the other end of the government... I provided lots of evidence that, although I was a student, I was locked into a government contract whereby I was expected to work on my PhD for 37.5 hours a week. And, according to the university's rules, I was not allowed to seek alternative employment for more than six hours a week, elsewhere. It just wasn't going through PAYE, and it's not considered [earned income] and I'm also a student, which doesn't help.

They came back with this number and said: "You're entitled to x amount." And I responded: ... "Can you explain to me how this number has been come to?" They said: "No. That's none of your business. We don't explain how decisions have been come to." They wouldn't tell me how they'd arrived at that number. Apparently, I wasn't to question...

A man rang me and said: "Over the course of the pandemic, we've accidentally overpaid thousands of people far too much. So, I'm going to be looking into your claim because we've probably done the same thing with you." I was like: "Fabulous. I look forward to be shafted." And that is what they did. It took three months of worry, for them to turn around and say that I owe them £16,000, which is all of the money they've ever paid me... I've requested mandatory reconsideration, four months ago now, five months ago, coming on for and I've heard nothing.

I had been informed, by other people that were receiving benefits, in similar circumstances, that they do this 70/30 split thing, which apparently, they shouldn't do. I've been part of a group chat where I had to reply: "By the way, apparently they shouldn't do that with stipends. So, if anybody else's universal credit claim is being handled in this way, beware... according to some rules that aren't written anywhere."

There is a lack of transparency with claimants about the substantive rules for calculating student income and how the rules have been applied in individual cases. For example, there is insufficient detail about student income in the monthly payment statement, which is presented as a single lump sum combined with any 'other income' a claimant might have, such as pension payments.

Figure 2E: CPAG mock-up of the 'other income' section on a payment statement

What we take off (deductions)

Other income

- £565.00

We take money off your payment for other income that you have. For example, pensions and educational grants.

Instead, the DWP should provide claimants with a breakdown of each grant or loan, any deductions, and the assessment periods between which the loan or grants have been divided. Students often receive multiple forms of loan and grant payments, some of which are fully or partially disregarded, and the payments are divided across a

certain number of assessment periods based on the academic year dates.¹⁶⁶ Without this level of detail, claimants are unable to recognise whether errors have been made in their award calculation.

One adviser described the types of errors made by the DWP and the difficulties claimants have when attempting to understand their student finance calculation.

Rhys (adviser) – March 2022

‘The calculation, working out the number of assessment periods the course covers... It’s a difficult one for claimants to understand, that... your student finance begins to be taken into account from the start of the universal credit assessment period in which your course starts... even if you’ve not received it... Which people find very hard to figure out, they say: “Surely it should only count from the date I get it or from the date my course starts,” and it doesn’t... It doesn’t count in the assessment period in which the course ends. And DWP are always, oddly enough, very good at allocating the income to the beginning, but at the end... They carry it on until the assessment period after the course has ended, rather than the assessment period in which the course ends. So, there are issues around calculation of student income in assessment periods.

Big issues around the treatment of student finance itself, which bits are disregarded and which bits are not... And DWP then don’t give an explanation on the journal of what is being deducted... it will say income, which could be from other benefits... On the wages it tells you, doesn’t it?... “We count this, we disregard this, we take 55 per cent of the rest, and it comes to this figure.” You don’t get anything like that. So people can’t check... Even if they know how it should be calculated, they can’t actually know if that’s what the DWP has done.’

One claimant described how it took multiple messages on her journal to establish why her student income had been calculated the way it had. She could not understand it from the information provided on the payment statement.

Georgia (claimant) – January 2022

‘They have got this fact that I get £1,076 education per month, and I don’t understand what that is because I don’t... So my loan for 12 months, it works out about £780 a month... I have gone back to them, saying, “Where have you got this figure £1,070 from?” because it doesn’t take a mathematician to work out the fact that £9,000 divided by 12 is not £1,000 a month.’

Follow-up interview with Georgia – February 2022

‘They came back to me on the 27th saying: “I’ve checked the calculations and they are correct. All student loans income is taken into consideration for your universal credit payment as per the universal credit policy.” I just went back saying: “Why does it state I receive that amount?” Then again – that was the 28th. I kept saying: “Can you respond to my questions?” They’re just too quick to just say: “Well this is it.”

I was going back and forth with them... Then someone did come back and said they worked a figure out... I suppose they work it over eight months because that’s when you’re studying for... They seem to have taken these figures and not really explained them...’

¹⁶⁶ Regs 68–71 UC Regulations 2013

This area of decision making in UC fails to uphold the rule of law principles of transparency and lawfulness. DWP officials regularly fail to apply the law correctly when calculating student income. The lack of transparency exacerbates this issue by preventing claimants from identifying and challenging errors and overpayments. As a result, claimants rely entirely on the DWP to make the correct calculation at the outset, quickly identify errors to prevent large overpayments, and not to recover overpayments caused by official error. Instead, evidence suggests the DWP is miscalculating awards, failing to identify mistakes, and recovering overpayments which claimants were not responsible for. Failing to provide claimants with adequate information to question or scrutinise their UC award is a breach of the rule of law principle of transparency.

2.3.5 The migration of employment and support allowance claimants onto universal credit

What the law says

Income-related employment and support allowance (ESA) is the earnings-replacement legacy benefit for people with limited capability for work due to ill health or disability. After an initial phase, ESA claimants are determined as having limited capability for work (LCW) and placed in the work-related activity group, or limited capability for work-related activity (LCWRA) and placed in the support group, or they are determined as being fit for work and their award is brought to an end.¹⁶⁷ Claimants can either be assessed as having LCW or LCWRA by a work capability assessment (WCA – a points-based system that scores the extent to which a claimant can carry out certain activities (eg, standing and sitting or coping with change) or they can be treated as having LCW or LCWRA based on their health conditions and circumstances.

Claimants in the work-related activity group or support group for ESA, when they claim UC, are treated as having the equivalent LCW or LCWRA for UC.¹⁶⁸ The DWP should include LCW or LCWRA elements in a claimant's UC award from the start of the first assessment period.¹⁶⁹ By comparison, claimants found to have LCWRA for the first time while already receiving UC are not usually entitled to the LCWRA element in their award until they have first served the three-month 'relevant period' (waiting period).¹⁷⁰ Claimants are not required to have a further WCA solely because they have changed benefit from ESA to UC.¹⁷¹

What happens in practice

Two different features of the UC system do not support previous ESA recipients in understanding and accessing their legal entitlements. First, the UC claim form asks all claimants who state they have health conditions or disabilities that restrict their ability to work or look for work to provide a fit note. The digital claim form also warns: *'If we have not been told about an up-to-date fit note, we will assume that you are able to work.'* This is incorrect as claimants who the DWP has already assessed or treated as having LCW or LCWRA for ESA do not need to provide a fit note or complete the WCA process again, and they will not be expected to work. Our evidence suggests that the warning to submit a fit note and the assumption of the ability to work causes confusion and distress for previous ESA claimants. They are left wondering what the DWP will expect of them in terms of looking for work when their income depends on this process. Advisers described this as a barrier their clients regularly came across. Some may delay completing, or fail to complete, the application form due to this lack of transparency about the legal requirements.

¹⁶⁷ Other claimants are treated as having limited capability for work or work-related activity due to their particular health condition or disability.

¹⁶⁸ Reg 19 Universal Credit (Transitional Provisions) Regulations 2014 No.1230 ('Transitional Provisions Regulations 2014'). This also includes previous ESA claimants with national insurance credits.

¹⁶⁹ New claimants have been unable to receive the limited capability for work element (LCW) in UC or the work-related activity component of ESA since April 2017, although there are some exceptions.

¹⁷⁰ Reg 28 UC Regulations 2013; the LCW element has been scrapped for new claimants since April 2017.

¹⁷¹ Reg 41 UC Regulations 2013

Lucy (adviser) – August 2021

“Do you have a fit note?” ... I think that’s really difficult for people... they’re on ESA already in one of the groups... they’ve already been assessed. They don’t need a fit note, so I think there [could] be... a note on there about the fact that they understand that some people might be unwell but don’t have a fit note, because they’ve already been assessed... Rather than just “You’ll need to get one.””

Zoe (adviser) – December 2021

‘People who are on ESA... they are moving onto universal credit, wrongly they are initially told to hand in the fit notes. That shouldn’t happen.’

Elena (adviser) – November 2021

‘If they are already claiming ESA they shouldn’t have to send a doctor’s note, because they should just go onto limited capability for work, but they don’t. They quite often get asked for doctor’s notes again, which sends these people into a tizz, because they don’t want to do that. Or they have been told that they don’t ever have to get a sick note again.’

One interviewee also described a lack of transparency regarding how UC and ESA were linked together during the claims process.

Sandy (claimant’s friend) – November 2022

‘It’s really unclear how it’s gonna link up to ESA. How they’re going to join the dots? because it never asks you for a national insurance number... are you gonna be treated like someone who for the first time is applying for sickness benefits? Are you gonna have to go through the whole process of being reassessed again? Which is really, really stressful.’

DWP officials sometimes reinforce this incorrect information during the claims process by providing additional incorrect information. One of the interview participants was an appointee for their 17-year-old foster child, who the DWP had assessed as having LCW under ESA. A DWP official incorrectly advised them they would need to complete the WCA process again for UC.

Stella (claimant) – October 2021

‘We did [the commitments interview] on Tuesday and the gentleman there said: “You now have to have another health questionnaire and medical.” I said: “But ESA say he is not fit to work.” “But you now have to verify it on our system.” ... I said: “Do we really?” He went: “Yes... this is universal credit. You will get sanctions.” I’m thinking the language is plainly quite aggressive, sanctions and money stopped. I’m thinking, “Oh, we haven’t had a penny yet,” so being told we are having to stop the benefit before we even get anything...’

Our research found numerous examples of the DWP failing to add the LCW or LCWRA elements to claimants' awards from the first assessment period, as the legislation requires. The testimonial below shows how one interviewee received an unlawful decision missing the LCWRA element when they 'naturally migrated' (before the formal managed migration process begins – see Chapter 1 – 'Claims') from ESA to UC and faced a lengthy loss of income while the DWP ignored his requests for a revision and delayed fixing the error.

Kier (claimant) – October 2021

'I should have support group brought over to universal credit limited capability for work and work-related activity... I had to start handing in sick notes. I think it took about, it was either six or eight weeks... in the end, they managed to get all the information off employment [and] support allowance, and it was brought over to universal credit... I was about £340 worse off [during that time, not overall as it was resolved] ... I had to put it on my journal about 20 times before it was acknowledged, and the universal credit team sent through a form to the ESA team to get the LCRWA brought over.'

Similarly, CPAG's Early Warning System has received evidence of the LCWRA element missing from the first assessment period, failures to add the element even at the revision stage, incorrectly applying the three-month relevant period of no entitlement and DWP officials misadvising claimants about the substantive rules of entitlement.

Early Warning System: ESA, LCWRA and three-month waiting period – January 2023

'An ESA claimant was placed in support group in November 2022 before claiming UC. She asked for the LCWRA element to be included in her UC award from the first assessment period but the DWP is insisting she must serve the three-month waiting period and then complete a new work capability assessment.'

Early Warning System: LCWRA not included in UC for client in ESA support group – December 2020

'The client was in receipt of contributory ESA with support group for years until she claimed UC in spring 2020. The LCWRA element was not included in her UC award despite her being entitled and she was advised she was not entitled to it until she did a work capability assessment for UC. The mandatory reconsideration was unsuccessful but she didn't appeal it. She has since received and returned the UC50 form and has a telephone appointment in couple of weeks so has started the WCA process again.'

Early Warning System: client in ESA support group not paid UC till fourth assessment period – August 2021

'Our client was in receipt of ESA support group directly before she made a claim for UC. They have only paid her from the fourth assessment period rather than from the beginning of the claim even though she is protected from the relevant period by the transitional provisions.'

The DWP confirmed in May 2021 that there is no automated process for identifying previous WCA decisions made under the ESA Regulations, and DWP officials must carry out a clerical process.

*Universal Credit: natural migration: Government response to the Committee's Twenty-Seventh Report of Session 2017–19 (HC 228, 28 May 2021)*¹⁷²

Recommendation 16:

'We recommend that the Department explore ways to make the carry-over of WCA decisions from legacy benefits to UC a more automated process, to reduce the risk of human error. If this is not possible, the Department should provide the Committee with quarterly reports on the number of cases where this is not happening on time so that we can continue to monitor the issue. (paragraph 107)

The Government does not accept this recommendation. Whilst we have not automated a solution, we have invested in and made significant improvements to the clerical processes. These improvements mean that, on average, we apply the ESA WCA to UC award in the vast majority of cases within the first assessment period.'

Finally, there is a lack of information in the UC payment statement about all of the different possible elements, exceptions or exemptions that might apply to a claimant if the UC digital system does not recognise them as applicable to the specific individual, which makes it difficult for claimants to identify whether their award calculation is missing a particular element, exemption or exception (see Chapter 3 – 'Communicating decisions' for more information).

The DWP has failed to introduce an automated solution which uses the information it already holds about ESA awards to ensure LCW and LCWRA elements are reliably added to UC awards when claimants migrate to UC from ESA. Data sharing to reduce administrative burdens for claimants and improve the accuracy of awards is one of the expected benefits of digitalisation for claimants. In this case, the benefits have not been realised. At the same time, the DWP does not ask claimants for details about previous ESA awards, which would alert them to its significance and allow them to supply the required information. Instead, the claims process instructs claimants that they will need to provide a fit note, or they will be assumed to be able to work, which is incorrect for claimants already treated or assessed as having LCW or LCWRA. This makes it particularly hard for claimants to identify that they have received an unlawful decision and are being significantly underpaid if they are missing the LCWRA element in their first assessment period. The situation is not helped by a lack of transparency and poor-quality information provided to claimants in the payment statement, and, in some cases, gatekeeping of the mandatory reconsideration process when claimants try to challenge decisions (see Chapter 4 – 'Disputes' for more information).

2.3.6 Missing child element for all children when one child is unverified

What the law says

In order for a child element to be included in the maximum amount, the claimant must be responsible for a child or young person who 'normally lives with them,' and the child must be under 16 or be a 'qualifying young person' who is under 20 and in non-advanced education.¹⁷³

¹⁷² Available at publications.parliament.uk/pa/cm5802/cmselect/cmworpen/228/228.pdf

¹⁷³ Regs 4, 5 and 24 UC Regulations 2013. To be classed as a 'qualifying young person', they must have not reached the 1 September following their 16th birthday, or have not reached the 1 September following their 19th birthday and be studying or accepted on a course of approved training or non-advanced education at school, college or other approved premises for an average of more than 12 hours a week.

Since 6 April 2017, there has been a ‘two-child rule’ preventing additional elements being paid for a third or subsequent children born after this date unless an exception is met, such as for a child who is adopted or conceived due to ‘non-consensual conception’.¹⁷⁴

The child element is increased by the ‘disabled child addition’ at either the higher or lower rate if the child is entitled to certain disability benefits at different rates or is certified as severely sight impaired or blind.¹⁷⁵ The disabled child addition is still paid for a child even if there is no child element for them because of the two-child limit.

How the universal credit system works and what it looks like

The DWP has access to HMRC’s Child Benefit Service to verify that a child exists, their residency status and whether the claimant has responsibility for the child.¹⁷⁶ Although the DWP may use the receipt of child benefit as evidence of responsibility for a child, the legislation does not require a child benefit award.¹⁷⁷

What happens in practice

This research has found multiple examples of families who have not been able to provide evidence for one of their children and have subsequently not been paid any child element for their other children, who they have successfully verified. In more than one case, there was a delay in verifying an older child’s education status, which was outside the claimant’s control.

Early Warning System: lack of evidence of one child’s education causes refusal of child element and no additional bedrooms for all children – November 2022

‘The client’s three children aged 10, 14 and 19 joined her in the UK in June 2022 and have pre-settled status. The client has cancer and claimed UC in April, declaring her children via a change of circumstances in June. She wasn’t able to provide evidence of her eldest’s education because he hadn’t been accepted into college yet and it wasn’t possible to do so until the new school year. The verification for all of the children failed because of the lack of evidence for one of her children. Since June her UC award has only included the single person allowance, limited capability for work-related activity and housing costs restricted to a single person according to local housing allowance (LHA). There is no child element for any of the children and no additional bedrooms allowed for them in the LHA size criteria.’

¹⁷⁴ s10(1A) Welfare Reform Act 2012 and regs 24A and 24B and Sch 12 UC Regulations 2013

¹⁷⁵ Reg 24 UC Regulations 2013

¹⁷⁶ *Additional Amount for Children*, operational guidance, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/001_Additional_amount_for_children_V24.0.pdf

¹⁷⁷ *MC v Secretary of State for Work and Pensions (UC)* [2018] UKUT 44 (AAC), reported as [2018] AACR 21, available at gov.uk/administrative-appeals-tribunal-decisions/mc-v-secretary-of-state-for-work-and-pensions-uc-2018-ukut-44-aac

Early Warning System: missed message regarding one child impacts on payments for all children – August 2022

‘The claimant has four children, for one of whom she receives DLA [disability living allowance]. The claimant had recorded this child as being on low-rate care, when she was in fact on mid-rate care. This is irrelevant for her UC as she would get the lower disabled child element in either case. DWP asked her to correct it but she missed the message because English is not her first language. As a result, she wasn’t paid the child element (or disabled child addition) for any of the children (all born pre-April 2017) for three consecutive assessment periods. She also had no work allowance applied and her housing element was reduced as she was deemed to be under-occupying with no children in the household. She missed out on around £1,500 per month, was in extreme hardship and got into massive debt. We have since been able to resolve the issue.’

When CPAG raised this issue with the DWP, it confirmed that *‘the system only allows an agent to verify the declaration as a whole. It doesn’t allow one child to be verified while others within the same declaration remain outstanding.’* The DWP also confirmed that this was a *‘design issue rather than a policy or legal decision’* and *‘the issue would need to be prioritised by the design team’*.¹⁷⁸ This issue can occur at the beginning of an award when first declaring the household members or if a claimant adds multiple children later on, using the change of circumstances function in the UC account.

In the example below, the DWP advised the claimant to add both children again via the change of circumstances function once the evidence was available for one of them; therefore, the DWP did not pay the child element for the verified child.

Early Warning System: two children removed from claim due to wait for evidence of one child’s education – August 2022

‘My client with two children claimed UC in late June, but when the first payment came through it was extremely low. This was because there was no child element, there was no work allowance disregarding some of my client’s earnings and the “bedroom tax” was applied when there is no spare room. My client was asked on their journal to supply evidence of the 17 year old’s education. They had supplied information about his upcoming course starting in September but were awaiting evidence of the previous year’s course because it was the school holidays. As they did not supply the evidence in the allotted timeframe, the DWP took both children off the claim and were told they would have to make a new change of circumstances when the education evidence was available. There was no doubt they were entitled to the child element for the 12 year old.’

The DWP states that claimants should add only their verifiable children initially using the to-do and then add any unverifiable children separately once the evidence is available to verify them. This workaround allows the claimant to receive the child element for their verified children without delay. However, this requires DWP officials to be aware of, and claimants to be notified of, this workaround. Our evidence from the Early Warning System suggests this is not reliably happening.

There is an additional risk that claimants will not receive arrears of UC if they use the change of circumstances function to verify the child(ren) later, as directed by the DWP. The risk is that the DWP will treat the change of circumstances as if it has been notified late and only add the child element from the assessment period in which

¹⁷⁸ Email from DWP Operational Stakeholders to CPAG, 7 February 2023

the claimant provides the evidence rather than from the earlier assessment period when they first tried to verify the child(ren).¹⁷⁹ There is evidence in section 2.4.1 that the DWP can make mistakes when deciding what date to make changes to awards from, and it is likely that claimants without advisers might not identify whether the DWP has made an error, due to the complexity of the legislation.

The DWP has designed a system that cannot verify individual children independently, resulting in families missing out on their legal entitlement to the child element for all of their children if there is a problem with evidencing one child. As a result of a digital implementation choice, claimants can receive decisions that are not taken in accordance with the law. The impact of these decisions is claimants face severe hardship: not only because of a missing child element but also because of a related potential reduction in the housing element and loss of the work allowance.

2.3.7 Missing carer element despite carer's allowance

What the law says

In order to have the carer element included in their maximum amount, a claimant must meet two conditions: first, they must provide 'regular and substantial care' for a person; second, that person must be considered 'severely disabled' due to receiving certain rates of disability benefits. If a claimant meets those conditions, they may be entitled to the non-means-tested benefit carer's allowance (CA). However, claimants do not have to be in receipt of CA to receive the carer element. Specifically, the legislation allows individuals with earnings above the threshold for CA to still receive the carer element in UC. Although, an award of CA is sufficient evidence to confirm that a claimant does meet the conditions necessary for the carer element of UC.¹⁸⁰

What happens in practice

As the interview extracts below describe, some claimants have CA included as income, reducing the UC award pound for pound, without the award calculation including the carer element. It appears this issue most affects claimants who become eligible for CA once they are already in receipt of UC.

Zoe (adviser) – December 2021

'People get carer's allowance, the computer knows that they are receiving carer's allowance, it's deducted from their entitlement but it's not adding carer element because they did not go through "report a change". And that is unlawful because this is not what the regulations say, so that happens every time. I had nine months until a mandatory reconsideration was successful for one claimant.'

¹⁷⁹ If the children were in the household from the beginning of the award, then the DWP should instead revise the entitlement decision to add the child element from the beginning of the award. If the children joined the household after the UC award had started, then the DWP should add the child element via a supersession from the assessment period in which they first notified the DWP of the change of circumstances (or earlier, if good reason for the delay) rather than the assessment period in which they were able to provide the evidence (see section 2.4 of this chapter for an explanation of supersessions).

¹⁸⁰ Reg 29(1) UC Regulations 2013. Reg 30 states the carer element can be paid to someone without an award of carer's allowance. 'Severely disabled' means they are in receipt of a relevant disability benefit.

Early Warning System: missing carer and disabled child element – August 2022

'My clients have a five year old who receives mid-rate disability living allowance. Wife receives carer's allowance. This is deducted pound for pound from their UC. They have not been told they can add carer element and disabled child element to their UC. They have been struggling financially and came to see us when we saw they were not getting these elements. We also noted a letter stating they had an overpayment due to the carer's allowance with deductions being made for this.'

Rhys (adviser) – February 2022

'We have the same issues with carers, who get awarded carer's allowance. The carer's allowance gets deducted from their universal credit, but they don't get awarded the carer element, because they haven't told the DWP they're a carer. Well hold on a minute, you've told the DWP you're a carer because you've claimed carer's allowance. And universal credit know you have, because they're deducting it... So the idea that it's then up to the claimant to actually say, "I am a carer" is ludicrous, simply ludicrous.'

Early Warning System: multiple cases of a missing carer element – November 2022

'A problem that I have been seeing a worrying lot of over the past couple of months is the number of people on carer's allowance and UC where the carer's allowance is being deducted from the UC but there is no carer element on the UC.'

It is reasonable for claimants to expect that if UC is taking their CA into account as income and reducing the award accordingly, then UC will also automatically take the CA into account for all other aspects of their UC calculation. Relying on claimants to identify when the carer element is missing from their award means that the error will often be missed, and those carers will not benefit from the additional financial support they are entitled to. In addition, there is a lack of information in the UC payment statement about all of the different possible elements, exceptions or exemptions that might apply to a claimant if the UC digital system does not recognise them as applicable to the specific individual, which makes it difficult for claimants to identify if their award calculation is missing an additional element, exemption or exception (see Chapter 3 – 'Communicating decisions' for more information). This is another example of claimants failing to benefit from the capacity for using the data available to reduce reporting requirements and improve accuracy.

This issue has been raised repeatedly with the DWP. In June 2022, the then Minister for Disabled People, Chloe Smith, stated that the department is 'aware of the concerns' and has been 'exploring the extent to which we might be able to automate our systems for a while' as the system does not currently automatically recognise when claimants become carers after their UC award has been made.¹⁸¹ The then Minister stated: 'There is no quick solution, and even if it were feasible to make system-related improvements, these would have to be prioritised alongside other required changes.' The DWP consulted with stakeholders on this issue in October 2022 after carrying out user research on the underpayment of carer elements in UC.

¹⁸¹ Ministerial correspondence from Chloe Smith MP to CPAG on 29 June 2022, ref: MC2022/47062

Similar to the issue affecting previous ESA claimants, this example demonstrates how some of the benefits of digitalisation are not being shared with claimants.¹⁸² From a rule of law perspective, carers are systematically receiving unlawful decisions due to a failure of the DWP to use the information already available within the department to accurately calculate awards.

2.4 DWP Changing of awards

Supersessions

If the DWP makes an error (of fact or law) when making a social security decision (eg, a child is missing from an award), it can correct it with 'full retrospective effect' by a revision.¹⁸³ (See Chapter 4 – 'Disputes' for more information on revisions). Alternatively, if the DWP made the correct decision at the time, but the decision becomes wrong at a later date (eg, because of a change in circumstances), the DWP can replace it with a new decision via a supersession.¹⁸⁴ Both claimants and the DWP can initiate supersessions and revisions. The DWP has the power to treat claimant requests for supersessions as requests for revisions and vice versa, with revisions always taking precedence over supersessions when both options would otherwise be available to a decision maker.¹⁸⁵ This is important because a revised decision generally takes effect from the same date as the original decision it is revising: meaning it provides a way of fully correcting decisions which have been wrong since they were first made. This is compared to supersessions, which change decisions from a date later than the original decision took effect (see below).

The DWP cannot supersede a decision for any reason or at any time: the circumstances must fall within a permitted 'ground' for supersession. The most common ground for a supersession is that there has been, or there is expected to be, a change of circumstances since the last decision was made.¹⁸⁶ Once a ground has been identified, it is necessary to determine the appropriate 'effective date' (the date from which the decision should be changed).

2.4.1 Supersessions because a new award of benefit takes effect from the wrong date

What the law says

The regulations prescribe the various possible dates a decision should be changed from when there has been a supersession on the ground of a change in circumstances. The effective date can depend on a number of factors, including whether the claimant or the DWP initiates the supersession, the reason for the change, whether the change is advantageous to the claimant (eg, resulting in a higher award of universal credit (UC)), if the claimant notifies the DWP of the change within the assessment period it happened, and whether the claimant has a good reason for notifying the DWP of the change late.¹⁸⁷

¹⁸² Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at digitalwelfare.report/contents.

¹⁸³ Under s9 Social Security Act 1998; R(IB) 2/04, para 10, available at rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1

¹⁸⁴ In some cases when a revision is not possible, a decision which was incorrect at the time of the decision may only be changed by supersession.

¹⁸⁵ If a decision can be both revised and superseded, then a supersession is only allowed if there are specific grounds which are not possible under a revision: reg 32 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No.381 ('Decisions and Appeals Regulations 2013').

¹⁸⁶ Reg 23 Decisions and Appeals Regulations 2013

¹⁸⁷ Reg 36 and Sch 1 Decisions and Appeals Regulations 2013

The general rule is that the supersession should take effect from the first day of the assessment period in which the change occurs.¹⁸⁸ However, if the change means the claimant will be entitled to more UC (an advantageous change), then the claimant must notify the DWP of the advantageous change before the end of the assessment period in which the change occurs so that they can receive the increase in their UC award from the earliest opportunity. Otherwise, the supersession will only take effect from the beginning of the later assessment period in which the claimant notifies the DWP, and the claimant will miss out on the increase in their UC up until that point.

There are two main exceptions to the general rule.¹⁸⁹ First, if the claimant provides a good reason for their delay in notifying the DWP of a change (and they report it within 13 months), the DWP should still supersede the award from the assessment period of the change, rather than when the claimant alerted the DWP.¹⁹⁰ Second, if the change is caused by the claimant or their family member receiving a new award or altered rate of a relevant benefit (eg, disability and carers' benefits), then the supersession should always take effect from the assessment period in which the entitlement to disability and carers' benefits first arose or changed, regardless of when the claimant notifies the DWP.¹⁹¹

In some circumstances, there may be more than one ground on which the award could be superseded. Identifying the correct combination of ground and effective date in these situations is crucial as it may determine whether a claimant has been overpaid or underpaid and by how much. The Upper Tribunal held that when multiple grounds are available and the change is advantageous, the claimant should be able to rely upon the most beneficial ground.¹⁹² Alternatively, when a decision is not advantageous to the claimant, the Secretary of State for Work and Pensions (SSWP) can choose the most beneficial ground to them or choose a more administratively straightforward ground with a less beneficial effective date if they so choose.

What happens in practice

Where a UC claimant or their family member becomes entitled to a new or altered rate of a relevant benefit (including carer's allowance (CA) and disability benefits) so that it alters the amount of their UC (eg, by adding the carer element), the supersession should take effect from the beginning of the assessment period in which the disability or carers' benefit entitlement starts. It does not matter when the claimant notifies the DWP about the relevant benefit.¹⁹³ The rule exists because it can take a long time to get decisions on disability benefits, especially when claimants have to go through the lengthy appeals process to secure their entitlement, so awards often start from a date many months before the DWP or appeal tribunal finally makes the decision. This prevents claimants from losing out on benefit simply due to delays in DWP decision making or incorrect decisions. However, the Early Warning System regularly receives evidence of the DWP acting unlawfully in these circumstances and only adding the carer element and disabled child addition from the beginning of the assessment period in which the claimant notifies the DWP about the new benefit rather than when the new benefit entitlement arose.

In the following case study, the DWP asked a claimant why they were late in reporting their child's new disability benefit, despite it being impossible to notify any earlier than the date the DWP notified the claimant of the disability benefit award decision.

¹⁸⁸ Sch 1 para 20 Decisions and Appeals Regulations 2013

¹⁸⁹ Sch 1 para 21 Decisions and Appeals Regulations 2013

¹⁹⁰ Reg 36 Decisions and Appeals Regulations 2013

¹⁹¹ Sch 1 para 31 Decisions and Appeals Regulations 2013

¹⁹² *DS v SSWP (PIP)* [2016] UKUT 538 (AAC), reported as [2017] AACR 19

¹⁹³ Sch 1 para 31 Decisions and Appeals Regulations 2013

Early Warning System: DLA and change reported outside assessment period – August 2021

'My client and their partner have five children and were losing £800 a month because of the benefit cap. One of their children was awarded DLA [disability living allowance] mid-rate care and high-rate mobility from March 2021 and the benefit cap was removed. They reported the DLA award and with our help requested the disabled child element be added from the beginning of the assessment period from which the award was made. UC ignored it and have asked her to provide reasons why she reported late – "outside the AP [assessment period] in which the change occurred". We again wrote to UC (via the journal) to explain that the usual rule about the effective date for a supersession on the grounds of a change of circumstances if the change is reported late does not apply if a family member becomes entitled to another relevant benefit (such as DLA). They have ignored this and keep telling the client that she needs to explain why it is late. It does feel like case managers don't understand the law. This case is not unusual – almost every relevant benefit change that I have come across, this is happening.'

Early Warning System: missing carer element – February 2023

'A carer's UC award started in December 2020. In January 2021 she started receiving CA which was taken into account as income for UC. However, the carer element was not added at the same time. In January 2023, her work coach identified the missing carer element and added it from that assessment period, but they are refusing to add it from January 2021 when she first became entitled.'

Early Warning System: further information on 'special circumstances' for disabled child element – October 2021

DLA was awarded for client's child, but UC is now requiring further information on 'special circumstances' to add the disabled child element from an earlier date. The adviser has identified the qualifying benefit rule and thinks the element should be effective from the date of the child DLA, so they are confused by the DWP's response.

Early Warning System: DWP refuse to add carer element from date of disability benefit – April 2022

'I have a client who has been part of a joint UC claim since October 2018. Her partner has just been awarded personal independence payment (PIP) effective from November 2018. The DWP has now given the carer element from the current assessment period but a note on their journal says it will refuse to consider backdating it to when the PIP award started as it is outside of the 13-month deadline for late notification of a change in circumstances.'

A number of stakeholders have raised with the DWP how claimants with disabilities and caring responsibilities were repeatedly missing out on their entitlement to the carer and disabled child elements due to supersessions taking effect from the incorrect date.¹⁹⁴ The DWP responded: *'There are no underlying technical issues which*

¹⁹⁴ Questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 6 July 2021

would cause incorrect backdating and guidance is available to support colleagues through this process.’ We investigated this assertion below.

In order for a UC award to be superseded to add the carer element from an earlier assessment period, the case manager must make a referral to a decision maker, which may not always happen reliably. It appears that case managers can change a UC award for the current assessment period themselves if the claimant reports a change of circumstances, but a decision maker is required to carry out a supersession that takes effect from an earlier assessment period (an earlier effective date). When a case manager does identify that a referral is necessary, they use a to-do titled ‘Refer to a decision maker (late reporting of a change)’.¹⁹⁵ There is no specific internal agent ‘to-do’ for dealing with a new or altered award of a relevant benefit (such as child DLA or CA) as a distinct process from referring other late reported changes to a decision maker. The DWP has confirmed that an agent would use the “other reason” option and the free text box to explain the reason for the referral to the decision maker in the to-do.¹⁹⁶ The name and use of the ‘Make a decision (late reporting of a change)’ to-do when considering a new or altered rate of a relevant benefit may partially explain why decision makers wrongly treat these notifications as advantageous changes that have been reported late.

The rules on effective dates are complex and context-specific, with the variation in effective dates adding up to significant amounts of money. However, there is no transparency as to the rules when claimants notify the DWP about a change in circumstances or when they receive supersession decisions. For example, a claimant reporting a new award of CA might say the change happened from the day they started receiving money, not understanding that the change happened from the date the CA was awarded. Claimants do not have enough information to identify whether the correct effective date has been applied in their case or whether they should raise a dispute.

Decision makers regularly fail to apply the law correctly when considering the rules on effective dates for supersessions because of a new award or altered rate of a carer or disability benefit. The use of the ‘Refer to a decision maker (late reporting of a change)’ to-do by case managers and the use of the equivalent ‘Make a decision’ to-do by decision makers, is likely to produce unlawful decisions because the to-dos incorrectly suggest that the only reason a supersession should take effect from an earlier date is if there is a good reason to accept a late report. In addition, there is a lack of transparency about the effective date rules and inadequate details provided to claimants when they notify of changes or are notified of supersession decisions. As a result, claimants are unable to recognise whether they have had their application for a supersession decided according to the correct legislation, or whether they are missing out on their full entitlement, which can amount to thousands of pounds over multiple years.

2.4.2 Inability to accept future circumstances

What happens in practice

The regulations allow the DWP to supersede a decision when a change of circumstances is expected to occur in the future; however, the UC system cannot accept future dates, as illustrated by the following interview extract.

¹⁹⁵ whatdotheyknow.com/request/850660/response/2016615/attach/html/5/To%20do%20list%20as%20of%2006.04.22.pdf.html

¹⁹⁶ Email from DWP to CPAG, 4 April 2023.

Harriet (claimant) – June 2021

'I have just received a job contract but I won't be starting for a week or so until 16 June 2021. I went on the change of circumstances function to say I would have a job from that date but it won't let me add any dates that are in the future. I won't actually receive my first pay cheque until the end of July so I am not sure whether I should tell them on the first day of my job or the day before I am expecting my first pay cheque?'

The inability to process future changes in circumstances causes particular administrative difficulties for claimants and social housing providers when social rents increase every April. Although social landlords have access to the rent increase information for all of their tenants, the claimants themselves are required to update their details using the change of circumstances function, prompted by a to-do from the DWP. The DWP then supersedes UC awards to account for the change.

Figure 2F: CPAG mock-up of extract from 'FAQ for landlords' on the *Understanding Universal Credit* website

Understandinguniversalcredit.gov.uk***[Universal Credit Social Rented Sector \(SRS\) Rent Change April 2022 – FAQ for landlords](#)***

Q: When can claimants report a change to their rent?

A: All changes need to be made once they have happened (i.e. after the rent has changed in April). We would be grateful if you can remind your tenants of the information, they need to report to their UC account and the date of this change in any communications. Claimants will receive a to-do asking for the information.

The combination of requiring claimants and landlords to submit and verify the annual change in rent and not allowing future changes in circumstances means social landlords and tenants can struggle to ensure the change is reported before the end of the assessment period including the beginning of April. One adviser described the extent of the administrative burden for both claimants and landlords, which is in direct contrast to the automatic increases for social housing tenants in receipt of housing benefit (HB).

Rowan (adviser) – February 2022

'A guy that I saw a couple of weeks ago... we sent him his rent-increase letter last year, he immediately went on his journal and tried to do his rent increase, but you can't do your rent increase until it's happened because universal credit can't handle the future. He realised that he couldn't do it and somehow cancelled his whole housing costs... He'd put notes on it, saying: "I don't know what I'm supposed to do." ... There was a note on his journal the next day, saying: "Oh, it looks like you've sorted it out for yourself now. Is that right?" ... They should have been looking at it and going: "Did you really mean to cancel your housing costs because the address is the same but you're saying you haven't got any rent now?"

... it's supposed to be that on 5th April, ... Any housing association or council tenant... on the Landlord Portal... are supposed to get a to-do that says: "Has your rent increased?" Then, if they tick "yes", it will say: "What's your new rent? Has anything else changed or have you got any service charges? Is it still paid weekly?" Tick, tick, tick. Then, it gets sent to us. We verify it... Obviously, that's a manual process... We'll almost certainly get them all, which is great in the sense that we want all our tenants to have the right rent, but yes, it's a massive administrative burden on us as a small social landlord.'

Rhys (adviser) – February 2022

'People not realising, if you're in the social renting sector, you have to notify the DWP of your rent increase. People were so used, on housing benefit... They didn't have to tell the housing benefit service that their rent had gone up because it was done on a bulk data transfer... Now they have to do it themselves, a lot of people fall foul of that. We'll see that in the next few weeks.'

The DWP has designed a system that is unable to supersede awards based on changes of circumstances that are expected to occur in the future. Claimants have been granted the procedural right by parliament to apply for supersessions on the basis of expected changes, but the DWP has failed to provide a mechanism allowing them to access this procedural right. This does not adhere to the rule of law principle of procedural fairness. This is also an example of the DWP not sharing the benefits of digitalisation and automation, which can improve accurate and prompt decision making, with claimants and other stakeholders required to interact with the UC digital system. Social rented tenants in receipt of UC have a higher administrative burden with regard to annual rental increases than those in receipt of HB.

2.4.3 Suspension and termination to end awards**What the law says****Suspension**

Sometimes the DWP may question whether a UC recipient is currently, or was previously, entitled to the award at all or at the same rate. While the DWP is determining this question, it might be paying the wrong amount of benefit. To guard against such situations, the law provides discretionary powers to the DWP to 'suspend' payment if a claimant fails to provide requested information or evidence within 14 days, or in certain circumstances, to suspend the benefit before the evidence request is made. The regulations require that any request for information or evidence must clearly state, not just the 14-day deadline, but also the possibility of requesting an extension or satisfying the DWP that the evidence does not exist or cannot be obtained.¹⁹⁷ As suspension powers

¹⁹⁷ Regs 44 and 45 Decisions and Appeals Regulations 2013

are discretionary, decision makers must consider each case's specific facts and any potential hardship.¹⁹⁸ Suspensions are not appealable decisions.

Termination

The DWP can terminate a suspended award (by supersession) in certain circumstances where the claimant has not provided the requested information. Such decisions may end entitlement that the claimant was properly entitled to, not because the claimant no longer meets the entitlement conditions, but solely because they have failed to comply with a procedural requirement to provide evidence. Given the potential for injustice in such a process, the DWP must strictly comply with the procedural rules which apply to it before it can make such a decision. For example, if the DWP has not included all of the information required by the regulations in the request for evidence, such as the possibility of requesting an extension beyond the 14 days, then any subsequent termination will be unlawful.¹⁹⁹ Any decision to terminate an award is a type of supersession and is, therefore, appealable.²⁰⁰ If the DWP suspends and then terminates an award of UC, it should not result in an overpayment because the termination should happen from the date of the suspension, and the previously paid award remains unchanged up until that date.²⁰¹

What happens in practice

UC may be the majority or entirety of a claimant's income, so suspension of UC can have severe consequences. This is in comparison to the different legacy benefits which are paid separately so that if a person's HB, for example, were temporarily suspended, they would still be able to receive their child tax credit and income support. It is important that the DWP uses its discretionary power to suspend lawfully and carefully, with decision notifications including all the information required, partial suspensions being favoured over full suspension when only one element is under examination, and with timely investigations. A claimant cannot challenge a suspension via the usual mandatory reconsideration and appeal route; therefore, judicial review is the only legal remedy if claimants are in hardship.

An investigation of the template language used to notify claimants that they must provide information or evidence at the risk of, or following, suspension strongly suggests that the UC notices do not comply with the requirements of the suspension and termination regulations.²⁰² In response to a freedom of information (FOI) request for the written communication used when advising UC claimants they must provide information or evidence under regulation 45 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No.381 ('Decisions and Appeals Regulations 2013'), the DWP provided the following illustrative example of the wording used.²⁰³

¹⁹⁸ ADM Ch A4: 'Supersession, suspension and termination', paras A4321-A4345, available at

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1065518/adma4.pdf

¹⁹⁹ *AA v Leicester CC* [2009] UKUT 86 (AAC), paras 54-56, available at casemine.com/judgement/uk/5a8ff78660d03e7f57eae361; *VW v Hackney LB (HB)* [2014] UKUT 277 (AAC), para 5, available at casemine.com/judgement/uk/5b46f2182c94e0775e7f222f; and *SS v NE Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 21, available at hinfo.org/caselaw/2011-ukut-300-aac

²⁰⁰ R(H) 4/08

²⁰¹ A termination is effective from the date of suspension unless there are alternative grounds for a revision or a supersession from an earlier date: reg 47(2) Decisions and Appeals Regulations 2013 and CH/2995/2006.

²⁰² Reg 45 Decisions and Appeals Regulations 2013

²⁰³ FOI2022/55231, available at

cpag.org.uk/sites/default/files/files/policy/post/FOI2022_55231_Suspension_evidence_request_notification_wording.pdf

Figure 2G: CPAG mock-up of template notice requesting evidence or information

Your payment has stopped.
Your payment was stopped on XX/XX/XXXX. This is because there's a problem with your claim.

What you need to do
Call XX on XXXXXXXXXXX before XX/XX/XXXX or your claim will be closed.

If we've already asked you for evidence, your claim may close on a different date. You have 14 days from the date of the request to provide that evidence, unless we've told you otherwise.

Your claim will restart if you provide any missing information and it shows you are still entitled to universal credit. You'll also get any missed payments.'

The wording of the template notice suggests it could be used simultaneously in cases where the DWP has already requested the information or evidence and as the first notification that information is required. In the latter situation, it is inadequate to ask the claimant to contact the DWP without expressly stating what information or evidence is required.²⁰⁴ This notification also fails to include the possibility of requesting an extension beyond 14 days or satisfying the DWP that the evidence does not exist or cannot be obtained.²⁰⁵ The failure to include the lawfully required information in the decision notice is a procedural error that is likely to result in any subsequent termination decisions being unlawful.

Furthermore, the Early Warning System cases below show examples of suspensions of the whole of claimants' awards when there is only a question over the accuracy of one particular element.

Early Warning System: housing costs following wife's death – October 2021

A widower struggled to get DWP to pay his full housing costs from the date of his wife's death. Despite support and intervention from his social landlord, DWP took months to respond to his requests, and then suspended his whole UC award, rather than just the housing costs, while a decision was pending. The claimant's payment was delayed for two weeks, leaving him reliant on family and friends. A payment was only made when his social landlord escalated the matter.

Early Warning System: payment of childcare element following summer break – November 2020

'A woman in receipt of UC had a break from receiving childcare costs during the summer while her elder daughter was back from university, but since September she has been having difficulty uploading the correct evidence of her childcare costs as some of the receipts had the incorrect dates. She was expecting to be paid on 2 November but she hasn't received her payment statement, or any of her UC, and there is no letter or journal message to say it has been suspended. Surely they shouldn't withhold the whole UC payment when there is only an issue with the childcare element?'

²⁰⁴ Reg 45(2)(a) and (c) Decisions and Appeals Regulations 2013

²⁰⁵ Reg 45(4)(a)(ii) and (b)(i) and (ii) Decisions and Appeals Regulations 2013

Early Warning System: couple's UC suspended waiting for confirmation of wife's application to European Union Settlement Scheme (EUSS) – December 2020

'A married couple, husband British and wife French, have had their UC suspended which is their only source of income so they are destitute. She has lived in the UK for 30 years and made a late application for the European Union Settlement Scheme. The UC claim has been suspended because they have been asked to provide a certificate of application from the Home Office which they do not have yet. Could he not still be paid at the single rate seeing as he is a British citizen?'

The purpose of suspension is to ensure that overpayments are not made and, in some cases, to put pressure on claimants to provide information. As such, the suspension power should only be used for these purposes. Suspending the entirety of an award where there is only doubt about one part of it, or suspending a current award where there is only doubt about a past period, does not align with this purpose and is, therefore, likely to be a breach of the rule of law principle of lawfulness.

2.5 Claim closure

What the guidance says²⁰⁶

The *Claim Closure* internal operational guidance describes 'claim closure' as an 'important process' within universal credit (UC).²⁰⁷ The guidance lists examples of when the DWP might consider 'claim closure', including if a claimant fails the habitual residence test, has failed to provide evidence, or if a claim has been suspended for 30 days.²⁰⁸ The examples suggest that the DWP can 'close a claim' both when deciding a claim and after an award is in place, both for failing to meet entitlement conditions and for failing to follow procedures.²⁰⁹ Similarly, in the DWP's training materials, they make the distinction between 'claim closure' before the end of the first assessment period and after the first assessment period.²¹⁰

What the law says

'Claim closure' is not a concept that is recognised within the Social Security Act 1998.

²⁰⁶ Usually we start with what the law says and then follow it with what the guidance says, but in the example of 'claim closure', the guidance is so detached from the law that it requires starting with the guidance.

²⁰⁷ *Claim Closure*, operational guidance v 19, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf

²⁰⁸ To qualify for UC, a person must be both present in Great Britain and 'habitually resident' (meaning the UK is your main home and you intend to keep living there), which includes having a 'right to reside' in the common travel area (s4(1) Welfare Reform Act 2012 and reg 9 UC Regulations 2013). Reg 47(1)(b) Decisions and Appeals Regulations 2013 requires that 'more than one month has elapsed since the first payment was suspended', not 30 days.

²⁰⁹ If an award is in place, then the claim ceases to exist.

²¹⁰ *UC24GEN: claim closure and re-claim*, v36.0, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/UC24GEN_Claim_Closure_v36.0.pdf; version 15 (onwards) of the UC internal operational guidance on claim closure was updated to say 'claim closure (legally speaking the termination of an award)'.

PP v SSWP (UC) [2020] UKUT 109 (AAC)

paragraph 7 ‘... The concept of “case closure” is jurisprudentially highly suspect. Over the years the former Social Security Commissioners and now the Upper Tribunal judges have done their best to try and eliminate this usage...’

paragraph 8 ‘Unfortunately, the notion of case closure, so beloved of frontline benefits administrators, has proven resistant to all such judicial attempts at erasure...’

The regulations are clear that once the DWP has taken the decision to refuse a claim or make an award, the ‘claim’ ceases to exist.²¹¹ The DWP can only bring an award of UC to an end by a revision to remove entitlement from the date of the original decision or by a supersession to end entitlement from a later date.

What the DWP describes as ‘claim closure’ can actually be five distinct decision-making mechanisms.

Refusal of claims for substantive grounds

The DWP has the power to immediately refuse a claim on substantive grounds if the claimant does not meet the conditions of entitlement – for example, if a claimant does not meet the residence requirements for UC.²¹²

Refusal of claims for procedural grounds

If the DWP requires additional evidence to determine a claimant’s entitlement, it can request the information or evidence from the claimant.²¹³ The claimant then has a month, or longer if extended, to provide the required evidence. If the claimant fails to provide the required information within the given time limit, then the DWP must make a decision based on all available information and evidence. One outcome could be to refuse the claim on substantive grounds; however, there is no freestanding right to refuse a claim for benefit solely due to a failure to comply with a duty to provide evidence. This was confirmed by Judge Wikeley in the Upper Tribunal judgment of *PP v SSWP (UC) [2020] UKUT 109 (AAC)*.

PP v SSWP (UC) [2020] UKUT 109 (AAC)

paragraph 43 ‘It follows that it was overly simplistic to say that the Appellant’s case was closed because he had failed to attend an interview about his self-employment. On a proper legal analysis, his universal credit claim was disallowed because he had not shown that he satisfied the financial condition of entitlement for a single person... That was a decision under section 8(1)(a) of the Social Security Act 1998... on his claim for universal credit...’

The DWP cannot lawfully refuse a claim purely on procedural grounds. Once a valid claim has been made, the Secretary of State must decide whether the claimants meet the conditions of entitlement to benefit. (See section 2.2.2 of this chapter on the refusal of UC for a failure to book the initial evidence interview.)

²¹¹ s8(2)(a) Social Security Act 1998

²¹² s8(1)(a) Social Security Act 1998

²¹³ Reg 37 Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 No.380 (‘Claims and Payments Regulations 2013’)

The ending of awards for substantive grounds

If someone with an award of benefit no longer meets the conditions of entitlement, the DWP should supersede the award to bring it to an end on the grounds of a change in circumstances.²¹⁴ For example, if a claimant receives an inheritance that brings them over the £16,000 capital limit, their award would be ended on substantive grounds.

The termination of awards for procedural grounds

The DWP may request evidence or information from someone in receipt of UC to assess whether the current award decision is correct or should be changed.²¹⁵ When requesting evidence, the DWP must notify the claimant exactly what information is required, that there is a 14-day deadline before they will suspend the benefit, and that the deadline can be extended.²¹⁶ In some cases, the benefit can be suspended at the same time the DWP requests evidence.²¹⁷ If more than a month has passed since the suspension started or since the request for evidence, all the decision notices included the required information, and the claimant has failed to provide the evidence requested, the DWP can supersede the award via termination for a failure to provide information from the date of suspension.²¹⁸

Revision of entitlement decisions to remove entitlement

The DWP can revise a decision awarding UC to remove entitlement on any grounds within one month of the decision.²¹⁹ If more than a month has passed, the DWP can only remove entitlement by revision on two grounds: if the original decision was an 'official error' or because the original decision was made 'in ignorance of, or based on a mistake as to, some material fact'.²²⁰ (See Chapter 4 – 'Disputes': section 4.4 for examples of the DWP revising entitlement decisions as part of the reverification of claims made during the early stages of the Covid-19 pandemic when evidence checks were reduced.)

What the UC digital system looks like and how it works*For DWP officials*

The UC system automatically generates a 'Consider closing claim' agent to-do, which prompts work coaches and case managers to begin the 'closure' process, although the system does not generate the to-do in all circumstances.²²¹ DWP agents are expected to make a number of manual checks before 'claim closure', including checking whether the claimant has complex needs, checking for any outstanding appointments, and seeing whether there is any recent contact in the journal, with the option available to defer the 'closure' to a future date.²²² Decision makers also have the power to 'close claims' if their decisions directly affect entitlement, such as a determination that someone has not satisfied the habitual residence test. The 'claim closure' decision

²¹⁴ Reg 23 Decisions and Appeals Regulations 2013

²¹⁵ Reg 38 Claims and Payments Regulations 2013

²¹⁶ Reg 45 Decisions and Appeals Regulations 2013

²¹⁷ Reg 44 Decisions and Appeals Regulations 2013

²¹⁸ Reg 47 Decisions and Appeals Regulations 2013. A termination is only effective from the date of suspension unless there are alternative grounds for a revision or a supersession from an earlier date (reg 47(2) and CH/2995/2006).

²¹⁹ Reg 5 Decisions and Appeals Regulations 2013

²²⁰ Reg 9 Decisions and Appeals Regulations 2013

²²¹ UC24GEN: claim closure and reclaim, facilitators guide, accessed via FOI2020/59338, available at

cpag.org.uk/sites/default/files/files/policypost/UC24GEN_Claim_closure_and_reclaim_facilitator_guide_FOI2020_59338.pdf; *Claim Closure, internal operational guidance, v 19*

²²² *Claim Closure, internal operational guidance, v 19*. The DWP has a broad definition of what may be considered complex needs, which includes different life events, personal circumstances, health issues and disabilities that may be either permanent or temporary. See *Complex Needs Overview, UC internal operation guidance, v 18*, available at data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039_Complex_needs_overview_V18.0.pdf

notifications are automatically posted in the UC journal. A drop-down menu for DWP officials in the to-do provides the claimant with the reason for the decision.²²³

For claimants

The claimant receives a 'claim closure' notice pinned to their UC account home screen with a one-line explanation for the decision, such as 'you did not accept your claimant commitment to-do'. Claimants are given instructions on making a new claim and directed to their journal to 'find out why we have closed your claim and how to contact us if you disagree'. The decision notification in the journal repeats the (usually) one-line explanation for the decision, accompanied by a notice of appeal rights. The UC journal is immediately frozen, so claimants cannot post new messages, meaning they cannot use their journal to request an explanation of the decision or a mandatory reconsideration (a revision).

Figure 2H: CPAG mock-up of a 'claim closure' notice displayed on the home screen

Your claim has been closed

We closed your claim on 6 July 2022.
This is because you failed your habitual residence test.

This means your Universal Credit has stopped
Including payments to your landlord or mortgage provider for rent, interest or service charges.

If you need to claim again
You can make a new claim if your circumstances change, or if your partner claims Universal Credit and gives you a linking code.

Once you have made your new claim, you can apply for an advance if you need money before your first payment.

What to do if you disagree
Find out why we closed your claim and how to contact us if you disagree – go to your [journal](#).

[Make a new claim](#)

[Enter a linking code](#)

²²³ UC24GEN: claim closure, v36.0, pp.7-11, accessed via FOI2021/75537, available at cpag.org.uk/sites/default/files/files/policypost/FOI2021_75537_response.pdf

Figure 21: CPAG mock-up of 'claim closure' decision notice displayed in the journal

Home	Journal
<h2>Your claim has been closed</h2>	
<p>Monday 16 August 2021 at 11.30am</p>	
<p>Closed date 5 August 2021 Reason You did not complete your 'accept your commitments' to-do.</p>	
<h3>Why we closed your claim</h3> <p>You did not complete your 'accept your commitments' to-do. This means you did not accept your commitments.</p> <p>Your commitments explain what you must do in return for Universal Credit.</p>	
<h3>Your Universal Credit has stopped</h3> <p>This includes any payments to your landlord or mortgage provider to cover your rent, interest or service charges. You must arrange to pay these directly.</p> <p>Check what you were previously paid and how it was worked out – on to payments.</p>	
<h3>What you should do next</h3> <p>The quickest way to check if you can get Universal Credit again is to make a new claim. You can make a new claim on your homepage.</p> <p>Once you have made your new claim, you can apply for an advance if you need money before your first payment.</p>	
<h3>Ask us to explain</h3> <p>If you disagree with our decision, you can ask us to explain. You can also ask for a written explanation.</p> <p>You need to ask us by 15 September 2021.</p>	
<h3>How to do this</h3> <p>The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.</p> <p>You cannot use your journal to contact us.</p> <h4>Call the Universal Credit freephone helpline</h4> <p>Telephone 0800 328 5644 Textphone 0800 328 1344 Welsh language telephone 0800 328 1744</p> <p>Monday to Friday, 8am to 6pm (closed on bank holidays). Calls to 0800 numbers are free from landlines and mobiles.</p> <h4>Send a letter</h4> <p>Our postal address is: Freepost DWP UNIVERSAL CREDIT FULL SERVICE. Dial 18001 followed by 0800 328 5644 for Relay UK (previously Next Generation Text).</p> <h3>Ask us to reconsider</h3> <p>You can also ask us to look at the decision again. This is called a 'mandatory reconsideration'.</p> <p>You need to ask us by 15 September 2021.</p> <h4>How to do this</h4> <p>The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.</p> <p>If you want us to look at the decision again, you can use the mandatory reconsideration form on the GOV.UK website.</p> <h4>What happens after this</h4> <p>When we have looked at the decision again, we will send you a 'mandatory reconsideration notice'. This explains what we have decided and why.</p> <h4>You can appeal this decision</h4>	

What happens in practice

Awards being described as 'claims'

As soon as the DWP has decided a claim and made an award, the 'claim' ceases to exist.²²⁴ It is legally inaccurate for the DWP to describe both claims and awards as 'claims'. When claiming UC, *'the department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met. The claimant is the one who generally speaking can and must supply that information.'*²²⁵ (See Chapter 1 – 'Claims' for more information). Once the DWP has decided the claim, and an award is in place, the responsibility shifts to the DWP to demonstrate that a claimant is no longer entitled to the benefit in order to remove entitlement, either because the claimant no longer meets the conditions of entitlement or because they have failed to comply with procedural requirements within given time limits.²²⁶ The DWP and claimants have different rights and responsibilities during the claims process compared to when an award is already in payment that should not be confused.²²⁷ By describing both claims and awards as claims, the DWP obscures this change in the burden of proof.²²⁸

The concept of 'closing'

The DWP uses the same terminology of 'closure' when referring to five distinct decision-making mechanisms.²²⁹ This frustrates the ability of claimants to identify whether there has been an error in the decision making and if there are any grounds for a challenge.

PP v SSWP (UC) [2020] UKUT 109 (AAC)

paragraph 8... 'As the written submission by the Secretary of State's representative on the present appeal frankly concedes:

"... training material and operational guidance for the new benefit ubiquitously describe both the termination of an award and any disposal of a claim as the 'closing' of a 'claim'. As a result, any attempt to understand the legal nature of any given instance of 'claim closure' is obliged to have recourse to informed inference (or desperate guesswork)."

The DWP has normalised the concept of 'claim closure', which confuses initial entitlement, revision and supersession decisions. It has done this within the digital system design itself and in the accompanying guidance. As a result, DWP officials are encouraged to make decisions without first identifying whether they have the power to do so, whether they require or have a ground, and what the correct effective date is. One adviser described how problematic 'claim closure' can be for advisers and claimants trying to challenge decisions, as the decision-making process itself is made opaque by this catch-all and legally meaningless term.

²²⁴ s8(2)(a) Social Security Act 1998

²²⁵ *Kerr v Department for Social Development NI* [2004] UKHL 23, para 62, available at publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm: 'But where the information is available to the department rather than the claimant, then the department must take the necessary steps to enable it to be traced.'

²²⁶ Regs 23 and 47 Decisions and Appeals Regulations 2013; *LP v SSWP (ESA)* [2018] UKUT 389 (AAC), para 13, available at assets.publishing.service.gov.uk/media/5c1bd7fde5274a65cc0f5ce0/CE_0729_2018-00.pdf

²²⁷ See ADM Ch A1: 'Principles of decision making and evidence', para A1405, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084744/adma1.pdf.

²²⁸ Although see *Kerr v Department for Social Development NI* [2004] UKHL 23, para 62, available at publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm, which observes 'the process of benefits adjudication is inquisitorial rather than adversarial...it will rarely be necessary to resort to concepts taken from adversarial litigation such as the burden of proof.'

²²⁹ ss 8, 9 and 10 Social Security Act 1998

Charlie (adviser) – February 2022

‘Claim closure, yes, it’s a trigger word, isn’t it?... it’s a meaningless term. There’s no such thing as claim closure, and very often, there isn’t even a claim anymore to close because, very often, it’s been replaced with an award... It can lead people off going down wrong rabbit holes in terms of looking for legislation on what a closure is and how that differs from a refusal or a supersession and that is a waste of time...’

Also, in some cases, it’s used... as a loincloth for an unlawful process. Sometimes, the DWP will just say, “Oh, in circumstances X, we closed the claim...”, when nobody actually knows what that means... I think that a degree of procedural discipline would go a long way in improving decision making because the DWP will then have to ask themselves, “What is it we’re actually doing and what effect does that have on the award, and where is our actual legal power to do it derived?”, which are questions that really, you should expect civil servants to ask themselves... in the olden days... one of the boxes that you had to tick on the paper decision pro forma was which ground of revision you’d used. So, in overpayment cases, for example... they might have ticked the one that says ‘official error revision’. It’s forcing the decision maker to apply their mind to the question of what power it is that I’m using to do what I’m doing. Whereas with claim closure, that doesn’t really happy because they just say: “Oh, under circumstance X, we closed the claim.” Well, what does that mean?’

The terminology also confuses advisers, as illustrated by the following Early Warning System case.

Early Warning System: UC award brought to an end for failure to provide evidence – August 2021

A client in receipt of UC was required to provide evidence of ID and failed to do so in time due to pressing circumstances. The claim was ‘closed’. The adviser understood that to mean suspended, as other clients have had such claims ‘reopened’. Advised that ‘closed’ in this case means the decision awarding UC has been superseded ending entitlement.

If a claimant is advised that their ‘claim’ has been ‘closed’ when, in reality, the DWP has terminated their award after a period of suspension for failing to provide evidence, then claimants and advisers are discouraged from investigating whether the DWP has provided the information and waited the time required to make any termination legally valid.²³⁰

Finally, the concept of ‘closed claims’ appears to have a similarly problematic parallel in the DWP’s description and concept of ‘open,’ ‘live’ or ‘reopened’ UC claims. If a UC claim is refused or an award is brought to an end, there is no legal basis for that claim or award subsisting after that time, and the DWP can only consider any new circumstances as part of a new claim. An individual can challenge the decision on the old claim or award while at the same time starting a new claim for benefit, which would often be the recommended course of action. In the following example, the DWP refused the individual’s new claim without proper consideration despite the claimant requiring a new decision based on his new circumstances. It appears in this case that the UC system allowed for an award that has legally ended to remain, for administrative purposes, ‘open’ or ‘live’, and the case manager’s misunderstanding of the legislation led to the ‘closure’ (legally speaking, a refusal) of a legitimate new claim which the DWP should have decided.

²³⁰ As required by regs 45 and 47 Decisions and Appeals Regulations 2013

Early Warning System: new UC claim refused due to outstanding appeal on ending of previous award

The client's ex was refusing to sell the jointly owned marital home and its value was disregarded for six months before his UC was terminated due to excess capital above £16,000. He requested a mandatory reconsideration and then went to appeal requesting an extension to the six months. His circumstances then changed and they took steps to sell the property. He was initially discouraged from applying again and when he submitted a new claim, it was closed. He has had no notification of his appeal rights, only a journal message stating: 'The claim you made on the 13/05/20 has been closed due to the fact you already have a claim open on the 09/01/2019 and this has an appeal waiting... Until your appeal is heard and the outcome of this known we are not able to pay any UC to you.'

While the extract from a decision letter below describes the DWP's decision to revise a supersession decision which had brought an award to end an award as having 'reopened the claim'.

Early Warning System: extract from decision letter revising a decision to end entitlement – May 2023

'I am pleased to advise that we have changed our decision and reopened the claim. Underpayments amounting to £5,500.50 has been released for the period from 15 November 2021 to 14 March 2023.'

It must be acknowledged that the DWP was using the language of 'claim closure' long before the digitalisation of benefits, so this poor implementation of the law cannot be blamed solely on the digital nature of UC. However, the digital system design could be described as exacerbating the consequences of 'claim closure' by 'hard-coding' the concept into the digital system, and because of the digital environment in which claimants encounter it. For example, after the DWP refuses a claim or ends an award (claim closure), it freezes a claimant's journal so that claimants cannot post any new messages and are blocked from disputing their entitlement decision via the primary route claimants have been using to communicate with the DWP. One interviewee described how the combination of the 'closure' and journal freezing highlighted the power differentials that can be felt between the DWP and claimants, which is worsened by some of the UC digital processes.

Timothy (claimant) – April 2021

'They closed my claim, and I can't even reach them... they messaged me saying that I had failed the habitual residency test... my intuition immediately said that I should have passed the residency... And after that they immediately closed it. I could read the messages... but I couldn't reply ... It's a bit odd that they say that it's closed... a bit sort of passive aggressive almost... Sort of a one-way street... I think I then began calling them and that wasn't easy to get through to them and challenge their decision, saying to them: "Look, I think I should have passed the test. What's behind your reasoning? How did you make your decision?" I had to wait for them to call me... and some of the calls never happened.'

The DWP's reliance on the concept of 'claim closure' throughout the UC system design and decision-making guidance creates problems across the three rule of law principles of transparency, procedural fairness and lawfulness. Describing decisions by a legally meaningless term rather than the specific decision-making mechanism in the legislation is a barrier to decision makers understanding the legal powers available to them and encourages unlawful decision making. Our research has already demonstrated how the system and guidance instructs officials to unlawfully refuse UC for a failure to attend the initial evidence interview when there is no

freestanding right to refuse a claim for a failure to comply with an evidence request (see section 2.2.2).²³¹ In that example, the drop-down menu, which allows officials to decide to 'close' (refuse) a claim for UC solely due to a missed appointment for the initial evidence interview, distances decision makers from their legal powers in that situation, which they may be exceeding. At the same time, the lack of transparency caused by misidentifying the correct legal decision-making mechanism is a barrier to claimants understanding the decisions taken against them and identifying any errors. Finally, the digital design choice to freeze the journal after 'closure' is a procedural barrier to challenging decisions, as the primary route of communication with the DWP is suddenly blocked when claimants are likely to want to query or dispute a decision, when they are refused UC or when their UC award is brought to an end.

2.7 Decision making conclusions

Rule of law principles have been undermined in the design and implementation of universal credit, but this is not an inevitability of digitalisation

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness in the way decisions are made within universal credit (UC). These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. The DWP has designed a digital system that does not accurately capture the legislation's decision-making framework and contributes to human errors in decision making. It is not only the effects of artificial intelligence, or even automated decision making, which should be considered when investigating the impact of digitalisation on claimants and their rights; simple design choices when implementing a digital-by-design benefit can have a significant effect on the extent to which a system complies with rule of law principles.

Inconsistencies and missed opportunities of digitalisation

UC is a partially digitalised system, and which parts have been automated and which parts remain clerical appear unpredictable and inconsistent from an outside perspective. One of the most obvious advances of UC as a digital-by-design benefit compared to legacy benefits is the automated sharing of employed earnings information between HM Revenue and Customs (HMRC) and the DWP. (Although, even when it comes to the automated sharing of earnings information from HMRC, Lord Freud was critical that the current system's reliance on reported information from employers was vulnerable to 'discrepancies', compared to his preferred vision for a more digitally advanced system using data on live salary transfers.²³²) This is contrasted with some obvious gaps, where the expected benefits of digitalisation have not been realised, such as the failure to use the data the DWP holds about other benefits to accurately calculate their effect on UC awards.

Under legacy benefits, many claimants missed out on the disabled child addition of tax credits (administered by HMRC) because they did not know that the disability living allowance award for their child (administered by the DWP) entitled them to an increase in their maximum amount for tax credits.²³³ Claimants' lack of knowledge about the interaction between the two benefits, and the unreliable sharing of data between HMRC and the DWP, resulted in the many thousands of families with disabled children missing out on thousands of pounds a year.

²³¹ Reg 37 Claims and Payments Regulations 2013, as confirmed in *PP v SSWP (UC)* [2020] UKUT 109 (AAC) with regard to information about self-employment and self-employed income.

²³² D Freud, *Clashing Agendas: inside the welfare trap*, Nine Elms Books, 2021, pp178-9; see also ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit

²³³ Contact, 'Missing the disability element of child tax credit', contact.org.uk/help-for-families/information-advice-services/benefits-financial-help/benefits-and-tax-credits/tax-credits/missing-the-disability-element-of-child-tax-credit-frequently-asked-questions

Many would consider one of the most obvious advantages of a digital-by-design benefit for claimants is the sharing of benefits information (both within and between government departments) allowing for the interaction and effect of one benefit on another to be automated, increasing the accuracy of benefit award calculations and decreasing the administrative burden of reporting requirements from claimants.

This research has found examples of the DWP's failure to use its own benefits data to automate the interaction and effect of other benefits on the calculation of claimants' UC awards, including:

- the inclusion of the carer element if carer's allowance (CA) is in payment;
- the inclusion of the limited capability for work (LCW) or limited capability for work-related activity (LCWRA) elements of UC if the work-related activity or support group elements were included in a previous award of ESA.

The reliance on clerical intervention results in delays, miscalculated awards and an administrative burden for claimants in trying to secure their full legal entitlement via the revision process. In particular, errors within the clerical identification process for the LCW and LCWRA elements have been raised repeatedly since the inception of UC. On a much wider scale, the DWP decided to require all legacy benefits to make a new claim for UC rather than using the information they already held to pre-populate new UC claims and migrate claimants automatically.²³⁴

Our research has found that it is often the additional elements, exemptions or exceptions from the standard rules which remain clerical rather than automated. Therefore, it is the claimants who require these additional elements, exemptions and exceptions because of their particular circumstances, such as those in receipt of disability and carers benefits, who are most vulnerable to missing out on their full legal entitlement when DWP officials delay making decisions, misdirect themselves as to the legislation or fail to identify all eligible claimants. (See Chapter 1 – 'Claims' for examples of the failure to ask all the necessary questions during the claims process to identify if claimants are entitled to additional elements, exemptions and exceptions and Chapter 3 – 'Communicating decisions' for more information on the lack of transparency about these aspects of UC.)

Accuracy of language: claim closure

Across the social security system, the DWP uses legally inaccurate language. Specifically, the introduction of UC as a digital-by-design benefit has encouraged administrative and technical terminology for decision-making processes rather than the legally accurate identification of decisions and procedures as defined by the legislation.

The DWP's concept of 'claim closure' is the most obvious example of this problem, which the DWP uses to describe five different decision-making processes that are sometimes inaccurately described as 'claims', and always inaccurately described as 'closures'. Although, as has been acknowledged, the DWP was using the language of 'closed claims' long before the digitalisation of benefits, the issue has become pervasive under UC because the concept has been built into the fabric of the UC digital system, and reinforced by the freezing or closure of the journal and the opposing language of 'open', 'live' or 'reopened claims'. Elsewhere, in Chapter 4 – 'Disputes', case managers and work coaches refer to the technical, administrative processes of 'correcting' or 'updating' of current assessment period calculations as somehow distinct and separate from the revision or supersession processes which change the award of UC from previous assessment periods and which require the actions of a decision maker.

²³⁴ See cpag.org.uk/sites/default/files/CPAG-Poverty-173-an-irresponsible-gamble.pdf for more information.

Inaccurate language is not just an issue for the pedantic, but can cause real-life harm to claimants. When DWP work coaches, case managers and decision makers view legally meaningless terminology in their guidance, training materials and the design of the system itself, they are encouraged to make decisions without first identifying whether they have the power to do so under the legislation, whether they require or have a ground, and what the correct effective date is, if appropriate. These decisions can be the unlawful refusal of a claim or the termination of an award, which leaves claimants without any income. To compound the issue, if there is no transparency with claimants as to the type of decision that has prevented the payment of their benefit, they are frustrated in their ability to identify whether there has been an error in the decision making and if there are any grounds for a challenge. And, of course, it is not just claimants who face this issue; advisers supporting them can understandably adopt the language used by the DWP, reinforcing the inaccurate terminology and, in some cases, inhibiting their own understanding of the rules and the rights of their claimants.

Inaccurate language that does not reflect the legislation can both encourage and disguise unlawful decision making.

2.8 Decision making recommendations

Quick fix

- DWP *Digital Design* should change the wording in the claim form so that previous employment and support allowance (ESA) claimants who are not required to provide a fit note are not asked to provide one, as it currently does not reflect the legislation.
- DWP *Digital Design* should amend the payment statement and increase the detail in the payment statement guidance to provide information to claimants about all the possible elements, exemptions and exceptions that exist in the legislation. Ideally there would be the easy-to-read summary, as is currently available, along with an expanded complete version with all the non-relevant elements greyed out.
- DWP *Digital Design/Communications* should amend the template notification of request for information or evidence so that it complies with regulation 45(4) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, by including what information or evidence is required and the possibility of requesting an extension or satisfying the DWP that the evidence does not exist or cannot be obtained.
- DWP *Digital Design/Communications* should provide additional information to claimants via the expanded statement or *Help Understanding Your Statement* guidance about:
 - effective dates;
 - calculating student income.

Medium-term fix

- DWP *Digital Design* should delay the freezing of a claimant's journal for at least one month (the time period for an in time, any grounds revision) after decisions to refuse a claim or end an award to allow time for claimants to start the appeals process via their journal.
- DWP *Digital Design* should create new internal agent to-dos for when claimants notify of a new or increased award of a 'relevant benefit – eg, disability or carers' benefits, instead of using the inappropriately named 'late notification of a change in circumstances' to-dos.
- DWP *Digital Design* should amend the digital universal credit (UC) system to allow claimants and housing providers to notify of expected future changes in circumstances.
- DWP *Digital Design* should automate the annual rent changes for social tenants, to remove the significant administrative burden that is placed on housing providers.
- DWP *Digital Design* should use benefits data already held by the department to automate:

- inclusion of the carer element, if carer's allowance is present;
- the inclusion of the limited capability for work or limited capability for work-related activity elements of UC if the work-related activity or support group elements were part of a previous ESA award.
- The DWP *training team* should review and improve training for staff in the following areas:
 - the inability to refuse a claim solely for failing to attend an initial evidence interview and instead the duty to make a decision on entitlement based on all available evidence;
 - student income;
 - effective date rules;
 - suspension powers – eg, partial suspensions;
 - when claimants can lawfully be found not to have accepted a claimant commitment.
- The DWP should waive overpayments when they are caused by official error.

Long-term reform

- The DWP should ensure the accuracy and legality of the language used throughout the UC system, training materials and guidance.
 - Specifically, DWP *Digital Design/Training* should remove the concept of 'claim closure' from training materials, guidance and the UC digital system design.

Chapter 3: Communicating decisions

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3. Communicating decisions

3.1 Introduction

This chapter considers whether Department for Work and Pensions (DWP) processes for communicating decisions to claimants comply with the rule of law principles of transparency, procedural fairness and lawfulness. Claimants require transparency about the rules and procedures and how the rules were applied in their individual case to know whether, and how, to assert their rights to challenge a decision. Our research has found several digital design choices within universal credit (UC) that prevent claimants from understanding and accessing the decisions that the DWP has taken and the appeal rights that come with each decision.

Section 3.2 begins with a summary of the legislation on communicating decisions, followed by an exploration of failures to adhere to the rule of law principles of transparency, procedural fairness and lawfulness, due to inconsistent decision notification, inadequate reasons for decisions, the failure to accurately report a claimant's appeal rights and deficient record keeping within the digital UC account.

3.2 Communicating decisions and record keeping

What the law says

The regulations require that the DWP provides claimants with certain information when notifying of an appealable decision, including the claimant's right to challenge the decision by appeal and the right to a written statement of reasons.²³⁵ Since 2013, the DWP has required a mandatory reconsideration (a revision) to be carried out by the department before a claimant can appeal a decision.²³⁶ However, this requirement only applies if the claimant has received a decision notice explicitly advising them of the mandatory reconsideration requirement, as was explained in *PP v SSWP (UC)* [2020] UKUT 109 (AAC).

PP v SSWP (UC) [2020] UKUT 109 (AAC)

paragraph 25 'The usual position is that a mandatory reconsideration (a revision by another name) must be undertaken before a claimant's right of appeal can be exercised... But the legal position is not that straightforward...'

paragraph 26 '... the requirement for a mandatory reconsideration to be undertaken as a necessary prelude to an appeal only applies if regulation 7(1)(b) also applies (see regulation 7(2)). There are strict requirements as to the type of notice required for the purposes of regulation 7(1)(b) – see regulation 7(3). There was no such informative notice attached to the notification of the decision in the appellant's journal... It follows logically that the appellant had the right of appeal to the First-tier Tribunal unencumbered by the (usual) need to apply for a mandatory reconsideration.'

²³⁵ Reg 51 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No.381 ('Decisions and Appeals Regulations 2013'). Any entitlement decision under s8 Social Security Act 1998 or supersession decision under s10 is appealable, whether as originally made or as revised under s9, in accordance with s12 of the Act – as are decisions against which an appeal lies in Sch 3.

²³⁶ Reg 7 Decisions and Appeals Regulations 2013

When notifying claimants they must request a mandatory reconsideration before they can appeal a decision, the DWP must inform claimants about the time limits for requesting a mandatory reconsideration.²³⁷ The standard time limit is one month, but it can vary according to whether the claimant has requested a statement of reasons or if the claimant requests an extension and the DWP accepts there is a good reason to grant one. In practice, a decision maker should accept most extension requests within 12 months of the one-month deadline expiring (giving a total 'dispute period' of 13 months), as long as a reason is provided for the delay. After 13 months, a claimant can only initiate a revision if specific grounds apply for an 'any time' or 'specific grounds' revision.

The legislation does not require the DWP to notify claimants of decisions in a particular form. However, numerous judgments have criticised decision letters that fail to identify the type of decision-making mechanism used, the section of the Social Security Act 1998 the decision is being made under, the identification of the previous decision if it is being changed, a specific ground if one is required, and the correct effective date of the new decision (when the change takes effect from). See Chapter 2 – 'Decision making' for more information.

R(IB) 2/04

paragraph 75 '...The Secretary of State's decision terminating entitlement commonly does not state that a previous decision is being superseded, or indeed even refer to a previous decision at all, or refer to section 10, or even... to the precise ground of supersession which is purportedly being invoked. Regardless of the conclusion we reach below, that is a highly unsatisfactory state of affairs. Commissioners have from the outset of the 1998 Act scheme expressed substantial concern that decisions have been made in disregard of the new statutory language and conditions, and that time and money is then wasted by appeal tribunals and Commissioners in attempting to unravel the consequences. Despite this, there is little evidence of any significant improvement, which we consider unfortunate. The fault may not always lie with decision makers themselves. For example, the fault in incapacity for work cases may lie more with those who design the printed forms to be used by decision makers...'

What the universal credit system looks like and how it works

Historically, the DWP notified claimants of entitlement decisions via physical letters. This communication method is burdened by delays and missing post, and it requires claimants (and advisers) to spend considerable amounts of time waiting in telephone queues to different government departments to investigate the status and history of decision making across multiple benefits. Under universal credit (UC), decision notifications are stored in the online account, giving claimants and advisers access to up-to-date records and evidence of decisions about their combined benefit in one central place. This is one of the key benefits of digitalisation for claimants and advisers, alongside the record of communication with officials recorded in the journal.²³⁸

²³⁷ Reg 7(3) Decisions and Appeals Regulations 2013

²³⁸ Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at [digitalwelfare.org.uk/reports/digital-welfare-report-contents](https://www.digitalwelfare.org.uk/reports/digital-welfare-report-contents).

Richard (adviser) – August 2021

'I think that the ability to see your payment statements and a breakdown of your benefit is incredibly useful and almost mad that you don't have that normally... your tax credit award letters seem quite archaic now, in terms of being able to see payment statements online. So, that aspect is better... If you're assisting a client and you can get onto their journal, then you can interact with the entire history of their claim... you can find all of the information they provided when they initially claimed. You can go through all of the award statements, you can go through all of the decision making. Over time, probably, it's going to become even clearer how effective it is as a way to resolve historic issues in the awards, whereas previously, you would have had to do a subject access request to get that kind of level of access to what's happened. So, I would think that you can't undersell how big an advantage that is to advice staff.'

*All names have been changed.

Rowan (adviser) – February 2022

'In some ways, it's easier because you can go back and you can look at the journal and you can see their awards and you can see what the calculation of the award is... It also means that then, when you put a comment on the journal, you know it's there in black and white and there's no arguing about it...'

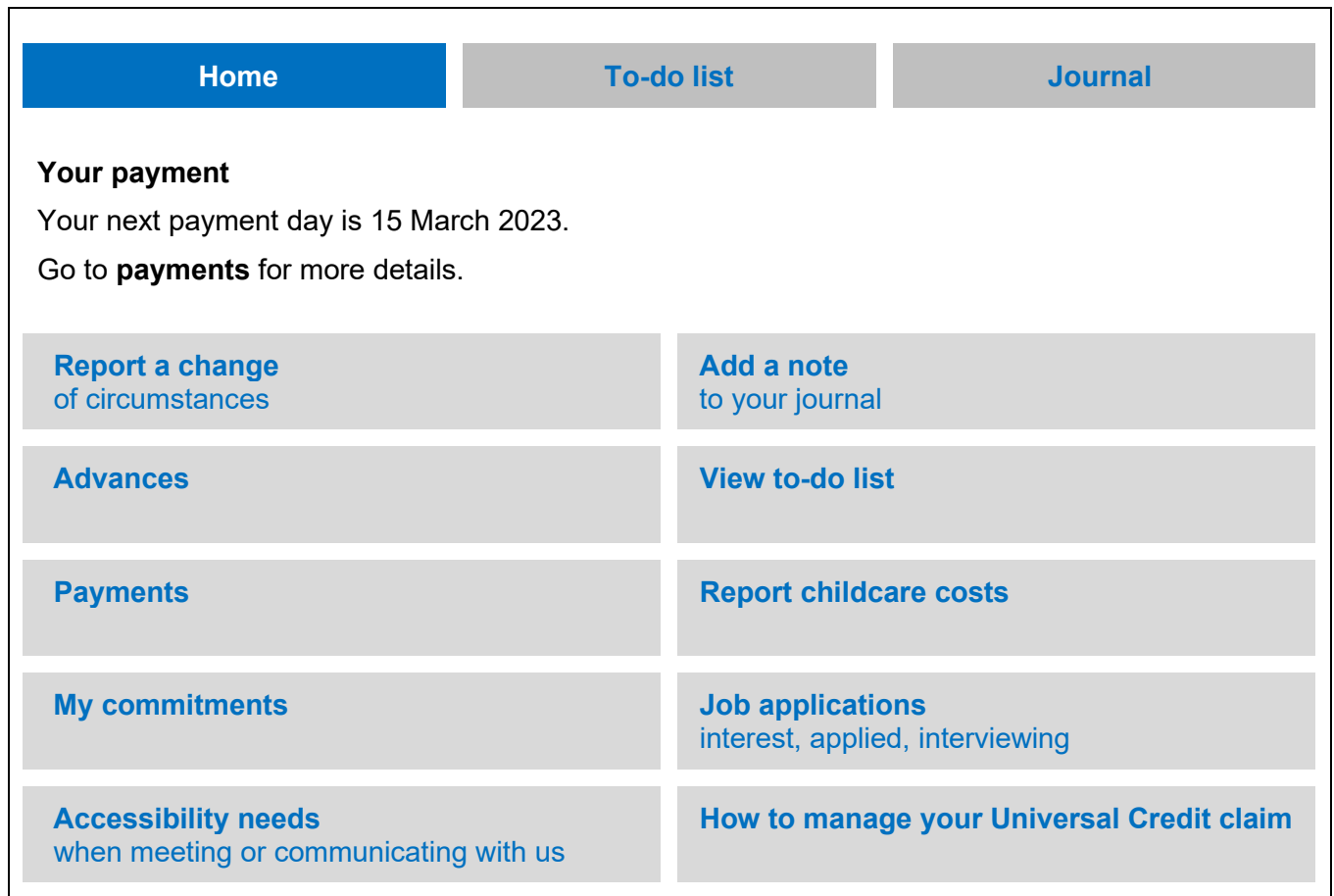
However, there are features of the UC digital account, particularly with regard to decision notifications and record keeping, which undermine some of the progress that has been made. As a digital-by-design benefit, UC has the potential to vastly improve transparency and procedural fairness in the benefit system; however, as things stand, claimants are prevented from being able to take advantage of these developments fully.

3.2.1 Inconsistent decision notification**What happens in practice**

UC decisions are communicated in various formats and in several different places within the digital UC account. As noted in CPAG's first report on this issue, *Computer Says 'No!' Stage one – information provision*, these inconsistencies are 'not conducive to claimants understanding that universal credit is a decision-based system and that decisions can be challenged if they do not agree with them.'²³⁹

²³⁹ CPAG, *Computer Says 'No!' Access to justice and digitalisation in universal credit– Stage one: information provision*, 2019, available at cpag.org.uk/policy-and-campaigns/computer-says-no-access-justice-and-digitalisation-universal-credit, p7.

Figure 3A: CPAG mock-up of the UC account homepage



One type of decision notification, the monthly payment statement, is collected in the ‘payments’ section of the UC online account and displayed as a page on the website, which can be printed or saved as a PDF.

Figure 3B: CPAG mock-up of a payment statement

Important	
Read about extra government payments to help with the cost of living .	
Payments	
Assessment period: 9 January to 8 February 2023 Need help understanding your assessment period?	
Your payment this month is	
£426	
This will be paid by 8pm on 15 February 2023	
What you're entitled to	
Standard allowance	£525.72
You get a standard amount each month. You said you're in a couple	
Housing	£925.01
Need help understanding your housing?	
You said per month the total rent for your property is £1,300.00.	
You will have to pay your housing costs to your landlord.	
Monthly, we can pay you £925.01 towards your housing costs. We cannot pay the full amount you told us about because:	
the amount we pay cannot be more than your Local Housing Allowance	- £374.99
Children	£489.16
You get support for 2 children	
Children in childcare	£1,000.00
Need help understanding your childcare costs?	
You had 2 children in childcare this month	
We pay 85% of your costs each month, up to £1,108.04 for 2 children	
Total entitlement before deductions	£2,939.89

What we take off (deductions)

Take-home pay - £2,545.54

[Need help understanding take-home pay?](#)

Take-home pay is what's left after tax, National Insurance and any pension contributions have been deducted.

Earnings reported by your employer

£2,413.23

The amount we'll use to work out your Universal Credit is £2,413.23

Earnings reported by your employer

£2,359.02

The amount we'll use to work out your Universal Credit is £2,359.02

The total take-home pay for _____ and _____ this period is **£4,772.25**

The first £344.00 of your take-home pay doesn't affect your Universal Credit monthly amount. Every £1.00 you earn in take-home pay over this amount reduces your Universal Credit by 55 pence.

Total deductions - £2,435.54

Your total payment for this month is **£504.35**

Whereas, the DWP uploads mandatory reconsideration, habitual residence test, overpayment and underpayment decisions and determinations as digital letters in the form of PDFs in the journal, which claimants access via a hyperlink in an individual journal message.

There is nothing to distinguish a message which contains a link to a formal decision from other types of communication between the claimant and DWP officials. When there is an extensive history of messages recorded in the instant messaging communication style of the journal, it can be difficult for claimants to identify decisions with appeal rights. There is no ability to filter the journal by type of communication or time period. By way of

example, how is the claimant to know, from looking at the journal message given in the first example, that the 'attached letter' is in fact a notification of a decision which carries rights of challenge? That point is revealed only by looking at the letter.

Figure 3C: CPAG mock-up of an individual journal message with decision letter attached as a hyperlink

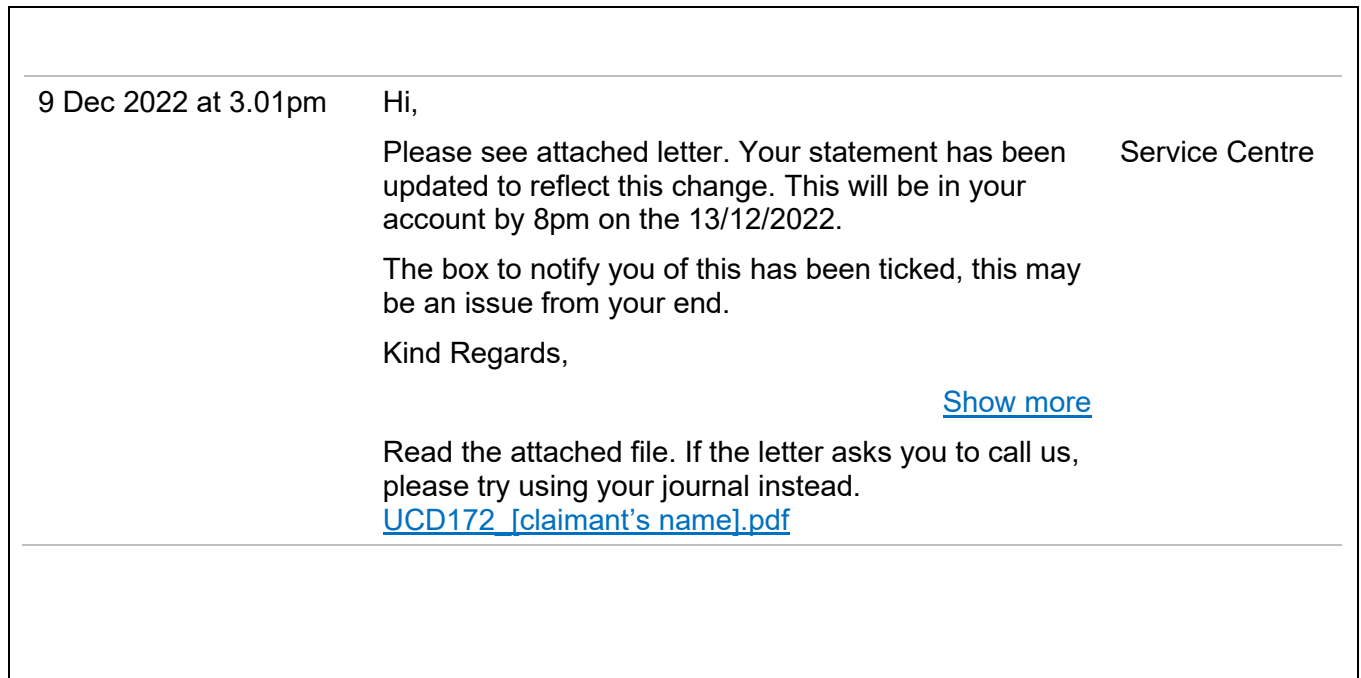


Figure 3D: CPAG mock-up of multiple messages in the journal including a message containing a decision letter

5 Feb 2023 at 10.41pm	Report childcare costs	
5 Feb 2023 at 10.41pm	Childcare costs - declare changes completed	
31 Dec 2022 at 4.22pm	Provide proof of your childcare costs completed	
31 Dec 2022 at 4.21pm	Report childcare costs	
31 Dec 2022 at 4.21pm	Childcare costs – declare changes completed	
9 Dec 2022 at 4.56pm	Please note that I have not received a text message alert to notify me of the most recent journal entry. Please enable text message alerts on my account or confirm who I need to contact to request them. Many thanks	
9 Dec 2022 at 3.01pm	Hi, Please see attached letter. Your statement has been updated to reflect this change. This will be in your account by 8pm on the 13/12/2022. The box to notify you of this has been ticked, this may be an issue from your end. Kind Regards,	Service Centre
	Show more	
	Read the attached file. If the letter asks you to call us, please try using your journal instead. UCD172 [claimant's name].pdf	
9 Dec 2022 at 2.09pm	I did not read the journal message about a discrepancy with childcare costs until 9 days after it was posted because I was not notified of your entry on my journal. Please send me a text message alert when you have made an entry on my journal. Please note my previous request for the same. If you are unable to enable the text alerts, please tell me who I need to contact who is able or whether a formal complaint, contacting my MP and escalating to other DWP contacts is preferable.	
9 Dec 2022 at 2.03pm	I have resubmitted evidence of the childcare costs paid this month. Please kindly recalculate the award asap.	
9 Dec 2022 at 2.02pm	Provide proof of your childcare costs completed	
9 Dec 2022 at 2.01pm	Report childcare costs	
9 Dec 2022 at 2.01pm	Childcare costs – declare changes completed	

One adviser described an additional barrier for claimants in accessing decision letters as PDFs on their phones if they do not have a PDF reader installed on their device.

Zoe (adviser) – December 2021

‘Because decisions are attached in a PDF, people cannot always open them. I recently had to teach someone how to open PDF documents and assisted him over the phone how to download Acrobat Reader and stuff, and he failed but he later told me when I spoke to him: “Oh you know what, after we stopped talking I managed to do it” ... Not everybody can access those or knows what to do.’

Another interviewee described how the DWP had uploaded a PDF decision letter to his journal without a printed date when the letter says: ‘Tell us if you have more information, or if you think we have overlooked something which might change the decision. Do this within one month of the date on this letter.’

Timothy (claimant) – March 2021

‘Because how UC works, there’s only a certain amount of time for you to challenge their decision. It should be dated letters, but what they send, they are not dated letters. It looks like a copy paste form that someone has filled... how can you challenge them... in one month from which date if it’s not dated?’

Finally, some decisions, such as the outcomes of real-time information (RTI) disputes (the first stage in the dispute process when a UC award has changed due to income information received automatically from HM Revenue and Customs (HMRC) – see Chapter 4 – ‘Disputes’: section 4.3 for more information), can be communicated informally as typed messages from DWP officials in the journal itself.²⁴⁰ These types of informal decision notifications are not accompanied by a statement of appeal rights.

Figure 3E: CPAG mock-up of a journal message with outcome of RTI dispute

13 Oct 2020 at 2.09pm	<p>Hello</p> <p>The RTI dispute has come back saying “I have checked the RTI feed and in this Ap [assessment period] we are using earnings of £2222.45 paid to claimant on 31/08/20. An amount similar to what the claimant thinks we should be using is reported as being paid on 30/09/20 and will be used in APE [assessment period ending] 10/10/20”</p> <p>Kind Regards</p>	Service Centre
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Without a single location and consistency of style for decision notifications, claimants may struggle to understand that UC is a decision-based system with appeal rights when the DWP decides their claim or alters their award in

²⁴⁰ Reg 41 Decisions and Appeals Regulations 2013 provides that if a claimant wants to dispute the amount of earnings from the RTI feed, then the DWP must alert them that they are entitled to a decision, which should be provided within 14 days, and it is that decision that is appealable, which in practice is the outcome of an RTI dispute.

any way. If claimants cannot easily identify and access all decisions taken about their benefit, this is a failure to adhere to the rule of law principle of transparency.

3.2.2 Payment statements

What happens in practice

The DWP has significantly improved the monthly payment statement since CPAG first began investigating this issue.²⁴¹ Progress has most notably been made with the information provided to claimants about the housing cost element, with additional details now available on the 'bedroom tax', housing cost contributions and the local housing allowance (LHA). The DWP now provides claimants with a better explanation of why the amount paid to them for their housing may be lower than their actual rent, and warns when a managed payment to landlord will be insufficient to cover the total rent.

However, evidence suggests there is still insufficient detail in the payment statement for claimants to understand all aspects of the calculation, including student finance and childcare costs.

Henry (adviser) – October 2021

'The explanation of the student loan deduction can be a bit elusive and not really explained properly... Actually, you can find out more about the student loan from the student loan letters than you can from the government. They will say: "this is the amount that the government will use to reduce your benefits." "This amount is not counted..." The first thing I always say is can I see a student finance letter because that will tell me what is eligible and what is not eligible. But the universal credit account will just say, £900 per month because you have a student loan, and that is all.'

Chloe (claimant) – October 2022

'... The statement is pointless and means nothing... To this day, I still don't understand what it's telling me... I'm not illiterate. I can read it. It makes no sense... I asked them on the phone to explain... And they told me that they couldn't and that I wasn't allowed to know how they'd come up with the number... All of the information I was entitled to was on the statement and if the statement doesn't make any sense, well bummer..

I like to have all of the information because giving me some information isn't helpful. All it does to me is ask me the questions in my head of, "What information are you not giving me?"'

²⁴¹ CPAG, *Computer Says 'No!'* Access to justice and digitalisation in universal credit – Stage one: information provision, 2019

Martha (claimant) – October 2022

‘What really, really is confusing, is how they work out what they pay you in each statement... Maybe this is because we’re self-employed and we have a reporting period for our self-employed income, maybe that makes it different, but because they do 85 per cent of your childcare costs that you have paid, it doesn’t actually add up to a real amount.

We pay for our childcare costs once a month. We pay a monthly invoice that runs from the 1st to the 30th or the 31st of the month, but the UC assessment period runs from the 24th of the month to the 23rd of the following month. So that is the childcare that we are paid for, which obviously doesn’t match in any way. It’s not 85 per cent of the invoice that we have paid. It’s a little bit of one invoice and a lot of the next invoice. So I still have no idea if what I’m getting is the correct amount and I gave up trying to work it out because it’s too confusing because it just doesn’t make any sense... to the point where I’m struggling to explain it.

So I’ve tried to work out before if what we’ve got on the statement for the childcare is the correct amount and sometimes I’ve gone, “Well, that seems about £30 out,” but I’m not really sure. Other times, I’ve gone, “Oh, it seems like they’ve paid us about £15 too much.” So I just gave up.’

In particular, there continues to be a lack of information about the different possible elements, exceptions or exemptions that might apply to a claimant if the system does not recognise them as applicable to the specific individual. As such, claimants do not always know what the DWP has decided they are not entitled to, which makes it difficult to identify if something is missing.

Natalia (adviser) – November 2021

‘Usually errors are the claimant not including components. Literally, “Oh, I didn’t realise I could claim that.” I had one this morning on the food bank line... she has parental responsibility for her nephew who lives with her permanently. She claims child benefit for him, so she should be getting child element and she hasn’t. She was, “Oh, I didn’t realise. I only thought I could get child benefit.” He’s disabled and attends a special school so he could in theory also get the disabled child element. So there’s like £400 a month that’s she’s not getting... she was phoning the food bank because she didn’t have enough money to afford food.’

Early Warning System: claimant did not realise there was a disabled child element – February 2023

‘I have a client, whose son was awarded disability living allowance [DLA] over a year and a half ago and the client was not aware this would have any impact on her UC claim. Since speaking to her, we have been established that she could have been receiving the disabled child element for the duration of this time. I have asked the client to report the change on her journal and request the decision takes effect from the date of the DLA award so she can be paid the arrears, but the decision from the DWP is that this cannot be done due to the change not being reported within the year of it happening. [Note: The DWP is incorrect. See Chapter 2 – ‘Decision making’: section 2.4.1 for more information on this issue.]

In some circumstances, claimants are relied upon to self-identify as satisfying a particular condition as the DWP does not ask all claimants all the relevant questions during the claim process (see Chapter 1 – ‘Claims’: section

1.4.1). These aspects of the calculation are also less likely to be automated, making them vulnerable to human error (see Chapter 2 – ‘Decision making’: section 2.3).

One of the improvements the DWP has made is to provide additional guidance called *Help Understanding Your Statement*, which claimants can access via hyperlinks in a number of different places on the payment statement. Although this additional guidance is welcome, the level of detail is insufficient for claimants to understand the substantive rules of entitlement. For example, the section on the shared accommodation rate of LHA for private renters does not detail the various circumstances in which an individual under 35 may be entitled to the higher one-bedroom rate rather than the lower shared accommodation rate – eg, those in receipt of certain disability benefits.²⁴² In fact, the guidance states ‘you cannot be paid more than this amount’, which is incorrect for people who meet one of the exemptions. The lack of transparency as to all elements, exceptions or exemptions in the legislation on the payment statement or in the *Help Understanding Your Statement* guidance means that claimants, including those with protected characteristics, may unknowingly be missing out on their full legal entitlement.

Figure 3F: CPAG mock-up of the *Help Understanding Your Statement* guidance on the shared accommodation rate

Shared accommodation rate

This is based on the rent for a single room in a shared house for someone under 35 in your area. You cannot be paid more than this amount.

Go to your local council’s website to check the shared accommodation rate in your area.

Despite significant improvements, there is still a lack of adequate information in the UC payment statements. The *Help Understanding Your Statement* guidance improves the situation somewhat; however, even with this additional guidance, claimants are not given sufficient information to understand the underlying legislative requirements, the procedural requirements and how the DWP arrived at its decision. Without this information, claimants cannot identify errors or make meaningful representations when challenging decisions, which does not comply with the rule of law principle of transparency.

3.2.3 Communication of appeal rights

What happens in practice

UC’s statement of a claimant’s appeal rights does not contain sufficient information to comply with legal requirements or assist clients in understanding their rights and how to exercise them.

Statements of appeal rights in UC vary slightly, depending on the type of decision notification. The payment statement notice of appeal rights is not automatically immediately visible within the payment statement itself. Instead, a claimant must click on the words ‘If you think we’ve made a mistake or want to appeal’ at the bottom of the statement, which expands to include the following information.

²⁴² Sch 4 para 29 Universal Credit Regulations 2013 No.376 (‘UC Regulations 2013’); ‘disability benefits’ in this research refers to disability living allowance, child disability payment, personal independence payment, adult disability payment and attendance allowance.

3G: Payment statement notification of appeal rights

If you think we've made a mistake or want to appeal**If you think we've made a mistake**

It is important that you tell us straight away.

You can ask for a written explanation. You need to contact us **within 1 month of the date on this statement (9 February 2023)**. You can write to us at Freepost DWP UNIVERSAL CREDIT FULL SERVICE, or call us.

Contact us

You can contact Universal Credit:

- through your [online account](#)
- using the Universal Credit helpline

Universal Credit helpline

- Telephone: 0800 328 5644
- Welsh language telephone: 0800 328 1744

Monday to Friday, 8am to 6pm (closed on bank holidays). Calls to 0800 numbers are free from landlines and mobiles.

If you cannot speak or hear on the phone

You can use the [Relay UK service \(opens in new tab\)](#) to make a text-supported call to the Universal Credit helpline.

[Find out more about using Relay UK \(opens in new tab\)](#).

From your laptop, desktop or mobile

[Download the Relay UK app \(opens in new tab\)](#). Once you have set up the app, dial 18001 followed by the Universal Credit helpline. If you are redirected to your device's default calls app, return to the Relay UK app to join the call.

From your textphone device

Dial 18001 followed by 0800 328 1344.

If you use sign language

You can use the Video Relay Service (VRS) to make a British Sign Language (BSL) interpreted call to the Universal Credit helpline.

[Find out more about using the VRS \(opens in new tab\)](#).

From your laptop or desktop

[Open the VRS \(opens in new tab\)](#).

From your mobile

Download the InterpretersLive! app from your app store. Once you have set up the app, use it to contact the Universal Credit helpline.

If you have new information that could affect your payment or think something has been overlooked, you can request a **mandatory reconsideration**. When we've looked at the decision again, we'll explain our reasons in a **mandatory reconsideration notice**.

Can I appeal?

If after a mandatory reconsideration, you still disagree with our decision you can appeal it. Your mandatory reconsideration notice includes details on how to do this.

Evidence received by the Early Warning System suggests this design choice is not sufficiently transparent for all claimants to understand their appeal rights.

Early Warning System: comment on statement of appeal rights – October 2022

'The payment statement award letters carry appeal rights but they are not made clear enough to claimants. You have to open the "If you think we've made a mistake or want to appeal" link to understand how long you have to appeal. People I speak to do not seem to be aware of this and it leads to difficulties. This fundamental stuff needs to be clearly accessible/obvious.'

The law requires that a decision letter includes notification of the time limit within which a claimant can challenge a decision by mandatory reconsideration.²⁴³ The time limit differs depending on whether the claimant requests an explanation of the decision first or makes a late request (see Chapter 4 – 'Disputes'). However, the payment statement notification of appeal rights does not contain any information about the different time limits for requesting a mandatory reconsideration or the requirement to provide a good reason for a delay beyond a month. Claimants may assume that the one-month time limit given for requesting a written explanation of the decision also applies to requesting a mandatory reconsideration. If claimants interpret the notice this way, then this would be incorrect as the time limit for requesting a revision is only a month if the DWP does not provide reasons for the decision or there is no extension for a late application.

By comparison, the statement of appeal rights at the end of PDF decision letters states: 'Do this within one month of the date of this letter.' The different statements of appeal rights displayed to claimants when the DWP refuses a claim or brings an award to an end (the 'closed claim' statement of appeal rights – see Chapter 2 – 'Decision making') goes one step further and states claimants 'need to ask' the DWP for a revision within one month. A further worrying example is decision notices which attempt to communicate the time limit by stating the final day of the limit, such as in Figure 3H.

²⁴³ Reg 7(3)(a) Decisions and Appeals Regulations 2013

Figure 3H: CPAG mock-up of the statement of appeal rights on a 'closed claim' decision notification

Ask us to reconsider

You can also ask us to look at the decision again. This is called a 'mandatory reconsideration'.

You need to ask us by **19 August 2022**.

That time limit was given in a notification for a decision made on 20 July 2022. The mistake is that a revision request would be 'within a month' of 20 July 2022 if it was submitted by 20 August 2022 and not the 19th. Such a mistaken communication of a time limit has arisen either because this type of decision notification allows a DWP officer to fill in the final date for seeking a mandatory reconsideration (which is worrying, as it leaves this subject to human error) or, more likely, is a result of the system having been set up to auto-generate the final date based on the date of the letter (which is worrying, given that the final date used is wrong).²⁴⁴

Across the different statements of appeal rights, there is a complete lack of transparency about the possibility of applying for a late revision up to 13 months after the decision, if a claimant explains why they are applying late and the DWP considers it reasonable to grant an extension, or about the possibility of revisions at any time if specific grounds apply – eg, the DWP has made an official error.²⁴⁵ The consequence of this lack of transparency could include claimants unknowingly missing time limits, decisions going unchallenged if claimants wrongly believe deadlines have expired and cannot be extended, or claimants failing to provide reasons why they could not apply for a revision within the one-month period.

The information given about when a revision can be sought also suggests that a claimant can only request a revision in a case where 'you have new information that could affect your payment or think something has been overlooked'. However, the right to request that the DWP look at a decision again is not limited to situations where a claimant has new information or thinks something has been overlooked. A revision is a complete reconsideration of the decision, which means a decision maker can come to a different conclusion on the basis of exactly the same evidence. By suggesting that the DWP can only change a decision if it failed to consider new or overlooked information, the DWP is not completely transparent about the situation in which a revision is possible.

The previous CPAG report on this issue included a suggested rewording of the template appeal rights notification to ensure it reflects the legislation, makes clear the different options available to claimants if they disagree with, or do not understand, the decision, and fully notifies claimants of the time limits for, and methods of requesting, an appeal.²⁴⁶

²⁴⁴ See R(IB) 4/02, available at rightsnet.org.uk/?ACT=39&fid=8&aid=60_e2INQmt48MPrw0jq3Nqe&board_id=1 and *SSWP v SC (SF)* [2013] UKUT 607 (AAC), available at casemine.com/judgement/uk/5b46f1ff2c94e0775e7efb21, which make the point that an act is done 'within a month' of a date if it is done by the end of the same date on the following month.

²⁴⁵ Regs 6 and 9 Decisions and Appeals Regulations 2013

²⁴⁶ CPAG, *Computer Says 'No!' Access to justice and digitalisation in universal credit - Stage one: information provision*, 2019

Figure 3I: CPAG's mock-up of a suggested statement of appeal rights that complies with legal requirements previously published in *Computer Says 'No!' – Stage one: information provision*

What can I do if I think this statement is wrong?

You can ask us to explain our decision about your entitlement. You can also ask us to reconsider our decision – this is called making a mandatory reconsideration request. If at the end of this you still don't agree, you can appeal to an independent tribunal.

<p>You can ask us to explain</p> <p>You, or someone who has the authority to act for you, can ask us within one month of the date on this statement (30 December 2018) to explain your entitlement by providing you with a statement of reasons.</p>	}	<p>You can also ask us to reconsider (mandatory reconsideration)</p> <p>You, or someone who has the authority to act for you, can tell us if you think we've overlooked something, or you have more information that affects your entitlement or for any reason you think the decision is wrong. You need to do this before your deadline, which may vary (see below)</p> <p>When we have looked at what you have told us, we will post a letter on your journal to tell you what we have decided and why. We call this letter a mandatory reconsideration notice.</p>	}	<p>When you've done this, you can appeal</p> <p>If you disagree with the mandatory reconsideration notice, you can appeal to a tribunal.</p> <p>You must wait for the mandatory reconsideration notice before you start an appeal.</p>
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Your deadline for asking us to reconsider is: (a) **one month** from the date of this statement (30 December 2018) unless:

- (b) You requested, and we gave you, a written explanation within that month. Then your deadline is one month + 14 days from the date of this statement.
- (c) We gave you a written explanation after that month. Then your deadline is 14 days from the date of the written explanation.
- (d) You are making a late request and:
 - + **Your request is made within 12 months of the original deadline – ie, whichever of (a), (b) or (c) above applies.**
 - + There are good reasons for the deadline to be extended.
 - + You made your request as soon as you could.
 - + You are clear about which decision you disagree with.
 - + You explain the delay.

You can contact us by telephone, in writing, or use your journal.

Telephone: 0800 328 5644
Textphone: 0800 328 1344
Address: Freepost DWP UNIVERSAL CREDIT FULL SERVICE

Unfortunately, the DWP has not made any changes to the UC statement of appeal rights to reflect CPAG's concerns.

The inadequacy of information provided to claimants about their appeal rights is concerning when considering the extent to which the UC system upholds rule of law principles. If claimants do not have sufficient information about their appeal rights or how to exercise them, this is a lack of transparency which results in procedural unfairness.

3.2.4 Overwritten payment statements

What happens in practice

When a decision is revised or superseded with effect from an earlier date, that can change the award to generate an overpayment (if the amount of the award after the change is less than was previously awarded) or an underpayment (if the amount of the award after the change is more than was previously awarded). To understand the effect of a decision notice stating that a decision has been changed, it is necessary to compare the changed award with the original award, which means looking at the original decision notice.

However, when a UC decision is changed from an earlier date, the payment statements on the journal are automatically updated to display only the new decision. The new statements replace the originals rather than making both the original and amended decisions available for comparison.

It is difficult even to tell whether or not a decision has been changed at all, let alone the effect of the change. The only way claimants or advisers can tell whether the statement has been overwritten after a change is to click on the words 'If you think we've made a mistake or want to appeal' at the bottom of the statement and see whether the date in the statement of appeal rights matches the assessment period in question or was made at some later date.

Figure 3J: CPAG mock-up of an extract from the payment statement statement of appeal rights

You can ask for a written explanation. You need to contact us **within 1 month of the date on this statement (9 February 2023)**. You can write to us at Freepost DWP UNIVERSAL CREDIT FULL SERVICE, or call us.

The DWP's design choice to overwrite payment statements, rather than archiving them when decisions are changed so they are still accessible, makes it difficult for claimants and advisers to check whether overpayments and underpayments have been calculated correctly, especially if there have been multiple changes over the period in question.

Early Warning System: lack of information on revised payment statement – January 2021

'A major bugbear I have with UC is that when they change a decision for a past period, the payment statement simply updates with the new info. However, there is nothing on it to show it was revised and you have to do a subject access request to get a copy of the original. My issue with this is that the payment statement is now factually incorrect. This is a big issue when trying to challenge an overpayment, as you can't see the before and after to see what has occurred.'

Rightsnet thread [11258#50](#): overpayment was actually an underpayment – July 2021²⁴⁷

'It is certainly an issue where there is no visible audit trail of the UC payments due to the overwriting of the original payment statement when there has been a change of circumstances. I currently have a client with an overpayment because of the reinstatement of carer's allowance after the son won his personal independence payment appeal. The DWP are adamant that the client received the carer's element payment during the overpayment period because that is what the payment screen shows! The client is providing bank statements to show the payments received had no carer element included but it gets complicated as there were also housing costs initially paid to client then direct to landlord. The DWP do not make it easy for themselves but even less easy for clients to understand.'

Early Warning System: lack of transparency of arrears calculations – June 2022

'Overwritten payment statements are causing major difficulties when trying to advise about a housing costs underpayment. I have had to request a subject access request to get access to the current and previous payment statements to check whether the arrears payment has been calculated correctly.'

Overwritten payment statements also present a false narrative of decision making and payments, as described by the interviewees below.

²⁴⁷ Rightsnet thread 11258, available at rightsnet.org.uk/Forums/viewthread/11258/P30/#82718

Timothy and adviser Amelia – interview transcript

Amelia: Can you show me what you got for housing?

Timothy: Housing, £860.

Amelia: You didn't get £860.

Timothy: No, I didn't.

Amelia: You got £780. Why has it been changed to £860?... I've got the one that's showing £780.

Timothy: That's a bit naughty if they are changing it afterwards.

Amelia: Yes. I don't like that at all. They shouldn't be doing that.

Timothy: Because now it looks as if it had been always like that since the beginning, which isn't the case... It seems to me like they are cleaning there.

Amelia: But those were your records. It's not theirs to do that... it's like changing a bank statement. You don't go and change bank statements.

Martha (claimant) – October 2022

'They agreed they were wrong and they said: "We'll make a payment within X number of days for the rest that we owe you," which was fine... but what I then noticed was the statement changed. There's no date on them. So the statement just changed. I had no record of the previous statement. I hadn't saved it or screenshotted it. By looking at that statement, it looked like they'd paid us correctly the first time around on the correct date, which is not what had happened... "Well, that's just wrong. You didn't pay me that much on that day. I can show you a bank statement that proves you didn't, but you just changed the statement and have not indicated anywhere that it's been edited.... It just changed overnight." The paper trail is just dodgy.' [**Note:** there is in fact a date on the revised payment statement – however, the revised date is only visible if the claimant expands a tab within the payment statement to find out how to challenge the decision.]

Victoria (claimant) – August 2021

'My statements were amended a few times, so even though I've had the statements from January, then I looked at it in April or in May, it was different to what I've saved in January, and it was especially happening when there was a tribunal thing going on. So it was like somebody was messing with my statements just to make it look good for them, if that makes sense? ... I shouldn't have to find out myself that somebody was messing with it... because I argued over something that is not correct anymore. Unless I saved it myself and I can see it there...'

When compared to non-digital benefits, the overwriting of payment statements would be the equivalent of the DWP removing and replacing previous decision letters received through the post without leaving copies of the

originals. More than one person interviewed as part of the research made the comparison with the transparency expected and received from banks concerning financial records.

Rhys (claimant) – February 2022

'It's very hard to go back and check for yourself what has happened over the last two or three reassessments. If I go onto my bank account... I can look at transactions I've made any time in the last six years. You know, I can pick the date, I can pick the payment, I can click on it, and it comes up – who I paid, how much, when I paid it. Trying to find out what your last but one universal credit calculation was, you almost need a master's degree in IT, to manage to do that.'

Equally, if not more concerningly, there is a risk that the DWP's own 'back end' record does not always capture these changes when the new statements are later presented to an independent tribunal as part of appeal papers prepared by the DWP, so they do not evidence the decision as it was originally made.²⁴⁸

In September 2022, the DWP stated: *'UC design are currently exploring areas of the overpayment and underpayment process... The discovery phase has highlighted the issue of previous versions of statements not being visible to claimants. Changes which would allow the claimant to see both the original and amended statement require complex behind the scenes work to make it technically possible. The design team are now exploring various design improvements for the whole process which will be addressed in priority order.'*²⁴⁹

Overwritten payment statements are problematic from a rule of law perspective. The digital design choice to overwrite and replace decision notifications lacks transparency and is procedurally unfair, as claimants have insufficient information to identify whether the outcome arrived at is correct. The overwriting of payment statements also undermines one of the main advantages of a digital benefit over legacy benefits for claimants: the potential for recordkeeping. It appears that the DWP is aware of this issue and will take steps to address it at some point; however, it is disappointing that such a significant barrier to claimants' understanding of their UC award, and therefore their ability to exercise their rights, has not been a priority for the DWP.

3.2.5 Overwritten journals

What happens in practice

Claimants are advised to make a new claim following the refusal of their claim or the end of their award. Once a new claim is made, the claimant loses access to their previous journal as it is overwritten by the digital system when a new one is created. This means claimants cannot access the decision notifying them about the refusal of their previous claim or the end of their previous award and any journal messages which may be relevant to a dispute. Welfare rights advisers have learnt to screenshot and save any information that may be relevant to a challenge before a new claim is made. However, this is not always possible and does not help those without representation or those who have already made a new claim before seeking advice. Once a new claim has been made, claimants are only able to access the previous journal by querying the information available via the UC helpline, applying for a subject access request for their records or waiting for the information to be reproduced in an appeal bundle if they challenge the decision at the First-tier Tribunal.

²⁴⁸ See Rightsnet thread 11258, posts #43 and #48, available at rightsnet.org.uk/Forums/viewthread/11258/P30

²⁴⁹ rightsnet.org.uk/forums/viewreply/88015

Natalia (adviser) – November 2021

‘Claim closure is an issue in terms of again having this paper trail. It’s all very well telling someone to take screenshots of their journal in the event that the claim is closed and they have to reclaim, or whatever. But they don’t know if the claim is going to be closed, so how can they be expected to take screenshots of stuff when there’s no reason for them to do it?’

Chloe (claimant) – October 2022

‘When they did the new claim, it deleted my access to my old journal... I didn’t have access to my own information... New claim submitted 24th May... “Hi there. I was previously in conversation, over my journal, about alleged overpayments. I did not realise that doing the new one would remove me... Is there going to be any continuity? What’s going on? I’ve lost access to the old journal. So, I can’t see if anybody has said anything about this overpayment...” ... I did get confirmation. “In regard to your request for mandatory reconsideration, I have referred this for you. The decision maker will be in touch if there’s anything for you and to provide you with an outcome.”

They actually suggested that they could print it off and send it to me, if that would be convenient. I said: “Uh, yes. Frankly, that’s probably about the least you could do.” I would have assumed what they could have done is reactivate... So that I could get into that old claim and still interact with it...’

Ben (claimant) – August 2021

‘They’ve deleted all of this [first] claim... I thought: “I’ll go in and have a look, and I’ll be able to get the dates and tell you.” I should have framed my appeal letter, because it was a moment of pride. But I haven’t even got that. I’m guessing I could get it with a subject access request for all my records from DWP. It just says, from last year, “Reclaim started”. That’s the history of it. None of this is there, which I think is terrible for an online system.’

By contrast, previous job application history remains available when a claimant’s journal is overwritten. The two extracts from the same UC account below show that the earliest available journal message was from 4 October 2021, whereas there is a job application record visible from as early as February 2021. This difference suggests the overwriting of the journal was an intentional, claimant-unfriendly, digital design or implementation choice. In response to this research, the DWP has stated that one of the reasons for not providing previous journal messages is the possibility that household make-up may have changed between claims and this could cause issues with regards to information sharing. For example, new partners cannot have access to information about previous partners.²⁵⁰

²⁵⁰ Email from DWP to CPAG, 31 May 2023

Figure 3K: CPAG mock-up showing date of earliest journal message (4 October 2021)

Date and time	Message	Added by
4 Oct 2021 at 8.04pm	Income other than earnings completed	
4 Oct 2021 at 8.03pm	Savings and investments completed	
4 Oct 2021 at 8.03pm	Work and earnings completed	
4 Oct 2021 at 8.01pm	Who lives with you? completed	
4 Oct 2021 at 8.01pm	Housing completed	
4 Oct 2021 at 7.54pm	Nationality completed	
4 Oct 2021 at 7.54pm	Previous Address completed	
4 Oct 2021 at 7.54pm	Address completed	
4 Oct 2021 at 7.54pm	Contact details completed	

Figure 3L: CPAG mock-up of the job application information from an earlier date (22 February 2021)

Paediatric Nurse	Applied 270 day(s) ago
Update job	
Notes	
Updated on 22 February 2021	

3.2.6 Inadequate reasons for decisions

What happens in practice

For claimants to meaningfully access their appeal rights, they require decision notices with adequate information to identify what led to the particular outcome decision. Our research has found that the DWP fails to add sufficiently personalised and detailed information to their standard template UC letters to satisfy these requirements – in particular, the notification of overpayment or underpayment decisions and when a claimant fails the habitual residence test.

Overpayment and underpayments

There is insufficient detail in overpayment and underpayment decision notifications for claimants to understand what caused the over- or underpayment and how much they owe the DWP or the DWP owes them now the decision has changed. The only information provided to claimants is the total amount of over- or underpayment for the entire period and a summary of the reason, which is rarely more than a couple of words or lines.

Figure 3M: CPAG mock-up of an overpayment decision letter

<p>Important: You've been paid more Universal Credit than you're entitled to You now need to pay this back</p> <hr/>	<p>27 November 2020</p>
<p>Dear</p> <p>On 03 June 2020 you were paid £3,255.20. You should have been paid £1,798.14. This is because of changes to your account for Housing; Children; Take-home pay; Other benefits; and Advances. Because of this change you have been overpaid £1,457.06 and now need to pay this money back.</p> <p>You are now in a minority of people who have received money they're not entitled to.</p> <p>If you already owe money to us, this overpayment will be added to it. We'll contact you if we need to review how much you're currently paying back.</p>	<p>Overpayment of Universal Credit</p> <p>You need to pay £1,457.06</p> <p>You were overpaid £1,447.06</p> <p>From 28 May 2020 to 27 November 2020.</p> <p>Call 0800 916 0647 to set up your repayment.</p>

Figure 3N: CPAG mock-up of an underpayment decision letter

<p>We owe you some money</p> <hr/>	<p>9 December 2022</p>
<p>Dear</p> <p>We've decided you're entitled to Universal Credit of £250.00 from 9 November 2022 to 8 December 2022. This is because of childcare. We've already paid you Universal Credit of £0.00 from 9 November 2022 to 8 December 2022.</p> <p>We owe you £250.00. This is the amount left after taking away the Universal Credit we've already paid you.</p> <p>We'll pay £250.00 into your bank account.</p> <p>You must tell us about changes</p>	<p>Use your journal to contact us if you have any questions.</p> <p>You can also call us on the number above. To speak to an agent in Welsh, please call: 0800 328 1744.</p> <p>We have many different ways we can communicate with you.</p>

This lack of transparency makes it difficult for claimants to check for any errors in the calculation, as described by the following claimants and advisers.

Yasmin (claimant) – November 2021

'My issue was that I felt like they weren't being transparent with me... I had to say to them: "I want a month-by-month breakdown of what you are saying I owe. You can't be just telling me, 'You owe us £2,000.' And not telling me how." ... It's almost like you don't have the right to know the inner workings, and that's not right.'

Amelia (adviser) – October 2021

'This is highly unsatisfactory... It is just a ball figure. "Between August '20 and June '21, you were paid £2,815... You should have been paid zero." There is no calculation of how they have arrived at that figure... It is just ballpark figures and no context...'

Rowan (adviser) – February 2022

'The decision letters tend to be very jumbled and... cut and paste. For example, there was one that I had where I'd got a [mandatory] reconsideration done and I'd got a load of extra money paid and then they got a letter that said... "We paid you zero, so we need to pay you this amount." None of it added up, it was all just garbage, and really confusing...'

Early Warning System: lack of information in UC letter regarding arrears calculations – October 2022

'The client was awarded limited capability for work-related activity [LCWRA] but the arrears payment seemed small, so I checked and it was £401 less than expected. I asked on the journal how they worked it out and showed my calculation. They initially failed to respond after a month and we had to chase. They eventually responded to say: "The issue was you previously had housing costs corrected and when your limited capability for work [LCW] underpayment [was] generated, the system did not recognise the correct[ed] housing costs. This caused the [amount for the] additional bedroom entitlement payment to be taken off the limited capability for work underpayment [arrears payment]."

If we hadn't checked, he would have been underpaid. The UC letter shows what period the underpayment covers, but there is no transparency as to the exact calculation of the arrears. In this case, we didn't know the "bedroom tax" was incorrectly applied and deducted from the arrears of LCWRA payment. I expect many people are underpaid. Not many would question or know its incorrect especially when there is no information about how it was calculated.'

In the following example, the adviser asked for a more detailed explanation than the reasons provided in the decision notice, but DWP officials were unable to provide the information required.

Henry (adviser) – October 2021

'I have had cases where someone has been told, wrongfully, that they were overpaid housing costs and when I asked why, they said: "Oh because you were overpaid housing costs between this period." I said: "Okay, but why?" ... "Oh because you didn't tell us about your housing costs." That doesn't tell me anything... As far as I can see, the tenancy agreement started on this date, they were paid every month from that date, there is no error. We did a mandatory reconsideration and they took two months to process it... So it is extremely stressful. Firstly, the decision makes no sense, secondly they don't give any reason for the decision so it makes even less sense.'

If compared to legacy benefits, an over- or underpayment of housing benefit (HB) decision letter includes the total overpayment for the period in question, but it will also be accompanied by a breakdown of the personal allowances according to the family circumstances and the income and savings for each week's payment, as is required by the Housing Benefit Regulations 2006.²⁵¹ The DWP has more information available internally about how the overpayment has been calculated if they access the 'Review an overpayment or underpayment' internal agent to-do. Claimants also require a change in the award calculation broken down by assessment period.

Figure 30: CPAG mock-up of the information available to the DWP in the 'Review an overpayment or underpayment' to-do from a subject access request file

History	
Review an overpayment or underpayment completed	
Claimant contact details	
Name	
Email (preferred)	
Name	
Email	
Completed on: Tuesday 1 August 2021 at 12.30pm	
Created on: Tuesday 1 August 2021 at 11.30am	
Details	
Calculated value of overpayment/underpayment	£12356.50 overpayment
Calculated value accepted	Yes
Who should we recover this from?	The claimant

²⁵¹ Sch 9 para 15 Housing Benefit Regulations 2006 No.213 requires all notices of an overpayment to include: (a) the fact that there is a recoverable overpayment, (b) the reason, (c) the amount, (d) how it was calculated, (e) the benefit weeks the overpayment relates to, and if the overpayment is to be recovered by a deduction, the fact and amount of the deduction.

Calculation breakdown**Assessment period 30 March 2020 to 29 April 2020**

Element	Before recalculation	After recalculation
Standard allowance	£594.04	£0.00
Housing	£800.00	£0
Children	£277.08	£0
Carer	£160.20	£0.00
Take-home pay	£361.50	£225.40

The statement showed £1344.70 paid to claimant. This is now recalculated as -£125.00.

Assessment period 30 April 2020 to 29 May 2020

Element	Before recalculation	After recalculation
Standard allowance	£594.04	£0.00
Housing	£800.00	£0
Children	£281.25	£0
Carer	£162.92	£0.00
Take-home pay	£1512.50	£1373.90

The statement showed £200.60 paid to claimant. This is now recalculated as -£125.00.

Habitual residence test

In order to meet the qualifying conditions for UC, a person must be both present in Great Britain and 'habitually resident' (meaning the UK is your main home and you intend to keep living there), which includes having a 'right to reside' in the 'common travel area' – ie, the UK, Ireland, the Channel Islands and the Isle of Man.²⁵² It is possible for claimants to have multiple different rights of residence depending on their individual circumstances and those of their family members. Not all rights of residence satisfy the qualifying conditions for UC.

When the DWP notifies a claimant that they do not have a sufficient right to reside for UC entitlement, the decision notification lacks transparency about the right to reside requirements in the legislation and how they apply to the claimant's specific circumstances. This makes it difficult for claimants to identify whether a decision maker has made a mistake in refusing their claim or ending their award, and inhibits them from making informed representations if they do not agree with the decision. Claimants receive a decision letter in the form of a PDF uploaded as a hyperlink on their journal. This decision letter states: *'We have decided that you have failed the habitual residence test. This is because you have not demonstrated a right to reside that qualifies you for universal credit.'* The DWP then provides claimants with an index of the different residence rights and an explanation of how they generally make habitual residence test decisions. Claimants are not told what findings of fact have been

²⁵² s4(1) Welfare Reform Act 2012; there are limited exceptions where people can still be treated as present in Great Britain when temporarily abroad; reg 9 UC Regulations 2013.

made, what evidence has been used, and how the legal test has been applied to their specific circumstances. Claimants are advised that the DWP will ‘only look at the parts relevant to your circumstances’ but are not told which parts these are, so it is not possible to identify what, if anything, has not been considered that should have been, without contacting the DWP to request an explanation of the decision.

Lucy (adviser) – August 2021

‘You must have seen the HRT [habitual residence test] failure letters that are just so unhelpful... in terms of explaining exactly what is wrong with that particular claimant... why they failed. Even though they list various categories, I just don’t think they’re very helpful at all.’

Incorrect habitual residence test decisions are consistently one of the most common complaints raised with the Early Warning System.²⁵³ Our evidence shows decision makers regularly fail to apply the law, often because there is an insufficient investigation of the facts and a lack of consideration of the multiple possible residence rights which may apply to a person based on their personal circumstances and those of their family members.

Early Warning System: worker status following temporary illness – January 2023

A French national with pre-settled status has been in the UK for two years and received UC as a worker when she became pregnant and then ill in early 2022. She had to stop working. This prompted a new habitual residence test and her UC award was brought to an end due to failing the habitual residence test. The DWP has only looked at her pre-settled status and not considered whether she has retained her worker status.

Early Warning System: pre-settled status with child in education – August 2021

‘I have a client who is in a refuge. Her UC was refused because she has pre-settled status but they didn’t ask her questions to identify if she had any other right to reside – which she does as the primary carer of a child in education and as the spouse of an EEA [European Economic Area] worker. The mandatory reconsideration hasn’t been responded to after six weeks.’

At its heart, procedural fairness requires that individuals must ‘know the case against them’. The reason for this is that only then can a person identify whether a mistake has been made and assert their right to challenge a decision. In the UC digital system, the DWP is not adequately transparent about the reasons for decisions, which makes it difficult for claimants to understand the case against them or to put forward their own case to challenge a decision. This is partially caused by the inadequate design of the template letters used by DWP officials. Specifically, the DWP should provide claimants with a breakdown of the maximum amount and the income and savings for each month’s payment, as is provided by HB decision letters, and an explanation of how the right to reside requirements in the legislation have been applied to the claimant’s specific circumstances, including about each potential right of residence in isolation rather than general statements.

²⁵³ For a thorough exploration of the issues raised here and more, see C O’Brien, *Unity in Adversity: EU citizenship, social justice and the cautionary tale of the UK*, Hart Publishing, 2017.

3.3 Communicating decisions conclusions

Rule of law principles have been undermined in the design and implementation of universal credit, but this is not an inevitability of digitalisation

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness in the way decisions are communicated within universal credit (UC). These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. An online account with a record of all communication with the DWP and a history of decision making for one combined benefit is a significant development of UC, and one of the more apparent advantages of a digital-by-design benefit for claimants, which has the potential to increase transparency compared to legacy benefits. However, these potential benefits of an online account for increasing transparency have been undermined by a number of the DWP's digital design and implementation choices.

The DWP has designed a system that automatically overwrites payment statements when decisions change from an earlier period, overwrites journals when a new claim is submitted and produces inconsistent decision notifications, which are written in different formats and stored in different places across the UC account. At a more basic level, the DWP has designed templates for individual decision notifications that fail to provide adequate information about a claimant's appeal rights and the reasons for decisions. As a result, some UC claimants can have a worse record of decision making than those in receipt of legacy benefits.

These issues are not inevitabilities of digitalisation but avoidable and rectifiable design choices that prevent a claimant from having a meaningful understanding and record of the decisions taken about their UC claim or award. Many of the changes would be cost neutral or low cost to introduce. They would have a significant benefit for claimants and they would not interfere with the central architecture of the UC system. In some cases, the DWP has committed to making changes, but it has not committed to a timescale among competing priorities. In many cases, digital design issues remain many years after stakeholders first raised them with the DWP.

They are also evidence that it is not just the effects of artificial intelligence, or even automated decision making, which should be considered when investigating the effects of digitalisation on claimants and their rights. Simple design choices when implementing a digital-by-design benefit can significantly affect the extent to which a system complies with rule of law principles, and the extent to which it can result in negative consequences for claimants.

Prioritisation of simplicity over completeness and lawfulness

The DWP appears to prioritise simplicity over legality, which is not a choice available to it if the system is to comply with the rule of law. Currently, the DWP does not provide adequate information on a claimant's appeal rights when they notify appealable decisions. The information required by the legislation may be longer than the current statement of appeal rights for UC, but that is because all of the detail is necessary for claimants to understand and access their appeal rights.

The DWP also appears to prioritise simplicity at the expense of completeness, and as a result, claimants are not provided with enough information to understand the reasons for decisions. For example, there is a lack of transparency with claimants in either the payment statement or the *Help Understanding Your Statement* guidance about all the different possible elements, deductions or exemptions that might be applied to an award if the system does not recognise them as applicable to the specific claimant – making it very difficult for claimants to recognise if their award is incorrect. There are other examples across the UC digital system. The lack of detail in the overpayment and underpayment decision notifications (see section 3.2.6), the inadequacy of the habitual residence test determinations (see section 3.2.6), the information on student finance displayed on the payment

statement (see Chapter 2 – ‘Decision making’: section 2.3.4), and the failure to notify claimants about the process for challenging real-time information (RTI) errors (see Chapter 4 – ‘Disputes’: section 4.3) all indicate that the DWP has prioritised simplicity and accessibility over completeness in places.

That is not to say that simplicity is not also a requirement. The DWP should ensure that decision notifications are simple, comply with the law and include adequate reasons for decisions. If this is not possible in one statement of appeal rights or a single decision letter, then the DWP should provide short- and long-form versions as standard.

3.4 Communicating decisions recommendations

Quick fix

- DWP *Digital Design* should amend the payment statement and increase the detail in the payment statement guidance to provide information to claimants about all the possible elements, exemptions and exceptions that exist in the legislation. Ideally, there would be the easy-to-read summary, as is currently available, as well as an expanded complete version with all the non-relevant elements greyed out.
- The statement of appeal rights should be part of the payment statement rather than available as an expansion after clicking the ‘If you think we’ve made a mistake’ button.
- DWP *Digital Design/Communications* should amend the statement of appeal rights in line with previous recommendations from CPAG so that it complies with legal requirements and gives claimants adequate information about their appeal rights, paying particular attention to the right to apply for a revision beyond one month.²⁵⁴
- DWP *Digital Design/Communications* should review the quality of information provided in decision notifications, and amend the information provided accordingly, to ensure that adequate information to identify what it was specifically about the conditions of entitlement in the legislation or the procedures followed that led to a particular outcome decision and the evidence used.

Medium-term fix

- DWP *Digital Design* should redesign the UC account so that all appealable decisions are stored in the same place, to assist claimants locating these decisions.
- DWP *Digital Design* should redesign the journal so it is possible to filter by time period and type of communication – eg, decisions or determinations versus messages to do with work search.
- DWP *Digital Design* should prioritise a redesign of the payment statements in the UC account so that previous decisions are archived rather than overwritten, and it is more obvious to claimants when a decision has been changed by revision or supersession at a later date.
- DWP *Digital Design* should redesign the UC account so that previous decisions and communications in the journal are visible or retrievable when a claimant makes a new claim for UC.

²⁵⁴ Child Poverty Action Group, *Computer Says ‘No!’ Access to justice and digitalisation in universal credit – Stage one: information provision*, 2019, available at cpag.org.uk/policy-and-campaigns/computer-says-no-access-justice-and-digitalisation-universal-credit

Chapter 4: Disputes

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4. Disputes

4.1 Introduction

This chapter considers the process for challenging a decision under the universal credit (UC) system and the extent to which it adheres to the rule of law principles of transparency, procedural fairness and lawfulness. Claimants require transparency about the rules and procedures, and how the Department for Work and Pensions (DWP) has applied the rules and followed the procedures to make a decision. The DWP must also provide claimants with information on how to challenge decisions, and claimants must have access to fair and effective mechanisms to allow them to do so, which includes being able to make representations at each appropriate stage in the dispute process, timely access to decisions, and access to an independent tribunal.

Our research has found that the DWP has made a number of digital design choices with UC, which prevent claimants from understanding decisions that have been made in relation to their UC claim or award, and from accessing their right to challenge decisions. In some cases, digital design choices appear to obstruct claimants who attempt to raise disputes, such as the informal communication style of the journal and the lack of a specific function to flag a particular journal message as an application for a revision.

Section 4.1 begins with a summary of the legislation on disputes, followed by an exploration of failures to adhere to the rule of law principles of transparency, procedural fairness and lawfulness when claimants attempt to dispute decisions. Next, section 4.2 considers the process for challenging a claimant's UC award if the amount has changed due to earnings information gathered automatically from HM Revenue and Customs' real-time information system. Finally, section 4.3 explores the DWP's 'reverification' exercise of claims made during the initial months of the Covid-19 pandemic (when evidence checks were temporarily eased) as a case study for raising disputes and procedural unfairness caused by design features of UC.

4.2 Claimants challenging decisions

What the law says

Revisions and supersessions

If the DWP makes an error (of fact or law) when making a social security decision (eg, a child is missing from an award), it can change it with 'full retrospective effect' by a revision.²⁵⁵ Alternatively, if the DWP initially makes the correct decision at the time, but then it becomes wrong at a later date, it can replace it with a new decision via a supersession.²⁵⁶ (See Chapter 2 – 'Decision making' for more information on supersessions). Both claimants and the DWP can initiate supersessions and revisions. The DWP has the power to treat claimant requests for supersessions as requests for revisions and vice versa, with revisions always taking precedence over supersessions when both options would otherwise be available to a decision maker.²⁵⁷ This is important because a revised decision generally takes effect from the same date as the original decision it is revising: meaning it provides a way

²⁵⁵ s9 Social Security Act 1998; R(IB) 2/04, para 10, available at rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1

²⁵⁶ s10(1) Social Security Act 1998. In some cases when a revision is not possible, a decision which was incorrect at the time of the decision may only be changed by supersession.

²⁵⁷ If a decision can be both revised and superseded, then a supersession is only allowed if there are specific grounds which aren't possible under a revision: reg 32 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No.381 ('Decisions and Appeals Regulations 2013').

of fully correcting decisions which have been wrong from when they were made. This is compared to supersessions, which change decisions from a date which is later than the date the original decision took effect.

Revisions, mandatory reconsiderations and appeals

A request for a revision is the first stage in the dispute process.²⁵⁸ If a claimant is not satisfied with the outcome of their request for a revision, the next stage is to appeal the original decision (whether ‘as revised’ or, if the revision was refused altogether, in its original form) to the First-tier Tribunal. In most cases, the right of appeal to a First-tier Tribunal will not exist unless and until the DWP has first considered an application to revise. This has led to such applications for revision being termed as ‘mandatory reconsideration’ requests, with the resultant decisions communicated in ‘mandatory reconsideration notices’, which then act as proof that the requirement has been satisfied.²⁵⁹ Before 2013, it was possible to appeal directly to the tribunal without first going through the mandatory reconsideration stage.²⁶⁰

The grounds on which a decision may be revised are set out in legislation: there are two ‘types’ of revision – ‘any grounds’ revisions and ‘specific grounds’ revisions (also known as ‘any time’ revisions).²⁶¹

Types of revision – ‘any grounds’

An ‘any grounds’ revision allows the DWP to change a decision for any reason at the request of a claimant. A decision maker can come to a different decision based on the same evidence or by taking account of new information that may have since become available.²⁶² A claimant must request an any grounds revision within the time limit. The time limit is usually one month from the date of the decision under dispute, but a decision maker may extend the time limit by a maximum of 12 months beyond that, if the claimant explains in their application for a revision the ‘special circumstances’ which caused them to be late and the DWP considers it reasonable to grant the extension.²⁶³ If the DWP refuses to accept a late application for a revision, a claimant can still appeal the decision at the tribunal. In practice, a decision maker should accept most extension requests within 13 months of the decision as long as some reason is provided for the delay.

Types of revision – ‘specific grounds’/‘any time’

The DWP may carry out a ‘specific grounds’ or ‘any time’ revision in specific circumstances. The specified grounds for an any time revision include if there has been an official error or if there was a mistake or ignorance of facts.²⁶⁴ There is no time limit for requesting a specific grounds or any time revision.

Procedure

Nothing in the legislation specifies an exact procedure or method for requesting a revision. An application can be made verbally over the phone, by letter or electronically via the journal.²⁶⁵ Claimants are not required to understand the exact mechanics of decision making or to request a revision by its technical name, so the DWP

²⁵⁸ Revisions can be instigated by both claimants and the DWP, but DWP-initiated revisions are not part of the claimant dispute process.

²⁵⁹ Reg 7 Decisions and Appeals Regulations 2013

²⁶⁰ CPAG (and many others) raised objections to the introduction of mandatory reconsiderations before appeals in response to the DWP’s public consultation in 2012, available at cpag.org.uk/policy-and-campaigns/briefing/mandatory-consideration-revision-appeal-cpags-response-dwps-public

²⁶¹ Part 2 Decisions and Appeals Regulations 2013

²⁶² Reg 5 Decisions and Appeals Regulations 2013

²⁶³ Reg 6 Decisions and Appeals Regulations; longer delays require more ‘compelling’ special circumstances.

²⁶⁴ The specific grounds are listed in Part 2 Ch 2 Decisions and Appeals Regulations 2013.

²⁶⁵ Reg 20 Decisions and Appeals Regulations 2013 does not prescribe a specific method for an application for a revision.

should treat any indication that a claimant disputes a decision or wants it looked at again as an application for a revision.²⁶⁶

CTC/2662 and 3981/2005

paragraph 27 ‘...For as long as there have been Commissioners, we have insisted that claimants should not be prejudiced by their failure to understand the correct procedures. As the Commissioner wrote in R(I) 50/56:

“18. ... it must be remembered that claimants may well fail to appreciate the appropriate legal procedures by which their rights ought to be protected and it is essential that the determining authorities should not defeat a meritorious claim by a legal technicality.”

Time limits for responding to an application for revision request

Unlike a written statement of reasons for a decision, which the DWP must provide within 14 days of being requested where possible, nothing in the legislation or guidance specifies a time limit for the DWP to respond to a revision request.²⁶⁷ However, the silence of the legislation on when the duty must be fulfilled is likely to be construed as meaning that the DWP is under a duty to consider all applications to revise within a reasonable time.²⁶⁸ What is considered ‘reasonable’ depends on the individual facts of the case and the impact of any delay on the claimant.

Next, there will be an exploration of what happens in practice and some of the failures of the universal credit (UC) digital system to comply with the rule of law principles of transparency, procedural fairness and lawfulness.

4.2.1 Frozen journals and revisions

What happens in practice

When the DWP refuses a claim, or brings an award to an end, the UC journal is frozen so that the journal history is visible, but claimants cannot post any new messages. When CPAG asked the DWP to explain the rationale for freezing journals, the DWP stated that claimants are no longer assigned to a case manager so that if a claimant could add new journal messages, they would not be read and responded to.²⁶⁹

Claimants whose journals have been frozen receive a notice in their journal advising them that if they want to dispute the decision, they can call the freephone number, send a letter to the Freepost address or use the mandatory reconsideration template form on gov.uk.²⁷⁰

²⁶⁶ DWP Gatekeeper Memo 03.15.58, available at rightsnet.org.uk/forums/viewthread/10042; ADM Ch A3: ‘Revision’, para A3013, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092565/adma3.pdf

²⁶⁷ Reg 51 Decisions and Appeals Regulations 2013 specifies within 14 days or as soon as practicable afterwards.

²⁶⁸ *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin), available at meassociation.org.uk/wp-content/uploads/High-Court-Judgement-5-June-2015.pdf, holds that the duty to make initial decisions on claims under s8 Social Security Act 1998, also silent as to when it must be fulfilled, is a duty to make decisions within a reasonable time. There seems no reason why the same analysis would not apply to the duty to decide applications for revision under s9.

²⁶⁹ Email between DWP and CPAG, 09 September 2022, responding to a number of questions raised by CPAG.

²⁷⁰ gov.uk/government/publications/challenge-a-decision-made-by-the-department-for-work-and-pensions-dwp

Figure 4A: CPAG mock-up of statement of appeal rights on 'claim closure' decision

Ask us to reconsider

You can also ask us to look at the decision again. This is called a 'mandatory reconsideration'.

You need to ask us by **19 August 2022**.

How to do this

The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.

If you want us to look at the decision again, you can use the mandatory reconsideration form on the GOV.UK website.

If a claimant chooses to use the mandatory reconsideration form on gov.uk, they are required to locate, print and post the form as they cannot submit the form electronically. Another option available to claimants, but not notified to them, is to make a new claim and request a revision in the new journal. However, if a claimant chooses that method, they lose access to any relevant information or evidence from their previous journal as it is overwritten by the new version (see Chapter 3 – 'Communicating decisions').

Arguably, making a request via the journal would be the most accessible option for claimants when compared to the alternatives, which all involve some degree of administrative hurdle. Advisers interviewed as part of the research described how these hurdles affect claimants. (See Chapter 2 – 'Decision making' for information on the problem with the process of 'claim closure', which the advisers describe below.)

Amelia (adviser) – October 2021

'Once the claim is closed [refused], you do not get an opportunity to put any message in the journal. Which means you have got to ring the DWP and hang onto the phone for such a long time, trying to understand why exactly your claim was closed and give your side of the case. So, I do not think that closure is a fair system to the claimants. It would be better... if someone warned them beforehand and said: "Okay, we do not think you are eligible for this reason and this reason. What do you have to say?" and give them a chance to write on the journal... Even if it is maybe a week or two weeks...'

*All names have been changed.

Henry (adviser) – October 2021

'[There] was a claim closure [refusal] case... in the middle of the pandemic where all libraries, advice centres were shut. The client was in a refuge, she didn't have access to a printer. Shared facilities weren't being used. She managed to get in touch with us through her support worker. We sent a pre-action letter to the DWP on various grounds – access to justice, discrimination, unlawfully refusing a claim – and then it got sorted out almost immediately. If they just allowed the journal to remain open for two months more, or something like that, then we wouldn't have had to go through all of that. We could have written something on the journal and sorted that out.'

Charlie (adviser) – February 2022

'A very large number of the appeals that I've done about UC are cases where someone's been refused benefit and, therefore, their claim has been closed, as they would put it. You no longer have the ability to interact with your journal, it is a read-only thing, but you can't add messages or anything like that. So, you're then quite limited in how you actually request an MR [mandatory reconsideration]. One option you have is to spend an hour on hold to the helpline and then try to persuade the person who picks the phone up to actually treat it as an MR. Then I've had cases where the helpline people have actively gone out of their way to dissuade me from going ahead with the MR, and then your other option is to send it off in the post and hope for the best.'

One interviewee described how they tried to apply for a revision by telephone, and the DWP arranged callbacks but failed to carry them out as agreed, adding additional stress and anxiety beyond that caused by the unexpected lack of benefit.

Timothy (claimant) – April 2021

'I wrote in my journal: "I am making a fresh claim for universal credit. I am also challenging the previous decision. I would also like to take this opportunity to state my disappointment that even though I was promised a phone call. I have not received any phone call over the last three days. Also my account was closed. This meant I could not communicate via the journal with you. This has put me in a position of depending on you for phone calls that did not materialise. This has added undue stress and anxiety to my already difficult circumstances...".'

The digital 'closure' and freezing of the journal means that the primary route claimants have been using to communicate with the DWP, and have presumably become accustomed to using, is suddenly unavailable when they are likely to want to query or challenge the refusal of their claim or decision to end their award. Claimants who have their claims refused or awards ended should have the same routes available to challenge those decisions as claimants challenging other types of decisions. The DWP's decision to immediately freeze journals after claims are refused and awards brought to an end is a significant procedural barrier for claimants wishing to make representations and dispute entitlement to UC.

4.2.2 Informal decision making and disputes**What happens in practice**

UC, and social security more broadly, is a decision-based system where decisions are final unless there are grounds to change them, in which case the DWP must make a new formal and identifiable decision with appeal

rights. However, there are a number of ways in which the UC digital system has been designed and implemented, and the way DWP officials interact with it, that can undermine this framework.

First, frontline case managers and work coaches appear able to change a UC award from the current assessment period onwards, but they cannot change the award from an earlier assessment period (an earlier effective date) without a referral to a decision maker. If a claimant uses the change of circumstances function to notify the DWP about a change of circumstances that occurred months previously that should result in an increase in their UC award, it is beneficial to that claimant that their case managers can immediately supersede the award from the current assessment period onwards rather than having to wait for a decision maker to take a decision about the earlier time period. However, our research indicates that one potential consequence of this split is that DWP officials view ‘updating circumstances’ or ‘making corrections’ as distinct and separate administrative processes from the formal revision or supersession decisions, which they regard solely the responsibility of a decision maker.

Chloe (claimant) – October 2022

At first, they assessed me and said that I was entitled to nothing. I queried that and said: “For reals? My income is £1,300 a month and I have two children to look after.” Then, as far as I was aware... it was reassessed, but I wasn’t informed how it was reassessed. They just said: “Somebody will look back into it.” I basically said: “I think you’ve done that wrong.” And they went: “We’ll look into it.” Which I’m not 100 per cent sure whether it was or was not a mandatory reconsideration because nobody used those words.’

Charlie (adviser) – February 2022

‘A lot of the decision making is just interactions with the case manager... it’s happening a lot in that very informal context, where it’s not really done properly...’

Rowan (adviser) – February 2022

‘I think that comes down to the fact that they have people called decision makers so, anyone who is not a decision maker, they don’t think they’re making decisions...’

Social security legislation does not distinguish between a decision made by a case manager and a decision taken by a decision maker: the caselaw is clear that in most cases, if a new decision takes effect from the date of the initial decision, it is a revision, and if it takes effect from a later date, it is a supersession.²⁷¹

Second, the DWP undermines the principle of the finality of decisions when officials need to override the automated UC calculations repeatedly and manually. Some unlawful decisions occur because the automated calculation does not accurately capture a claimant’s circumstances. In these situations, case managers must manually override the automated calculation. However, it appears that these manual overrides sometimes only last for a single assessment period, meaning DWP officials need to repeat the process each month to ensure a claimant receives the correct amount. Case managers are required to set reminders to make the manual change

²⁷¹ R(IB) 2/04, para 1B

each assessment period, but inevitably some reminders get missed, and claimants have to contact the DWP to ensure they are paid correctly.

Early Warning System: housing costs adjustment required repeatedly – March 2022

'My client is under 35 and is on the high rate daily living component of PIP [personal independence payment]. He lives with his partner who has no recourse to public funds. She cares for him. His housing costs were being paid incorrectly at the shared accommodation rate. We have managed to get this changed to the correct one-bedroom rate. He has been told via his journal that he will need to contact the UC helpline each month, 7 days before his payment is due, and ask for a "retro calculation" in order to get the correct award. Is this a common occurrence? Because of his disability he has to jump over hurdles in order to be paid what he is entitled to.'

Early Warning System: monthly manual adjustment required for housing element – April 2022

A couple in receipt of UC live in a two-bedroom privately rented property. One partner has a severe disability so needs an extra bedroom, which has been accepted by the DWP. However, every month the UC apparently has to be adjusted manually for the housing element to be included at the two-bedroom rate. It regularly does not happen and the client has to chase it. They are disputing these decisions by way of mandatory reconsideration and then the award is corrected. The couple are trying to get this resolved so that DWP pays the correct amount in the first place, and they don't have to try and resolve it themselves.

The transcript and journal extract below illustrates how one interviewee was required to contact the DWP every month for five months when a manual override to the UC calculation only lasted for one assessment period.

Victoria (claimant) – interview August 2021

'So even though my JSA stopped on the 5th of January because I started work on the 6th, and I had a letter to prove that, they kept deducting it... They said the JSA and UC are not linked together or there is a system error or whatever. But I really don't care... it's up to them to make sure it's right, not for me to calculate it every month. I should be able to just receive the money in my bank, pay my bills and that's it, but what I was doing was checking it every 28th, when the statement come through, and having to tell them: "You've done something wrong." And then hoping they'll fix it by the time I get paid. At least five [times] ... They said to me, because of the technical issue, they will have to do it manually. But even then I had to remind them to do it manually, because they still deducted it... I didn't want to leave it too long because it's another £300 that fixes my food shopping for a month...'

Victoria's (claimant) journal extracts

28.01.20 *Good morning, I have noticed that you said on my account that your record shows I am getting JSA – I have not been getting this since 6th January – please update your records as this is incorrect. Thank you, Victoria*

28.01.20	<i>If JSA [jobseeker's allowance] ended on 06/01/20. Your assessment period (AP) is between 28/12/19 – 27/01/20. This will take effect from the next assessment period. Many thanks, Ron</i>
28.02.20	<i>FAO Ron – can you please check my latest statement asap? There is a deduction of £316.77 for JSA that I have not got since the 6th Jan when I started work...</i>
05.03.20	<i>I request a mandatory reconsideration of the decision to deduct the JSA from my UC award, and request a full refund as my [JSA ended] on the 5th of January 2020... This was also confirmed to me in two letters and a telephone call from the DWP.</i>
09.03.20	<i>Hi Victoria – We have referred the details over to the technical department on 06/03/20 for checking. This is to remove the JSA. Once approved we will make the underpayment. This can take five working days to resolve. Many thanks, Ron</i>
12.03.20	<i>Victoria, I've just sent a payment of £316.77 for approval which should reach your account today and repay the money that was previously deducted because of JSA.</i>
28.03.20	<i>I request a mandatory reconsideration of the decision to deduct JSA from my UC... as my [JSA ended] on the 5th of Jan 2020...This was meant to be resolved already...</i>
03.04.20	<i>Hi – I have made an underpayment of £316.77 between AP 28/02/20 – 27/03/20 as JSA has been removed. Statement has been updated. Money will be in your bank by 8pm.</i>
28.04.20	<i>For the 3rd time I request a mandatory reconsideration of the decision to deduct the JSA from my UC award, and request a full refund...</i>
05.05.20	<i>Hi Victoria – I have made an underpayment of £316.77 between AP 28/02/20 – 27/03/20 as JSA has been removed... Many thanks, Ron</i>
06.05.20	<i>Good morning, this is to inform you that my welfare rights adviser has lodged a formal complaint about this matter on my behalf. Thank you, Victoria</i>
07.05.20	<i>Hi Victoria, I will need to make manual payments moving forward until the technical team have resolved the issue. Once resolved, I will update you via journal.</i>
28.05.20	<i>Hello, please correct the payment manually as there is a deduction of £316.77 for JSA...</i>
28.05.20	<i>Hi Victoria – I have made an underpayment of £316.77 as JSA is not in payment between AP 28/04/20 – 27/05/20.</i>
28.06.20	<i>Once again... please make a manual payment as there is a deduction on my statement for jobseeker's allowance – £316.77.</i>
29.06.20	<i>I have made an underpayment of £316.77 as JSA is not in payment.</i>

If a claimant's award decision is wrong and it is changed, that new decision should be final and should continue to have effect until some future change in circumstances occurs. The legislation does not allow for a recent decision

to be changed again, and to revert to the previous position, without any grounds for that reversion. The case managers are making the correct decisions on the basis of the law (either to revise the decision from the beginning of the award or supersede it from some later date), but because the decision is implemented via a manual workaround, the decision is rendered temporary by the digital system, and the correct decision in law is prevented.

The DWP has built a digital-by-design benefit that seeks to implement what is required by social security legislation through the administrative processes that the system calls for. In many respects, this is not a new phenomenon in social security, as the DWP has long implemented complex legislation through guidance for frontline decision makers, which breaks down the rules set out in legislation into administrative processes to be followed in particular scenarios, which should lead to a lawful result. Now, with the implementation via the UC digital system, the administrative processes and the DWP officials interacting with the digital system are arguably further detached from the legislation and the important principles behind it. When DWP officials fail to understand that all of their actions and their interactions with the UC digital system to change awards must be considered within the formal decision-revision-supersession structure of the Social Security Act 1998, claimants miss out on the important protections of the rights-based system that parliament set out in that Act, such as the right to formal and identifiable decisions with appeal rights. The principle of transparency is not just relevant in interactions between citizens and the state; it is equally important that frontline administrators who operate a system on behalf of the state understand the outcomes of their actions in legal terms.

4.2.3 Gatekeeping revisions

What happens in practice

DWP officials regularly act as ‘gatekeepers’ (controlling access) to the revision process when communicating with claimants via the journal.

Early Warning System: previous claim not recognised after addition of child disability elements – January 2023

A couple claimed UC but were not paid any due to their earnings. Their children have since been awarded disability living allowance (DLA) and the addition of the child disability elements means that the family would have been entitled to some UC. They were told that their original UC claim had closed (it should not have been) and to submit a new claim, which they did, with a request for a mandatory reconsideration of the decision to refuse their previous claim. Their case worker has twice refused to refer this mandatory reconsideration request to a decision maker.

Frontline DWP officials can discourage claimants from pursuing challenges without a decision maker ever having the opportunity to reconsider the decision, and before claimants are advised of their right to continue their challenge to the independent First-tier Tribunal. In 2015, the DWP issued a *Gatekeeping Memo to Decision Makers*, drawing attention to the numerous ways in which DWP officials were frustrating the revision process and a ‘widespread misunderstanding of the disputes process’ across all benefits.²⁷² The memo acknowledged some DWP officials were advising claimants that their revisions or appeals would be unsuccessful, that the term ‘mandatory reconsideration’ was necessary for an application to be valid, and that a verbal and written explanation of a decision was required before the DWP could register an application for a revision. Our evidence

²⁷² DWP Gatekeeper Memo 03.15.38, available at rightsnet.org.uk/forums/viewthread/10042

shows, however, that UC claimants continue to face systemic gatekeeping of their right to challenge decisions, despite DWP efforts to improve the situation.

'The decision is correct'

One of the most common reasons for refusing to register a revision request is that frontline DWP officials believe a UC decision to be accurate, often seemingly based on a belief that the automated calculation is infallible. Even if the decision is correct, the claimant is still entitled to have the decision formally reconsidered by a decision maker and to receive a mandatory reconsideration decision notice explaining their procedural right of appeal and how to exercise it. In the following journal extract, Timothy repeatedly attempted to challenge the calculation of his housing costs over a couple of months. Despite the attempts of Timothy's work coach to resolve the issue, multiple agents from the service centre sent messages confirming the details of the calculation as correct without engaging with the reason for the challenge or referring it to a decision maker for a formal reconsideration.

Timothy's (claimant) journal extracts

- 26.01.21 *Hi Anthony – I am writing to query and challenge the calculation of my housing allowance... I am liable for £860 per month because I have the bigger bedroom.*
- 26.01.21 ***Hi Timothy – I will pass on your query to Anthony. What has happened here is because you have two people on the tenancy and the system does the calculation automatically to divide between two tenants. I am sure this can be rectified. Jenny***
- 29.01.21 ***Hi Timothy – As per your declaration there are two tenants in a three-bedroom property and therefore there is one spare bedroom. You are receiving £860 of £1,560 rent –50 per cent (minus extra bedroom deduction). James***
- 31.01.21 *Hello James – In response to your reply (29 Jan) I am requesting a mandatory reconsideration [MR] of my housing allowance. Your response indicates I am in a three-bed flat with a spare bedroom... but there are only two bedrooms...*
- 08.02.21 *Hello James – Could you please provide an update to my reply on 31 January 21 to your message?*
- 17.02.21 ***Hello Timothy – Your statement shows you pay £860 per month. You have three bedrooms. You said the rent is £1,560.00. There are two people. We have calculated rent at £780. You need to pay your landlord. Laura***
- 23.02.21 *Hi Laura – I am copying here the same message to James on 31 Jan to which I am still waiting for a reply.*
- 25.02.21 ***Hi Timothy – The information you declared for housing on your claim is: You pay £860 per month. You have three bedrooms. You said the rent for your property is £1,560.00. There are two people. We have calculated rent at £780. Hayley***
- 05.03.21 *Hello Hayley – Thanks for your response to my request for an MR on 25 February 2021. I am writing to request you send me a formal mandatory reconsideration note as I will be taking this to appeal. Could you please provide an update as to my reply on 31 Jan 2021?*

- 08.03.21** *Hi Timothy – I am just speaking about your case manager about this. I haven't forgotten. Jenny*
- 10.03.21** *Hi Timothy – I have just had a look back the history of your claim and I can see that on 26th January you said in a journal message to Alan that your rent is calculated at £860 because you have a slightly bigger room, is this amount still correct?... Hayley*
- 10.03.21** *Hi Hayley – Sorry I missed your call. Here is the information. I am liable for £860 per month for rent... You have a letter confirming this from the estate agent. I pay more than 50 per cent of the total rent because I have a bigger room... Please note that while I appreciate your attempts to resolve this, I repeat that this situation is causing me a lot of stress and anxiety. I politely point out that I have been corresponding with you about my housing element since January 2021 and have already provided the information you are now asking including a copy of my tenancy agreement. I wish to sort this out quickly and will take to appeal if necessary. Thank you.*
- 10.03.21** **Check your new joint tenancy costs. Updated details.**

Timothy was only convinced to continue with the dispute by his welfare rights adviser, which eventually resulted in an increase of his housing costs in line with his actual rent charge.

Timothy (claimant) and Amelia (adviser) – April 2021

Amelia: ... 'They first told him he was liable for the "bedroom tax", which is why they were not paying his full amount of rent. Which is rubbish because he doesn't have a spare bedroom as the tenancy is only for one room... Then they said that he's only eligible for 85 per cent of the rent. I don't know where 85 per cent came from... But this DWP official just said: "The calculation is right because you're only eligible for 85 per cent." Timothy was on the point of accepting it...'

Timothy: 'It goes to show that without Amelia's help, I would have just believed what they said about, "Oh, it's because of the bedroom tax." Or, "It's because I'm only entitled for the 85 per cent coverage." Well, it must be right because they say it.'

Our research has found claimants are sometimes forced to make multiple requests before an application for a revision is accepted. One adviser described how their colleagues sometimes required encouragement to persevere with the battle of getting applications for revisions accepted.

Charlie (adviser) – February 2022

There's a particular way that all the case managers seem to communicate, which is very much just a, "We are right, you're wrong." ... It's not communicated as being a decision. It's not communicated as something against which there is any discussion or right of review or appeal. It's just... "No, no, we've calculated your award correctly." Just, they say things like that all the time.

There was one case that I did... The client was saying that they were entitled to the carer's element in the UC to be backdated to the point at which the person they were caring for received PIP. The person who they were caring for also lived with them and had been generating the housing cost contribution. So... they got all of their housing cost contributions paid back to them, but what they didn't get is all of this backdated carer's element. So, I spent a very long time setting out, penny for penny, how this all worked... I was just getting responses back saying, "No, that's not how it works" ... how are you supposed to deal with that if someone won't even engage with you on the most basic points of how maths works?... You've just got to continue to push the point, forever and ever and ever until they give in... I spend a lot of time just telling my colleagues: "Look, you've just got to go back to them and say the exact same thing, in different words, until they agree with you."

What happened was, in that case particularly, but there's plenty of them that are all pretty much the same... they rang up the client directly to have a conversation with them about it. The client didn't speak any English and they didn't have an interpreter. They put a note on the journal saying: "I've rang you up and explained this, and consider the matter closed."

It is concerning that the repeated gatekeeping by DWP officials can even deter welfare rights advisers from pursuing a dispute, and perhaps unsurprising that claimants without welfare rights advice who may be less confident about their legal rights do not persevere with challenging a decision in situations when DWP officials tell them the UC system is right.

Rowan (adviser) – February 2022

'...For people who don't have me or someone like me, and there are not that many people doing this job around... because a lot of people, if they're told the DWP have looked at it and you say to them, "Oh, well, are you sure that's right?" and they go, "Yes, we're sure that's right," they'll take that. That's it... especially if you've got mental health problems... or learning difficulties or anything else that makes it harder for you to challenge it, you're just not going to challenge it.'

For claimants who do not persevere, the failure of the DWP to treat requests made via the journal as requests for revisions may produce further problems later. Such claimants could legitimately argue, even years later, that their request for a revision remains undetermined. That possibility should be of concern to the DWP.

'This is a policy issue'

An application for a revision, in substance, can contain a challenge to the factual conclusions reached by the DWP, a challenge against the application of the law to the agreed facts of the claimant, or (less commonly) a challenge to the lawfulness of the regulations themselves – for example, on the grounds of the regulations being discriminatory or outside the power of the primary legislation.²⁷³ The Early Warning System has received multiple

²⁷³ R(IB) 2/04, available at rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1

examples of DWP officials gatekeeping revision applications because ‘there is no right to challenge a policy issue’ when claimants try to challenge how the DWP has interpreted the law or the regulations themselves. By asserting that revisions are not possible against ‘policy decisions’, DWP officials appear to be saying that revisions are only possible where the nature of the dispute is a battle over the facts.

Early Warning System: one-bedroom rate not available to 26 year old – November 2020

A 26 year old recently moved into a one-bedroom property and has been awarded the shared accommodation rate for housing costs. The client, however, has previously lived in supported accommodation for more than three months. She has provided a letter from the housing project confirming this. The DWP has stated that she cannot get the one-bedroom rate until she reaches the age of 35. They did confirm a list of exemptions on her journal but did not include the one regarding over 25s who have lived in a homeless hostel for at least three months. The client has asked for a mandatory reconsideration, but the DWP replied saying that she cannot do this because ‘no decision has been made’ and that it is ‘government policy’ that those under 35 are only entitled to the shared accommodation rate.

Early Warning System: mandatory reconsideration for maternity allowance refused – May 2021

‘I helped my client submit a mandatory reconsideration on her journal in relation to the way maternity allowance [MA] is treated when calculating UC using CPAG’s template. When I chased up the mandatory reconsideration the DWP official stated: “We have reviewed the information you have provided – we would not be able to raise a mandatory reconsideration on this as it is a policy decision set by government. You would need to raise this with your local MP.”’ [Note: on 18 October 2019, CPAG issued judicial review proceedings challenging the treatment of MA as unearned income (so it reduces UC pound for pound) as opposed to earned income like statutory maternity pay (SMP) (which is subject to the taper rate and the work allowance.) The High Court judgment found that the difference in treatment between women claiming SMP and MA was justified and dismissed the judicial review. Permission to appeal was refused by the Court of Appeal on 23 June 2021 – *Moore and Others v SSWP* [2020] EWHC 2827 (Admin). Before this judgment, claimants in receipt of MA were encouraged to request a mandatory reconsideration to ensure they could benefit from the judgment if the judicial review was successful.]²⁷⁴

Early Warning System: mandatory reconsideration for LCWRA refused – October 2020

One member of a couple was already in receipt of the limited capability for work-related activity (LCWRA) element when their partner was also awarded LCWRA. The DWP did not add another LCWRA element, so the claimant requested a mandatory reconsideration. The DWP stated they could not do a mandatory reconsideration as this was a policy issue that cannot be challenged. [Note: the UC regulations only allow for one LCWRA element to be included, but the claimant was still entitled to a mandatory reconsideration notice advising them the decision had not been revised and of their appeal rights.]

‘It is too late for a mandatory reconsideration’

A decision maker may accept an application for an any grounds revision up to 13 months after the initial decision is notified if the claimant explains in their application the ‘special circumstances’ which caused them to be late and

²⁷⁴ cpag.org.uk/welfare-rights/resources/test-case/maternity-allowance-and-universal-credit

the DWP considers it reasonable to grant the extension.²⁷⁵ In practice, the DWP should accept most extension requests as long as the claimant provides any reason for their lateness, and the DWP receives the application before the final 13-month deadline. DWP guidance on mandatory reconsiderations states: *'It would be an exceptional case that is not accepted late.'*²⁷⁶ However, the Early Warning System has received evidence of case managers and work coaches gatekeeping applications for mandatory reconsiderations received outside the initial one-month deadline, despite claimants providing reasons for their delayed applications. There are also additional examples of the gatekeeping of late applications for revisions later in this report (See section 4.4 on the reverification exercise.)

Early Warning System: 30-day limit for mandatory reconsideration – June 2020

A woman's UC claim was terminated in October 2019 as she was out of the country and could not look for work. The woman was supported to request a mandatory reconsideration on the grounds that she has limited capability for work (LCW) and was abroad for medical treatment. Reasons for lateness were provided, including not being informed of appeal rights, complex needs and previously being notified a mandatory reconsideration had already been requested.

The decision maker based at Belfast responded: 'A mandatory reconsideration can only be lodged within 30 days of a decision, the previous claim was closed in October 2019, and as this decision was made much more than 30 days ago the time to lodge a mandatory reconsideration has now passed.'

Early Warning System: two late mandatory reconsideration requests not accepted – May 2022

'I have two clients who requested mandatory reconsiderations via their journals only to be told they are out of time and can't be raised. One is only 21 days late and the other had requested on time but then was talked into withdrawing the MR by their work coach. We've then requested it be raised again three months later but they've both been refused.'

Early Warning System: mandatory reconsideration request not accepted – April 2023

'My client's UC award has stopped due to owning property with her ex-husband. She has been referred by local domestic abuse services and her ex husband is currently in prison. My client tried to request a mandatory reconsideration of the decision to stop her UC but the DWP said she was out of time as it has been more than a month since the decision. I was under the impression the deadline could be extended by another 12 months?'

After 13 months, an any time revision may still be possible if the circumstances of the case means that one of the specific grounds is satisfied – eg, on the grounds of 'official error'. The Early Warning System has also received evidence of the gatekeeping of any time or specific grounds revision requests for being out of time despite there being no time limit if one of the specific grounds is met.

²⁷⁵ Reg 6 Decisions and Appeals Regulations 2013

²⁷⁶ *Mandatory Reconsiderations*, guidance, accessed via FOI2022/05415, available at cpag.org.uk/sites/default/files/files/policypost/Mandatory_Reconsiderations_guidance_accessed_via_FOI2022_05415.pdf

Early Warning System: any time revision request not accepted – September 2022

'My clients are a couple on UC with children. She receives personal independence payment and he receives carer's allowance. In 2019 the family were moved into a bigger house by the council because they cannot share a bedroom due to my client's health conditions. The DWP failed to award the additional bedroom and they have been therefore been subject to the bedroom tax ever since. I submitted an any time revision on the grounds of official error and mistake or ignorance of facts as the claimants told the DWP about the reason for moving to a bigger house when they changed their housing costs and the DWP did not ask them any questions or to provide evidence about their entitlement to an additional bedroom. The DWP treated the any time revision request as an any grounds revision that was beyond 13 months and would not accept it. I submitted it a second time saying it was an any time revision rather than an any grounds revision, alongside a complaint, but they responded saying: 'Please see our original response letter.' The DWP has refused to even look at the substance of the argument to see if one of the grounds for an any time revision applies and has just rejected it on the basis that it is out of time.'

Early Warning System: any time revision treated as a change of circumstances – August 2022

'My client applied for UC in March 2020 and included her service charges. Her service charges were not included in her award calculation and she assumed they were not eligible for assistance. We asked for an any time revision on the grounds of official error. First the DWP treated our request as change of circumstances that had been reported late and therefore the service charges could only be added to her housing costs from the current assessment period. We put in another mandatory reconsideration arguing it was not a late reporting of a change in circumstances but an any time revision as the DWP made a mistake in the original processing of her claim. The DWP have now treated it as a mandatory reconsideration request but have said we are out of time and the client should have spotted it earlier.'

To overcome this type of gatekeeping, a claimant must know that they can ask for an any grounds revision up to 13 months after a decision has been taken, or an any time revision after 13 months if specific grounds apply. UC statements of appeal rights do not currently contain any information about the possibility of applying for a late revision or an any time revision. (See Chapter 3 – 'Communicating decisions' for more information). The DWP's decision notice when it refuses a claim or brings an award to an end explicitly states claimants 'need to ask' the DWP for a mandatory reconsideration within one month. This failure to properly inform claimants about their appeal rights means that some claimants may decide not to apply for a revision, on the understanding that they have missed the one-month deadline and therefore they are not allowed to do so, or they may fail to provide the reasons for applying beyond the initial one-month deadline, as is required by the regulations.

The informal communication style of the journal creates an environment that encourages case managers and work coaches to take actions that undermine the decision-based and rights-based system they are working within. DWP officials may not always understand the implications of their interactions with claimants for the rule of law principle of procedural fairness when there is no separation between using the journal for informal communication with claimants and the formal decision-making process which has particular legal significance. Furthermore, a lack of transparency about appeal rights, together with a lack of information about how decisions have been made, creates additional barriers from the outset (see Chapter 3 – 'Communicating decisions'). Claimants' procedural right to challenge decisions is under threat in this digital environment which demonstrates confusion about the legal decision-making processes available to both claimants and the officials responsible for administering the system.

4.2.4 Inability to track whether an application for a revision has been made or accepted

What happens in practice

There is no specific function built into the UC digital system to flag that a particular journal message is an application for a revision, which can encourage an informal approach to challenging decisions and leaves claimants vulnerable to gatekeeping (as explained above). Our evidence suggests that, in many cases, claimants and advisers are left uncertain as to whether the DWP has registered their application for a revision or made a referral to a decision maker.

Chloe (claimant) – October 2022

'I got the letter through my online journal, saying... "You owe £16,000." To which I immediately responded: "I've just seen this letter. I don't agree, in any way, shape or form." And I received a response: "Could you please explain, in the journal, in detail, why you believe this to be incorrect?" ...They use language that makes sure that you're not 100 per cent sure what you should do to get the aim you want. They obfuscate. So, he would say: "If you disagree with our decision, you must request a mandatory reconsideration within such and such a timeline." It isn't clear that you have to basically, repeat that, verbatim, in your next message.

I had to assume... Nobody said: "It has been accepted." Or whatever. I don't think it was until I made another request and said: "Oh, and by the way, what's going on with the decision maker?" ... And I received the reply to whatever I'd asked and: "If you have anything with regards to the mandatory reconsideration you have requested, please address it in a note to the decision maker, in your work journal." The first indication I got that somebody was doing something about it or that it was actually being done was me being told that if I want to interact with that process, I need to directly address things to the decision maker... I have done so, and received no response since then.'

Charlie (adviser) – February 2022

'You can scream and shout all you like about, "Oh, this is a mandatory reconsideration that needs to be dealt with as such," and you just don't get answers... Often, it's very unclear in some cases if you've even been successful in getting your MR dealt with. Sometimes, you're just throwing it into the ether and hoping for the best.'

Rhys (adviser) – February 2022

'People will use their journal to request a mandatory reconsideration. And then you've got no record of it being registered with a decision maker. That journal entry [enters] the bowels of the DWP and you've got no way of knowing that you've made a mandatory reconsideration.'

Rowan (adviser) – February 2022

‘Quite often, things are just ignored or they refuse to do a mandatory reconsideration and they say: “Oh, yes, well we’re looking at it.” ... They could do with having some actual proper process where you can request a mandatory reconsideration so there’s no doubt about it, rather than it just being something you do on the journal.’

One adviser on Rightsnet raised a particular challenge for a previous UC claimant who had made an application for a mandatory reconsideration but no longer had access to their journal.

Rightsnet thread [17971](#): awaiting confirmation of mandatory reconsideration registration – January 2022

‘We submitted a mandatory reconsideration and all I’m wanting is confirmation that it’s been registered and “actioned”. I’m not chasing a decision – it’s just to confirm it’s in a (ridiculous) queue awaiting consideration by a decision maker. As my client has chosen not to reclaim, there’s no journal and no allocated case manager. The DWP agents on the helpline have said they can’t see anything as there’s no claim and only case managers can see the postal system. The partnership manager advised similarly. In this scenario, it is very difficult to confirm something is being done.’

Given the importance that parliament has placed, through the Social Security Act 1998, on benefits being administered according to a system of decisions which attract rights of challenge, the failure of the digital UC system to reflect that legal reality is concerning. Providing a clear route within the digital system to formally request a revision would seem to be a straightforward step that should have been implemented at the design stage.

4.2.5 Delays in receiving mandatory reconsideration notices**What happens in practice**

Between November 2021 and October 2022, the DWP registered an average of 20,102 applications for revisions (mandatory reconsiderations) each month. During this time, it processed 10 per cent of applications within two days, 7 per cent within three to nine days, 10 per cent within 10–24 days, 22 per cent within 25–49 days, 26 per cent within 50–99 days, 16 per cent within 100–149 days and 9 per cent taking 150 days or more. In the year ending October 2022, the DWP took five months or more to make a decision in nearly one out of every 10 applications for a revision.²⁷⁷ The median time for responding to an application for a revision request was 51 calendar days, as of October 2022.²⁷⁸ However, it must be acknowledged that any such statistics will not include the multitude of repeated revision requests that were not pursued due to gatekeeping or the lack of a specific function for flagging a particular journal message as a request for a mandatory reconsideration, as has already been explored.

The stated purpose for introducing the mandatory reconsideration stage was, according to the consultation paper, to *‘deliver timely, proportionate and effective justice for claimants, [and] make the process for disputing a decision*

²⁷⁷ FOI 2022/101477, available at whatdotheyknow.com/request/mandatory_reconsideration_status?nocache=incoming-2214279#incoming-2214279

²⁷⁸ House of Commons, Written Answer UIN 901930, 31 October 2022, available at questions-statements.parliament.uk/written-questions/detail/2022-10-31/901930.

*fairer and more efficient.*²⁷⁹ Unreasonable delays undermine the stated purpose of introducing mandatory reconsiderations by causing further delays for claimants trying to resolve problems with their benefits. What is 'unreasonable' depends on the facts of the case and the circumstances of the claimant, but it must always be recognised that when the DWP refuses a claim or ends an award, it is more financially significant for UC claimants due to the combined payment for individuals, housing and other circumstances in comparison to legacy benefits.

Early Warning System: mandatory reconsideration of sanction – December 2022

A single parent with health issues was sanctioned. She immediately submitted a mandatory reconsideration request. She added a note to her journal to chase it up four weeks later. Eight weeks later she had still not received a response. The sanction is £320 a month and causing major harm for her and her child.

Many of the advisers interviewed described unacceptable waiting times for receiving outcomes of revisions. This issue is exacerbated by the inability to track whether or not a revision has been registered and referred to a decision maker, and the informality of the journal, which encourages the gatekeeping of revision requests, as already discussed.

Liam (adviser) – March 2022

'There is no time limit on a mandatory consideration. I can remember when I was... a work coach which ended at the beginning of the pandemic... I was having a chat with one of my colleagues, he said... At the moment the queue for mandatory MRs is over six months but there is no time limit. So they could be six months... he said, the longest he can remember waiting for an answer was over 14 months, and this was pre-pandemic...'

Zoe (adviser) – December 2021

'The length of time waiting for [mandatory reconsideration] decisions... is really unacceptable... [It's] a very good outcome if you get a response or a decision after three months... We have had six months or longer...'

Elena (adviser) November 2021

'[A mandatory reconsideration] takes too long. Way, way too long. They don't get decisions when they should get decisions.'

DWP, *Mandatory Reconsideration of Revision Before Appeal*, 2012, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220473/mandatory-consideration-consultation.pdf

Natalia (adviser) – November 2021

'It's taking a long, long time. It's quite heartening in a way, that people do seem to know what to do if they don't agree. But then they'll say: "Well, I've put a note on my journal saying I wanted to ask for a mandatory reconsideration of this months ago and nothing has happened." ... if you speak to the DWP they'll say: "It has been passed to a decision maker. I'll send another email but there's nothing else you can do." As advisors, there's nothing we can really do about that.'

One claimant described the disparity between the time claimants have to raise a challenge and the lack of a time limit for the DWP to respond and make a decision.

Chloe (claimant) – October 2022

'I know that I have a month to request the mandatory reconsideration. From what I can gather, they have no similar timelines for them to actually do anything about them... I did get confirmation. "In regard to your request for mandatory reconsideration, I have referred this for you. The decision maker will be in touch if there's anything for you and to provide you with an outcome. They will be in touch with you once a decision has been reached." That's the last I heard about it and that was on 30 May... I still haven't heard. Not even a request for information... Nobody has asked me anything. Nobody's requested anything. Nobody's done anything.'

In order for the UC system to comply with rule of law principles, claimants must be able to secure their rights in front of an independent adjudicator.²⁸⁰ It is not enough that claimants have free access to the independent First-tier Tribunal in order to challenge a decision; claimants are entitled to timely decision making at the initial outcome and mandatory reconsideration stages to allow meaningful access to the tribunal without unreasonable delays. Unreasonable delays are an example of procedural unfairness and, therefore, a failure to comply with rule of law principles.

4.3 Real-time information disputes

What the law says

The majority of employed claimants have their earnings reported automatically to universal credit (UC) via HM Revenue and Customs' (HMRC) real-time information (RTI) system, following submissions to HMRC made by their employers.²⁸¹ Regulations state that the DWP must use the figure provided by the RTI feed to calculate a claimant's earned income during a monthly assessment period. There are exceptions where the DWP thinks the employer is unlikely to have reported earnings 'in a sufficiently accurate or timely manner', the amount reported to HMRC by the employer is incorrect, or no information has been received from HMRC at all.²⁸² If one of these exceptions applies, then the DWP must decide the amount of earned income received during the assessment period using such evidence as is appropriate – eg, wage slips and bank statements. (There is one further exception when two sets of monthly earnings are received in the same assessment period, which is explored in Chapter 2 – 'Decision making': section 2.3.3.)

²⁸⁰ T Bingham, *The Rule of Law*, Allen Lane, 2010, p85

²⁸¹ medConfidential, *The Data Flows of Universal Credit*, Annex 1, available at medconfidential.org/2020/universal-credit

²⁸² Reg 61 Universal Credit Regulations 2013 No.376

The legislation provides that changes to a UC award solely due to income fluctuations from the RTI feed can be made without a new formal decision being needed.²⁸³ The lack of a new decision means a claimant does not have automatic appeal rights if they want to challenge the change to their award. However, that does not mean it is not possible to challenge decisions based on changes in income, there is just an additional step to go through. The legislation provides that if a claimant wants to dispute the figure provided by the RTI feed, then the DWP must alert them that they are entitled to receive a new appealable decision, and that the DWP should provide this new (appealable) decision within 14 days.

What the universal credit system looks like and how it works

If a claimant wants to challenge a change in their UC award due to fluctuations in the income data from the RTI feed, they must first obtain a formal decision by requesting an 'RTI dispute' from the RTI support team.²⁸⁴ The UC agent should complete a 'Refer an RTI dispute' to-do, which, once completed, should 'support agents to understand what has happened, resolve earnings disputes and understand if a dispute needs to be raised to the RTI team for investigation'.²⁸⁵ The tool will also 'tell the agent if they need to complete and send the Real Time Information Dispute Support Tool/ Proforma'. The RTI support team then reviews the pro forma and decides whether the amount of earnings can be changed. If the RTI support team is unable to make a decision on the available information, the next step is to contact HMRC so that it can contact the claimant's employer.

4.3.1 Information provision about the real-time information dispute process

What happens in practice

Each payment decision notifying a claimant how much UC they will receive for the assessment period that just ended explains that if a claimant disagrees with that decision, they can ask for a mandatory reconsideration (a revision). It does not explain that if it is the amount of income calculated by the RTI feed that the claimant disagrees with, then they do not have the right to ask for a revision until they have first asked for and received an appealable decision via the RTI dispute process.

However, each payment notice for an employed person may contain more than one change: it could notify a change in the amount of earned income that has been taken into account (not a decision), but it could also notify that another element of UC (eg, a child element) has been added from that assessment period (a supersession decision). This presents a confusing picture for claimants. If a claimant challenges the calculation of earned income, the DWP must inform the claimant they may request a decision that can be challenged by revision, which should be received within 14 days by initiating the RTI dispute process. If a claimant challenges the DWP's failure to add their new baby to the award, the DWP can immediately revise this decision.

Claimants should not be expected to understand the complexities of the legislation governing the process of obtaining an appealable decision regarding changes in their earned income. However, if claimants are required to engage with a different dispute process when challenging income information from the RTI, then arguably the DWP has a duty to clearly explain this process to claimants in decision notices. Currently, it is not made clear to claimants that there is a requirement for an RTI dispute to be carried out before they can request a mandatory reconsideration. Evidence collected as part of this research suggests that the first time claimants are made aware

²⁸³ s159D Social Security Administration Act 1992 and reg 41 Decisions and Appeals Regulations 2013. Although the UC legislation does not consider the amount of earned income gathered via the RTI feed to be a decision with appeal rights, we would argue it should be considered a wholly automated decision, which has a meaningful effect on claimants from a public law perspective and when considering a wider understanding of the term 'automated decision making'.

²⁸⁴ Reg 41 Decisions and Appeals Regulations 2013

²⁸⁵ 'Process of disputed earnings' training materials, slide 6, accessed via FOI2021/51176, available at cpag.org.uk/sites/default/files/files/policypost/Process_of_disputed_earnings_FOI2021_51176.pdf

of the RTI dispute process is when they spot an error in their decision notice, follow the instructions in their decision letter to request a mandatory reconsideration, and find their requests unexpectedly refused, as in the cases below.

Early Warning System: told to do an RTI dispute rather than mandatory reconsideration – May 2020

A woman had two lots of earnings taken into account for one assessment period and requested a mandatory reconsideration but her case manager called her and said she can't ask for a mandatory reconsideration – she needs to do an RTI dispute instead.

Ben (claimant) – August 2021

'Basically, I said to [my work coach]: "What I want to do is the mandatory reconsideration of your decision..." She said: "Well, I'm not a decision maker, so I can't change this. But what we'll do is a technical investigation." ... So I was trying to explain to her: "Here's the bank statement. I didn't get paid in that month." [She said:] "We've got to do a technical investigation." I said: "Well, that's fine, if you need to do that, but I'm here and I'm asking you to do a mandatory reconsideration." I maybe pushed that three or four times, where she kept saying: "Technical investigation." I said: "Well, yes, but I want a mandatory reconsideration." ... She was on my account, and I said: "Can you just lodge one?" "No, we cannot do that." ... I said: "Well, it does say, on your decision letter, that that's my option." ... But what she was doing was saying: "You absolutely cannot do mandatory reconsideration until we've done this." Because I remember asking her: "How long is that going to take?" "I don't know. It will take as long as it will take." Suddenly, the attitude had changed.

... She put her hand out like this, and she said: "You need to leave now, Mr..." ... So really, the shutters came up at that point... When I got out I sat in the car and logged into my journal, and put my own mandatory reconsideration in... It wasn't anything particularly cumbersome that I was asking. I was saying: "You can do your technical investigation, if that's the way you've got to do it, but I would like this done." "No." ...'

Syeda F (Covid Realities participant) – April 2021

'I have been on UC for some time now. I am a lone parent and in work. I do know my rights. I have personal experience of my local job centre refusing to allow me to challenge a decision by way of mandatory reconsideration because they said they needed to do a technical investigation first. This was purely down to HMRC reporting incorrectly when I had been paid in to my bank account. This massively affected my UC payment. I knew I was right to challenge the decision but the job centre refused. I went on to win my appeal. Clearly the job centre were acting just on what the HMRC computers were reporting but I showed them my physical evidence through a bank statement. They refused to act on it.'

Due to the lack of transparency about the procedural requirements, claimants can experience the RTI dispute process as another form of gatekeeping to the revision process, as explored above. To confuse matters further, from the evidence we have seen, the DWP communicates what should be the new decision with appeal rights after the RTI process as a message typed in the journal without any notice of appeal rights. After finding out about the RTI dispute process from DWP staff, some claimants then face a further lack of information about the procedures and timescales involved in an RTI dispute.

In the following Early Warning System case, the claimant was unclear about how the dispute process worked, how long it would take, and how they could provide evidence that contradicted the RTI feed's information.

Early Warning System: helpline unable to provide information – November 2022

The client is a lone parent with a child under two, struggling to balance work (zero-hours contract) and childcare. They received no UC one assessment period due to an error in the RTI system. They challenged the decision/error via their journal and call(s) to the helpline. DWP helpline staff were only able to explain that a dispute had been raised and that a case manager would look into the matter and contact her in due course.

She offered to provide copies of wage slips and bank statements (or whatever evidence she might be asked for) but has not been provided with a journal link to allow such evidence to be uploaded. She called the HMRC helpline who confirmed that the earnings do not match the figure used for the UC decision. Her employer has suggested that a reset of the wages system may have sent a cumulative pay figure into RTI system but was not able to trace the particular event.

The client is frustrated at the lack of any information as to a possible timeframe for resolution of the apparent RTI/payment calculation error, and the lack of opportunity to provide evidence to show that an error must have occurred.

We made a freedom of information (FOI) request for the average processing times of RTI disputes, but it was refused as the DWP does 'not collate the processing times for RTI disputes and the only way to obtain this information would be to look at every referral.'²⁸⁶

The lack of transparency with claimants about the existence of the legal requirement to ask for an appealable decision before they can request a mandatory reconsideration, and the procedures and timescales involved, results in claimants experiencing the RTI dispute process as a delay and obstruction to their procedural right to challenge a decision. The lack of statistics available for processing times is a further example of the lack of transparency with the RTI dispute process.

Finally, it is important to recognise that, although the UC legislation does not consider a change in a UC award caused by a change in the amount of earned income gathered via the RTI feed to be a 'decision', in that it is explicitly discounted from the decision-revision-supersession decision-making framework of the Social Security Act 1998, and it does not have appeal rights, we would argue that it should be considered a wholly automated decision in a wider public law sense. This is because there has been a meaningful change in the claimant's UC award without any human intervention. If correct, that means such decisions should attract the protections of section 14 of the Data Protection Act 2018 and Article 22 of the UK General Data Protection Regulation (UK GDPR), and the requirement for claimants to be notified in writing if a decision has been taken solely based on automated processing. It is by no means clear that this is what happens in practice.²⁸⁷

²⁸⁶ FOI2021/51174, available at cpag.org.uk/sites/default/files/files/policypost/FOI2021_51174_RTI_dispute_processing_times.pdf

²⁸⁷ s14(4)(a) Data Protection Act 2018; see ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling for more information.

4.4 The reverification of claims made at the start of the Covid-19 pandemic

One example where large numbers of claimants were required to begin the dispute process because of arguably unlawful decision making by the DWP was during the DWP's 'reverification' of claims made during the initial months of the Covid-19 pandemic.

What the universal credit system looks like and how it works

'Trust and protect'

In response to the vastly increased number of claims and the public health restrictions resulting from the Covid-19 pandemic, the DWP made operational changes (or 'easements') to how it administered universal credit (UC) claims and awards. The approximately 200 'easements', known as the 'trust and protect' regime, included making identity and information verification checks over the phone rather than face to face, and suspending cross-checks with child benefit records.²⁸⁸ These welcome steps ensured millions of people claiming UC for the first time between March and June 2020 could apply for UC and receive payments more easily. The DWP states that officials informed claimants who applied during this period that they may be subject to checks at a later date.²⁸⁹ In 2021, the DWP created a 'repair team', of around 1,400 staff to 'reverify' awards – to check for fraud and error that may have occurred during the period when the usual checks were suspended.

The reverification process

As part of this reverification process, the DWP asked claimants to provide evidence which, in some cases, included photos of themselves next to their photographic ID and in front of their open front door. According to the DWP, a repair team agent would inform claimants a minimum of three times via their journal that the DWP needed to speak to them about their claim and arrange a call for a specific time, with each contact notified by text or email.²⁹⁰ The DWP states that non-digital claimants without the use of a journal were primarily contacted by telephone but the investigating agent also had the option of sending letters in the post.

Figure 4B: CPAG mock-up of an example of an information request posted in a claimant's journal as part of the reverification exercise

You should not ignore this message. If you do not answer but have not asked us to rearrange it may result in your payment of Universal Credit (UC) being suspended, your claim being closed and any overpayment of Universal Credit (UC) being recovered from you.

I have booked an appointment to call you 09.30am on 17/06/2021.

You can see this appointment in your to-do list. This is in order to verify the information you gave us when you started your claim. This is part of wider work on claims created at the start of the pandemic.

²⁸⁸ DWP, *Annual Report and Accounts 2021 to 2022*, p52, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091361/annual-report-accounts-2021-22-web-ready.pdf; questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 9 September 2021; UC07GEN: *capital*, v36.0, accessed via FOI2021/75537, available at

cpag.org.uk/sites/default/files/files/policypost/UC07GEN_Capital_v36.0_FOI2021_75537.pdf; and Public Accounts Committee, *The Department for Work and Pensions' Accounts 2020-21: fraud and error in the benefits system* (oral evidence), 9 September 2021, Q23

²⁸⁹ rightsnet.org.uk/forums/viewreply/84181

²⁹⁰ Questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 9 September 2021

Between January and September 2021, the DWP contacted most of the 900,000 claimants considered as ‘potentially high risk’ of fraud and error who were still receiving UC by January 2021, out of the two million claims made while the ‘trust and protect’ easements were in place.²⁹¹ The DWP reported the exercise ‘*found incorrectness in approximately 12 per cent of cases, generating savings of circa £500 million*’.²⁹² While the DWP had previously stated that it would not review the awards deemed to be ‘at risk’ that had already ended by January 2021, it has since committed to keeping this cohort ‘under advisement’, on the basis of the potential for recovery outweighing the costs of the action.²⁹³ In May 2022, the DWP announced it was ‘building on’ the retrospective action it took against the ‘trust and protect’ cases to create a ‘*new, dedicated 2,000 strong team to deliver targeted case reviews of existing universal credit claims*’.²⁹⁴ The DWP envisages targeted case reviews of over 2 million cases over the next five years.

What the law says

Regulations give the DWP power to request evidence and information from a claimant with a current award to check whether it is correct or should be revised or superseded.²⁹⁵

Suspensions and terminations

If a claimant provides unsatisfactory evidence or fails to respond to the information request, then the decision-making mechanism available to the DWP is suspension and termination.²⁹⁶ The DWP has discretionary powers to suspend a person’s award for failing to provide information within 14 days if the DWP clearly notified the claimant of exactly what evidence was required, the deadline for providing it, the possibility of extending the deadline if more time is required to provide the evidence, and the option of satisfying the DWP that the evidence doesn’t exist or can’t be obtained.²⁹⁷ If more than a month has passed since the DWP suspended the benefit, it can terminate the award of UC from the date of suspension. Suspension and termination powers should not result in an overpayment because the previously paid award remains unchanged up until the date of suspension and subsequent termination.²⁹⁸

Revisions

The retrospective exercise took place many months after the entitlement decisions were taken and therefore outside the one-month time limit for the DWP to initiate any grounds revisions of those decisions (as there are no provisions in the legislation for a DWP decision maker to instigate a late any grounds revision with good reason for the delay beyond one month as is available to claimants).²⁹⁹ Therefore, the only grounds available to the DWP to revise the entitlement decisions was if the original decisions were the result of an ‘official error’ or if the

²⁹¹ Peter Schofield’s letter to the Chair of the Public Accounts Committee, 13 May 2021, available at committees.parliament.uk/publications/5942/documents/67567/default

²⁹² DWP, *Annual Report and Accounts 2021 to 2022*, p68, available at gov.uk/government/publications/dwp-annual-report-and-accounts-2021-to-2022/dwp-annual-report-and-accounts-2021-to-2022

²⁹³ Work and Pensions Committee, *The Department for Work and Pensions’ Accounts 2020-21* (oral evidence), 24 November 2021, Q48-54, available at committees.parliament.uk/event/6250/formal-meeting-oral-evidence-session

²⁹⁴ DWP policy paper, *Fighting Fraud in the Welfare System*, May 2022, para 33, available at gov.uk/government/publications/fighting-fraud-in-the-welfare-system/fighting-fraud-in-the-welfare-system--2

²⁹⁵ Reg 38 Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 No.380 (‘Claims and Payments Regulations 2013’)

²⁹⁶ A termination is a form of supersession.

²⁹⁷ Reg 45 Decisions and Appeals Regulations 2013. Alternatively, UC can be suspended under reg 44. *AA v Leicester CC* [2009] UKUT 86 (AAC), paras 54-56, available at casemine.com/judgement/uk/5a8ff78660d03e7f57eae361; *VW v Hackney LB (HB)* [2014] UKUT 277 (AAC), para 5, available at casemine.com/judgement/uk/5b46f2182c94e0775e7f222f; and *SS v NE Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 21, available at hbinfo.org/caselaw/2011-ukut-300-aac

²⁹⁸ A termination is only effective from the date of suspension unless there are alternative grounds for a revision or a supersession from an earlier date: reg 47(2) Decisions and Appeals Regulations 2013 and CH/2995/2006.

²⁹⁹ Reg 5 Decisions and Appeals Regulation 2013

original decision was made ‘in ignorance of, or based on a mistake as to, some material fact’.³⁰⁰ Importantly, for the second ground to be met, the DWP must be mistaken or ignorant as to a primary material fact established by evidence and not simply have made a new conclusion based on a secondary or inferred fact.³⁰¹ For example, if, in the course of its investigations, the DWP finds that a claimant was actually in possession of over £16,000 in capital and, therefore, they did not meet the financial conditions for UC when the entitlement decision was made, this would be a mistake as to a primary material fact and a decision maker would have the power to revise the entitlement decision and remove entitlement. By comparison, if the DWP infers that a claimant was not entitled to UC because they failed to respond to a request for evidence or the evidence they supplied was unsatisfactory, arguably this is not a ground to revise the entitlement decision, as it is only a new conclusion or assumption based on a secondary or inferred fact.

4.4.1 Entitlement decisions revised to remove entitlement without grounds

What happens in practice

This research shows that the retrospective reverification team routinely revised entitlement decisions to remove entitlement for the entirety of claimants’ awards, resulting in significant overpayments in some cases, when claimants failed to respond to evidence requests.³⁰²

Early Warning System: DWP recovers whole UC award paid during Covid – June 2021

‘The client made a claim for UC in April 2020. DWP easements due to coronavirus meant he was not asked for ID until May this year [2021]. The client did not respond to requests and now his award has been terminated from 17 May 2021. On 25 June, the client received a decision seeking to recover £9,000 which is the whole of the payments he received from April 2020. They are doing a mandatory reconsideration of the decision. He has the ID available.’

Rightsnet thread [17067 #34](#): insufficient ID results in overpayment – September 2021

‘I’ve just picked up one of these cases. A passport was provided when the UC claim was started in March 2020. The claimant was recently asked to supply further ID. He didn’t read the letter properly and only supplied one piece of ID (driving licence) instead of two. Now he’s got a “decision” that his entire UC award (£12,000) is an overpayment – “You have failed to supply the evidence on time.”’

There was a lack of transparency from the DWP regarding the legislative basis for the retrospective verification exercise while it was taking place. The welfare rights sector spent a few months attempting to clarify what legislative powers the DWP understood itself to be using before the DWP confirmed it was revising entitlement decisions on the ground of ‘ignorance of, or based on a mistake as to, some material fact’.³⁰³ In response to a

³⁰⁰ Reg 9 Decisions and Appeals Regulations 2013

³⁰¹ ADM Ch A4: ‘Supersession, suspension and termination’, para A4464: ‘A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence’, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1065518/adma4.pdf. See, among other cases, *MS v SSWP (DLA and PIP)* [2021] UKUT 41 (AAC), paras 34-35, available at gov.uk/administrative-appeals-tribunal-decisions/ms-v-secretary-of-state-for-work-and-pensions-dla-and-pip-2021-ukut-41-aac.

³⁰² See also CPAG’s other work on this issue, including a briefing available at cpag.org.uk/policy-and-campaigns/briefing/demands-repay-impact-and-legality-dwp-reverification-uc-claims.

³⁰³ Reg 9 Decisions and Appeals Regulations 2013; whatdotheyknow.com/request/further_information_about_reveri#incoming-1818901;rightsnet.org.uk/forums/viewreply/83503

question from Rightsnet, the DWP stated in October 2021: *'If there is a failure to reply and entitlement terminates, the decision maker has to decide from what date UC should not have been paid. Normally that would be the date from which payment was suspended, but where the issue goes to entitlement in circumstances which cast doubt on the entire award, then they would be looking to revise the decision effective from the date of claim.'*³⁰⁴ However, 'doubt' is insufficient to revise an entitlement decision as there needs to be a mistake or ignorance as to a primary fact rather than a new conclusion concerning an inferred fact. When investigating identity, this would mean a finding of fact that a claimant was not who they had said they were when they claimed UC. Transparency was not helped by the department's use of the legally meaningless term 'claim closure', which further disguised the decision-making mechanism used (as is explored in Chapter 2 – 'Decision making').

Once an award is in place, it is the DWP's responsibility to demonstrate that a claimant is no longer entitled to that benefit, either because they no longer meet, or never met, the eligibility requirements or because they have failed to comply with an administrative process within given time limits. This research suggests that the DWP revised awards unlawfully without grounds, based on inferences about reasons for non-engagement or unsatisfactory responses to evidence requests. In the previous examples, the claimants involved could all provide evidence that they were who they said they were. In some cases, the DWP already had other evidence verifying the claimant's identity and circumstances available, such as awards of different benefits on the DWP's customer information system (CIS) database, which could have assisted them in the UC reverification process.³⁰⁵

Early Warning System: man with LCWRA has entire UC award recovered as an overpayment for failure to upload evidence of ID – May 2022

'My client's claim started in May 2020 and was closed in December 2021. A subject access request shows there was a call in December to say ID verification was completed. A few days later a 'to-do' was sent to upload ID evidence, which my client did not respond to. A month later the claim was closed and an overpayment recovery letter was issued for £8,000, which is the entire award. My client cannot read and write very well and has been in the employment and support allowance (ESA) support group as well as having limited capability for work-related activity (LCWRA) for UC. He said his son helped with the claim, and he didn't really know how to access it. He also thinks he changed a phone number around December, possibly shortly after the ID call in December.'

If the DWP had justifiable doubts about the claimant's identities, the correct legal response would have been to suspend UC while it investigated and then terminate the awards from the date of suspension if the claimant did not respond within the set time limits once reasonable efforts were made.³⁰⁶ Arguably, in many cases, the DWP did not have the power to revise entitlement decisions and raise overpayments because it had not demonstrated a mistake about the identity of the claimant.³⁰⁷ In its *Annual Report and Accounts 2021 to 2022*, the department was explicit about its perspective on those who failed to engage with the sampling exercise for investigating levels of fraud and error in the benefit caseload.

³⁰⁴ rightsnet.org.uk/forums/viewreply/84181

³⁰⁵ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110332/customer-information-system-the-data-held-about-you.pdf

³⁰⁶ Regs 44, 45 and 47 Decisions and Appeals Regulations 2013

³⁰⁷ There are additional concerns about the legality of the DWP's approach to reverifying awards which had already been brought to an end. This is because reg 38 Claims and Payments Regulations 2013 only allows the DWP to request evidence from current claimants rather than previous claimants. There is an added complication concerning the status of an award that was brought to an end as the result of the level of income and treated as automatically reclaiming for the following five assessment periods in accordance with reg 32A Claims and Payments Regulations 2013.

DWP Annual Report and Accounts 2021 to 2022

'31. Most of the recent rise in universal credit overpayments in 2021–22 compared with 2020–21 is due to a significant increase in cases selected for review where there was a "failure to provide evidence/fully engage in the process"... The Department assumes that such claims are fraudulent, because if the individual had a legitimate claim, they would be highly likely to need the money and therefore motivated to engage with the process. The Department also believes that the rise in these cases may be driven by people who started claiming universal credit early in the pandemic and have since seen their circumstances improve, but who have not notified the Department. Although these may be reasonable assumptions, the Department does not fully know the reasons for non-engagement and has limited ability to assess the nature of fraud and error in these cases.'

During the retrospective reverification exercise, DWP officials appear to have been systemically making unlawful decisions to revise entitlement decisions and recover the entirety of awards paid since the pandemic. This has had a profound impact on many current and previous UC claimants.

Early Warning System: receiving UC during Covid – June 2022

'I started receiving UC in March/April 2020 because of Covid-19. They sent me the money that same day, two hours after my call. I remember asking several times: "Do I have to give this money back if I cannot get a job soon?" They repeatedly said "no". During several months I followed instructions and to-do lists. I was recommended to move to a big city, and so I did. I was recommended to change my CV, and so I did. I applied to jobs I had no real skill set to do, just to widen the possibilities.

During this process, I was never ever (not a single time) asked to show myself personally to a job centre. In fact, I was warned not to do so because of Covid restrictions. I received a letter stating that "you were not entitled to the amount of money you received from universal credit". The reason? "We could not confirm your identity." The whole thing boils down to two phone calls I missed within a period of 12 days, which I had good reasons for.

I wrote in the journal, but it was too late, apparently. I knew this was wrong so I asked Citizens Advice what to do. We sent them a detailed mandatory reconsideration request. After about six months I get a reply: "We decided not to change your decision." There is not much substance other than that one line. Now I only have a month to prepare everything and defend myself on an appeal. I have read that I am not the only person in this situation. I am scared, I am angry, and I am sad.'

The DWP requested evidence primarily through journals or by telephone. For many reasons, many claimants did not receive these requests – for example, because they had moved into full-time paid work and were no longer receiving UC, so they had no reason to check their UC journal anymore. Some claimants first heard about a problem with their benefit when they received a physical letter through the post from DWP debt management, notifying them about the intention to recover the entirety of their UC award as an overpayment. By the time the DWP sent these overpayment recovery letters, claimants were inevitably beyond the initial one-month deadline for an any grounds revision of the decision that had resulted in the overpayment, but within the 13-month time limit for a late revision request, while there is no time limit if the DWP had made an official error or mistake about a material fact. In the example below, the lack of information in the decision notice about the deadlines to challenge the decision discouraged the claimant from applying for a revision, despite not finding out about the decision until after the deadline had passed.

Early Warning System: Entire award paid during Covid recovered as an overpayment – January 2022

'I was previously receiving UC when I was made redundant due to the pandemic. I received it for about six months until I got a new job... I sent a message on my journal letting them know that I would no longer need benefits and to take me off the system. I had no reply... I received a message in my journal three days later that said I had been overpaid as they couldn't verify all of my details. I replied asking why, as I provided all of my details when I signed up. The "overpayment" was not explained in the first message... I thought they were mistaken as my UC had stopped when I started work. The reply said: "We need to verify your details as you have had an overpayment," with no further explanation. I was not receiving any benefits, so I thought nothing more of the message as I hadn't been overpaid.

After I started my new job, I didn't see the need to be logging on to my journal as I had told them to remove me from the system. A few weeks ago, I received a letter that said I had been overpaid £4,000 which I was totally shocked about... I rang UC and spoke to a lady who said she was going to put it through as an urgent case and get someone to ring me back, which they never did. I logged on to my journal and saw a few messages explaining to me about the so called "overpayment" ... I could not reply to any of these messages on my journal as they said my claim was closed. I rang and they said I needed to fill in a reconsideration letter which on my journal stated that this form had to be filled in by October, which at this point had already passed, so there seemed nothing I was able to do at this point. Then two weeks later I received another letter saying that this matter had now gone to the debt collectors, and they had written to my employer to take money out of my wages each week.

I tried to sort this out by ringing the numbers on the letter, to only get through to an automated message saying we can't talk about an overpayment. So, I yet again rang UC who said they would again put it through to my case manager as an urgent call and they would ring me back on Thursday between 8 and 6pm... I did not receive a call.

If the first message I had received had clearly stated what details they needed... explained why and what I needed to do, then I would have done it... unfortunately, the first two messages I received explained nothing... I should have received a letter explaining to me exactly what I needed to do if I was not responding to my journal messages after telling them to close it... I am still very happy to do whatever is needed to verify all of my details to them so this matter can be resolved. I should not have to pay back money I was entitled to after losing my job due to the pandemic.'

Internal DWP guidance given to the reverification or repair team did not direct agents reviewing awards to consider other evidence or information already held on file by the DWP when concluding whether there had been a material mistake of fact.³⁰⁸ Instead, it appears that a failure to respond to requests for information led to a presumption by reviewers that the fact of the claimant's identity had been shown to be false. This appears to have led to repeated unlawful revisions of entitlement decisions without grounds to do so.

In addition, there are several ways in which the reverification process was procedurally unfair and exacerbated by some of the design features of UC that have already been discussed in this report, including frozen journals (see Chapter 2 – 'Decision making'), inadequate information about appeal rights, the lack of reasons in decision letters (see Chapter 3 – 'Communicating decisions'), and the language of 'claim closure' (see Chapter 2 – 'Decision

³⁰⁸ FOI2023/26077, available at cpag.org.uk/sites/default/files/files/policypost/FOI2023_26077_reverification_instructions.pdf

making’). Claimants caught up in the reverification exercise also faced gatekeeping of late revisions, despite having very good reasons for requiring and requesting an extension, as was explored in section 4.2.3 of this chapter.

Rightsnet thread [17067 #32](#): overpayment demand despite no longer receiving UC – September 2021

‘A man stopped claiming UC in January 2021 as he got paid work. In April he got a text to say, “You have a message on your journal,” so he logged in and was asked to send a photo of himself, holding his passport. Not unreasonably, as he was no longer claiming UC, and it being frankly quite an odd request, he did not reply. He actually thought it might be a scam. He then got an overpayment demand just shy of £6k. He then put an MR [mandatory reconsideration] in himself with all of the info requested and proof of rent as well, which was refused as they would not accept it saying he did not provide it within one month. He then approached us and we highlighted that he can provide info late, helped him provide the info, appealed, and the decision has since been revised and the appeal lapsed.’

Finally, the reverification exercise breached the important principle of the finality of decisions, which is there to give claimants certainty when planning their lives that once benefits are awarded, they cannot be arbitrarily recovered without legal justification.

4.5 Disputes conclusions

Rule of law principles have been undermined in the design and implementation of universal credit, but this is not an inevitability of digitalisation

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness in the universal credit (UC) dispute process. These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. The DWP has designed a digital system that has not prioritised a fair and effective dispute process, which is fundamental if UC is to comply with rule of law principles. Specifically, the DWP has not designed a specific function for a claimant to request a mandatory reconsideration. Instead, claimants most commonly request a mandatory reconsideration by writing a note in their online journal. The lack of separation between using the online journal for informal communication and the formal process of challenging decisions is unreliable and vulnerable to gatekeeping. As a result, frontline DWP officials can dissuade claimants from pursuing a challenge before a decision maker has ever had the opportunity to formally reconsider the decision. Our research has found claimants are sometimes forced to make multiple requests before an application for a mandatory reconsideration is registered and referred to a decision maker, and there is no specific function to acknowledge that this process has taken place. In other circumstances, claimants are left confused if they receive a message in their journal that appears to be a response to a mandatory reconsideration request, but it has been communicated informally without a mandatory reconsideration notice including a notice of appeal rights. It is very concerning that UC has been designed in a way that fails to reflect the importance of the statutory appeals process as was decided by parliament.

The freezing of the journal undermines the communication advantages for claimants

Many claimants described the positive development of the UC journal for easier communication, record keeping and the ability to query decisions. However, the communication benefits of the journal for claimants are removed by the DWP’s decision to freeze a claimant’s journal if their claim is refused or their award is terminated. At the time when claimants are most likely to want to challenge a decision, when they have no entitlement to means-tested support, the primary route of communication to the DWP is blocked. Although there are other methods for requesting a revision, such as by telephone, all of the alternatives are an administrative barrier by comparison to

requesting a mandatory reconsideration via the journal. The DWP's decision to freeze journals is a major procedural barrier to claimants making representations and disputing entitlement.

The reverification exercise as a case study and a warning

The DWP's reverification of claims made during the initial stages of the pandemic encapsulates a lot of the issues which are covered in this research project. As is predictable when the DWP fails to uphold rule of law principles of transparency, procedural fairness and lawfulness, the consequences for claimants were severe.

Arguably, it was a large-scale exercise of DWP officials acting beyond their powers in the legislation, based on inferences about reasons for non-engagement or unsatisfactory responses to evidence requests. There are several ways in which the reverification process was procedurally unfair and exacerbated by some of the design features of UC, including frozen journals, inadequate information about appeal rights, the inadequate reasons for decisions in decision letters (See Chapter 3 – 'Communicating decisions') and the use of the legally meaningless language of 'claim closure' rather than correctly identifying the type of decision-making mechanism used according to the Social Security Act 1998 (See Chapter 2 – 'Decision making'). Some claimants caught up in the reverification exercise also faced the gatekeeping of late mandatory reconsiderations, despite having very good reasons for requiring and requesting an extension.

In May 2022, the DWP announced it was envisaging targeted case reviews of over two million cases over the next five years, which highlights the urgency of acting on the recommendations in this research. There is increasing attention, rightly, on the potential risks of using machine learning and automated decision making to identify cases suspected of fraud and error. This research highlights that it is just as important to pay close attention to what happens next: evidence gathering, decision making and dispute processes once a claimant has been identified as warranting investigation.

4.6 Disputes recommendations

Quick fix

- DWP *Digital Design/Communications* must improve the information provision to claimants on payment statements about the real-time information (RTI) dispute process and its relationship with the mandatory reconsideration process.

Medium-term fix

- DWP *Digital Design* should delay the freezing of a claimant's journal for at least one month (the time period for an in time any grounds revision) after decisions to refuse a claim or end an award to allow claimants to have the time to start the appeals process via their journal.
- DWP *Research* should undertake research into RTI dispute processing times. This research should be made public.
- DWP *Digital Design* should introduce a 'request mandatory reconsideration' function across all appealable decisions which ensures all requests are treated as such. The DWP should monitor such requests and publish statistics – eg, volume of requests, types of issues, processing times etc.
- The DWP *training team* should improve training on:
 - the social security legislation that underpins all decision making eg, decisions, revisions and supersessions;
 - the gatekeeping of revision applications, including updating the gatekeeping memo from 2015.
- The DWP is planning to complete targeted case reviews of over two million cases over the next five years. It is crucial to ensure this process is lawful and procedurally fair.

- The DWP should ensure they act lawfully and only revise decisions and raise overpayments when there are grounds to do so, which will require additional training and legally accurate guidance.
- The DWP must contact claimants in a variety of ways, including physical letters, when requesting information and if awards are suspended and claimants do not respond to journal messages. Text messages should include more information about the reason for contact.

Long-term reform

- DWP should introduce time limits for making revision decisions, as has been introduced in Scotland.
- The DWP should increase the number of decision makers to reduce decision-making times on applications for revisions (mandatory reconsiderations).

Overarching research conclusions

Rule of law principles have been undermined by the design and implementation of universal credit, but this is not an inevitability of digitalisation

The central finding from this research is that the rule of law has been subtly undermined by the design and implementation of the UK's first digital-by-design benefit. This is not an inevitability of digitalisation. Instead, it suggests inadequate consideration of rule of law principles at each stage of the universal credit (UC) design and implementation process. We are particularly concerned by the lack of care which has been paid to the design and implementation of the mandatory reconsideration process within the UC digital system. When a fair and effective dispute mechanism is so fundamental for UC administration to comply with rule of law principles, the decision to not provide a specific digital function for a claimant to raise a dispute does not seem justified. It creates barriers for claimants and is an example of the Department for Work and Pensions (DWP) failing to share the benefits of digitalisation with claimants.³⁰⁹ The use of the online journal for informal communication and the formal process of challenging decisions is unreliable and vulnerable to gatekeeping. The freezing of journals, a relatively small digital design choice, creates additional barriers for claimants looking to exercise their appeal rights. Many of the rule of law breaches raised in this research are likely to be unintended consequences; however, if the DWP had prioritised rule of law principles at each stage of the UC design and implementation process, these problems for claimants might have been avoided.

A missed opportunity

Our research has found that the potential benefits of digitalisation for claimants, and opportunities to increase compliance with the rule of law principles of transparency, procedural fairness and lawfulness, have been undermined by a number of the DWP's design and implementation choices.³¹⁰

Record keeping

The UC online journal and account provide claimants with a record of all online communication with the DWP in relation to their UC award. Having such a comprehensive record of decision making for one combined benefit is a significant development in the history of social security administration, which could benefit claimants and help the system to comply with the rule of law principle of transparency. However, the potential advantages of the UC online account have been undermined by certain digital design choices, including the automatic overwriting of payment statements rather than keeping the original and the amended versions available for comparison and the overwriting of the UC journal when someone makes a new claim for UC.

Communicating with the DWP

The ability to communicate with the DWP via the online journal is a positive development, enabling faster and more convenient communication, with a record kept of all interactions. However, when people try to exercise their appeal rights within this context by requesting a mandatory reconsideration via the journal, they can face gatekeeping by officials, while the DWP's policy is to freeze the journal when a claim is refused or an award is

³⁰⁹ Following on from Richard Pope's research, *Universal Credit: digital welfare*, which found that 'the benefits of digitisation are not being shared equally between the government and the public', available at digitalwelfare.report/contents.

³¹⁰ The question of whether the benefits of digitalisation have been shared equally with claimants was first raised by Richard Pope in *Universal Credit: digital welfare*, available at digitalwelfare.report/contents.

brought to an end, preventing applications for a mandatory reconsideration being made this way, arguably when claimants are most need of an effective route of communication with the DWP.

Data sharing

One of the most significant potential benefits of digitalisation is data sharing, which can reduce the administrative burden on claimants by using information already held by the DWP, or in some cases other public bodies or government departments, to demonstrate entitlement to benefits and improve the accuracy of award calculations.

Within the UC digital system, earned income information is automatically shared between HM Revenue and Customs (HMRC) and the DWP via the real-time information (RTI) system so claimants do not need to report their earnings to the DWP in the same way that is required for legacy benefits. Reducing the burden on claimants to report earnings is a welcome step for some, and the responsiveness of UC can work well for some claimants with variable earnings as their UC award can increase if earnings drop.³¹¹ (Although, even when it comes to the automated sharing of earnings information from HMRC, Lord Freud was critical that current system's reliance on reported information from employers was vulnerable to 'discrepancies,' compared to his preferred vision for a more digitally advanced system using data on live salary transfers.³¹²)

However, in some situations, the DWP fails to use the data it holds about other benefits claimants receive to ensure that the UC digital system automatically and accurately calculates the effect of other benefits on UC. For example, there is no automated data sharing between the UC system and the system that administers the legacy benefit employment and support allowance (ESA) to ensure the limited capability for work (LCW) and limited capability for work-related activity (LCWRA) elements are included in UC awards, there is a failure to automate an exemption from the shared accommodation rate of local housing allowance (LHA) for private renters under 35 if they are in receipt of certain rates of disability benefits, and there is a failure to use the information gathered about carer's allowance to automatically include the carer element in UC awards. The reliance on clerical intervention results in delays, miscalculated awards and an administrative burden for claimants in trying to secure their full legal entitlement via the revision process. The aspects of UC which have been automated and the parts which remain clerical can appear unpredictable and inconsistent from an outside perspective.

The prioritisation of simplicity

One of the main objectives of UC was to simplify the social security system. Our research has found inconsistency in this regard. On the one hand, the creation of a single benefit has simplified matters for claimants by doing away with the need to engage with three separate institutions, each paying different benefits. However, in some places, the DWP has prioritised the simplicity of the benefit over ensuring the legality of the system, by ignoring some of the complexities of the legislation and the complexities of the lives of claimants who rely on it. For example, the DWP has oversimplified the digital claims process so that it fails to ask all of the relevant questions to accurately

³¹¹ Some research has found that the hyper-means-test can actually disincentivise work for some: 'For second earners, who were more likely to be women, the taper was often viewed in a negative light, seeming to penalise rather than reward work and additional hours. Because women were more likely to be the payee for universal credit, it was often women's income that fell when their partner's earnings rose. Knowing that the universal credit payment received by their partner would be reduced or might cease altogether if they earned more could also disincentivise additional hours among first earners. The difficulty of predicting drops in the payment, and the fear of a reduced amount in future months, also discouraged couples from working more hours, taking on extra shifts or accepting offers of overtime.' From R Griffiths, M Wood, F Bennett and J Millar, *Couples Navigating Work, Care and Universal Credit*, Institute for Policy Research, 2022, p9, available at researchportal.bath.ac.uk/en/publications/couples-navigating-work-care-and-universal-credit.

³¹² D Freud, *Clashing Agendas: inside the welfare trap*, Nine Elms Books, 2021, pp178-9; see also ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit

investigate entitlement. At the same time, payment statements and template decision letters have been simplified to the extent that they fail to provide adequate reasons for decisions. Alternatively, in other aspects of the design and implementation of UC, the DWP has missed what appear to be obvious opportunities to make things simpler for clients afforded by a digital-by-design benefit, by failing to use the data it holds about other benefits to accurately calculate their effect on UC awards.

A lack of transparency

There is a lack of transparency about the design of the UC system, including the level of automation used within the system, how the system has been designed and implemented, and the process by which features of the system can be added or changed. At CPAG we observe the same mistakes in decision making occurring again and again in relation to individual claims and awards, and despite investigations using freedom of information (FOI) requests and other methods, it is very difficult to find out whether these errors are solely caused by human error, due to a programming error, or due to a digital design feature which encourages DWP officials to repeatedly make the same mistakes.

Trying to unearth information about how the UC digital system works at an operational level and how these problems occur is challenging. We need information on the digital system design, the guidance provided to officials, and information on how that guidance is applied by officials, in order to build a complete picture. If it is the DWP's intention to build an interface which is as self-explanatory as possible, therefore reducing the need for officials to check separate guidance or legislation, it is all the more essential that we have access to what the interface looks like.³¹³ We need to be able to scrutinise the tools DWP officials are provided with to complete their job, so we can investigate where mistakes are happening and why.

When we have tried to request screenshots (or a list of data fields) of how the system appears to DWP agents (the DWP calls these pages requiring action 'to-dos') via FOI requests, the DWP has stated it is unable to provide the information due to the 'dynamic' and 'branching' nature of UC.³¹⁴

Freedom of information request: FOI2022/05415 – screenshots of digital systems

'Unlike previous benefits that have clerical applications with all possible questions, universal credit applications are only available digitally. This has the benefit that due to the dynamic nature of the system only relevant follow up questions will be asked depending on answers. This however does mean it is logistically challenging to provide screenshots and any provided would be impossible to provide in order due to the branching nature of many questions and to-do's. Due to this we are not able to provide you a meaningful copy of what you request.'

In response, we have requested copies of training materials in an attempt to elicit information on the internal interface of the system. This has been a slow process, which has provided inconsistent results. It has been hit and miss whether the training materials we have requested include screenshots or the level of detailed operational instructions we require to understand the internal digital system and how DWP officials are expected to interact with it. In addition, training materials on different aspects of the UC system were aggregated under the cost limit

³¹³ FOI2021/92236, available at whatdotheyknow.com/request/refer_to_decision_maker_young_pe

³¹⁴ FOI2021/07752, available at

whatdotheyknow.com/request/722572/response/1716361/attach/html/3/FOI2021%2007752%20Reply.pdf.html, and FOI2022/05415,

available at cpag.org.uk/sites/default/files/files/policypost/FOI2022_05415_response.pdf, and FOI2022/13818, available at

cpag.org.uk/sites/default/files/files/policypost/FOI2022_13818_response.pdf. See

whatdotheyknow.com/request/hardship_payments_standard_lette?nocache=incoming-2286751#incoming-2286751 for similar reasoning.

for a single FOI request (£600 – the equivalent of 24 hours of staff time), further hampering our investigation. In other examples, the digital system was updated so our previous research became out of date without warning and without us realising.

At a system-wide level, the DWP has not made the source code for UC publicly available, despite this being a requirement of the service standards of the Government Digital Service, with the UC digital system having been paid for by the public via their taxes.³¹⁵ For comparison, the DWP has committed to publicising the source code for personal independence payment and pension credit.³¹⁶ If the UC digital system source code was made public, there could be increased scrutiny; interested parties could check whether there are errors, suggest fixes and solutions to improve the system, and understand if there are legitimate technical reasons why some changes are difficult for the DWP to make. When the DWP asserts that changes to the UC digital system would be too costly or too damaging to the internal architecture, these assertions cannot be substantiated or fairly challenged due to a lack of information in the public domain.³¹⁷

Overall, the digital nature of UC has resulted in reduced accountability due to a lack of transparency, although this is not an inevitable consequence of digitalisation.

Those entitled to additional elements, exemptions and exceptions

Certain groups are entitled to additional elements, exemptions or exceptions from standard rules in the legislation because they require different treatment for their particular circumstances. These groups include claimants with health conditions or in receipt of disability benefits, those who have experienced domestic abuse, carers and care leavers, to name a few. There are three ways in which our evidence has found a failure to design UC in a way that ensures these additional elements, exemptions or exceptions are reliably included in awards: a failure to ask claimants all of the questions necessary during the claims process to capture whether claimants meet the specific conditions in the legislation; a failure to reliably automate these aspects of the system; and a lack of transparency with claimants via the payment statement or *Help Understanding Your Statement* guidance about all the different possible elements, exemptions or exceptions that might be applied to an award if the system does not recognise them as applicable to the specific claimant.

Social security legislation is complex, and claimants cannot be expected to understand the interactions between different benefits or how their circumstances may entitle them to a higher award of UC. Particularly when some of the exemptions are as specific as claimants under 35 who have lived in homeless accommodation for three months or more while receiving specific support, so claimants are very unlikely to volunteer this information spontaneously. Without transparency as to the existence of all of the exemptions, additions and exceptions in the legislation, claimants do not have a meaningful opportunity to provide all of the information that may be relevant to their claim or award at the outset or to identify whether their award has been miscalculated.

If the claimant does identify that an additional entitlement exists for their specific circumstances, and they are not receiving it, they then need to challenge a decision in order to secure their full legal entitlement rather than it being accurate from the outset. Throughout this research, we have found problems in securing legal entitlements

³¹⁵ [gov.uk/service-manual/service-standard/point-12-make-new-source-code-open](https://www.gov.uk/service-manual/service-standard/point-12-make-new-source-code-open)

³¹⁶ [gov.uk/service-standard-reports/apply-for-personal-independence-payment-alpha-reassessment#make-new-source-code-open](https://www.gov.uk/service-standard-reports/apply-for-personal-independence-payment-alpha-reassessment#make-new-source-code-open)

³¹⁷ *SSWP v Johnson, Woods, Barrett and Stewart* [2020] EWCA Civ 788, para 78, available at cpag.org.uk/sites/default/files/files/C1.2019.0593-2020-EWCA-Civ-778-R-Johnson-and-others-v-SSWP-FINAL-for-HAND-DOWN.pdf

for claimants with health conditions and disabilities, carers, care leavers, families with children, and students. In many cases, these groups will be disproportionately impacted because of their protected characteristics.

The pace of change

A lot of the rule of law breaches in this report have been raised by stakeholders many times, over many years, and they continue to cause problems for claimants. We also know a number of the issues raised in this report currently have the attention of the DWP – which has reported that it is working to resolve these issues. While this is welcome, we have been told by the DWP that changes to the system need to compete with other priorities and limited resources, and information about what solutions might look like or how long they will take to implement are rarely forthcoming.

The pace of change is just too slow for some fundamental features that cause such harm to claimants and their families. The issues raised in this research are not features that would be 'nice to have'. They are urgent requirements for the system to comply with rule of law principles. The DWP takes a 'test and learn' approach to UC; however it takes too long between the 'testing', the 'learning' and the implementation.³¹⁸ To provide an example, the problem with overwritten payment statements was raised with the DWP by Rightsnet at least as early as July 2017.³¹⁹ At the time, the DWP's response was: *'We are aware that this is an issue and do have, on our current plans, a feature that will look at statement enhancements; all future features receive regular prioritisation review and at this time we cannot confirm the timescale and delivery for statement enhancements.'*

However, it must be acknowledged that some of the issues originally identified by this research have been resolved in the three years it took to complete the research, and have therefore been removed from our findings.³²⁰ It is encouraging that the DWP has taken action to resolve some of these issues, and we have included a set of recommendations to inform further steps that need to be taken to address the issues outlined in this research. Many of these recommendations would be low cost to implement and do not require legislative or even policy change.

One of the reported advantages of UC is that it is flexible in comparison to legacy benefits – eg, the £20 'uplift' was added to UC during the Covid-19 pandemic but the DWP stated it would be too difficult to make such an unplanned change for legacy benefits.³²¹ But to counter this, the digital-by-design nature of UC can also be a reason that it is harder to make changes once problems are raised. For example, the DWP sought to defend a challenge to the problem of two monthly wages being taken into account in a single assessment period if one was paid early due on a non-banking day, on the basis it would either *'require a new version of the calculator to be built from scratch'* or would require 1.5 hours of manual intervention each time it occurred.³²² While, back in 2019 the DWP indicated it was considering solutions to the problem of claimants who are benefit capped despite working 16 hours a week due to their four-weekly pay cycle, when these earnings would exempt them if they were paid monthly.³²³ Yet, four years later, no change to this part of the system has been made. The DWP can

³¹⁸ [gov.uk/government/publications/universal-credit-test-and-learn-evaluation-families](https://www.gov.uk/government/publications/universal-credit-test-and-learn-evaluation-families)

³¹⁹ rightsnet.org.uk/Forums/viewreply/53142/

³²⁰ For example, the DWP informed us in January 2022 that *'a fix has now been put in place to automate exemptions to non-dependent housing cost contributions so this should no longer be an issue'*. Email from DWP to CPAG, 31 January 2022.

³²¹ House of Commons Library, *Coronavirus: legacy benefits and the universal credit 'uplift'*, 2021, available at commonslibrary.parliament.uk/research-briefings/cbp-9246

³²² *SSWP v Johnson, Woods, Barrett and Stewart* [2020] EWCA Civ 788, para 78

³²³ House of Commons Work and Pensions Committee, *The benefit cap: Government Response to the Committee's Twenty-Fourth Report of Session 2017-2019*, HC 1477, 10 May 2019, available at publications.parliament.uk/pa/cm201719/cmselect/cmworpen/2209/220902.htm

assert that changes to the digital system would be too costly or damaging because of the restrictions of the architecture, and because of the lack of transparency it is very difficult to challenge these assertions.

Automated decision making

As this research shows, the legislative framework that underpins social security administration is crucial for protecting claimant's rights and adhering to the rule of law. However, we have also found that there could be some limits to only seeing decisions through the framework of appealable decisions according to the Social Security Act 1998 when considering the impact of digitalisation and automated decision making. This is because it does not include other decisions that have a significant impact on claimant's lives – for example, if a decision was made to investigate a claimant for fraud based on information gathered automatically via machine learning.³²⁴

In 2021, the DWP stated that it did not use fully automated decision making to make decisions regarding people's benefit entitlement.³²⁵ (When asked to confirm if this was still the DWP's position in March 2023 via a parliamentary question, the response neither failed to confirm nor deny if this was still the case.³²⁶) However, there is a difference between an automated decision according to the UC legislation, seen within the formal decision-revision-supersession framework of the Social Security Act 1998 as a decision with appeal rights, and a fully automated decision considered from the perspective of a more general understanding of the term. This research suggests we should consider automated decision making in the broader sense rather than the narrower concept of decisions under social security legislation.

For example, UC legislation does not consider a changed amount of UC, caused only by a change in the amount of earned income gathered automatically via HMRC's RTI system, to be a formal decision with appeal rights.³²⁷ However, it could be considered a fully automated decision in the wider sense, as something has changed since the last UC decision because of the automated calculation of earnings, which has a meaningful effect on claimants. If so, that means such decisions should attract the protections of section 14 of the Data Protection Act 2018 and Article 22 of the UK General Data Protection Register (GDPR), and the requirement for claimants to be notified in writing if a decision has been taken solely based on automated processing.³²⁸ This is not currently the approach taken by the DWP.³²⁹

Digitalisation leading policy

This research raises concerns that choices about digital design, implementation and costs are leading policy decisions or, as observed by Rita Griffiths, it is a '*case of the digital tail wagging the policy dog*'.³³⁰ There are

³²⁴ House of Commons, Written Answer UIN 183519, 2 May 2023, available at questions-statements.parliament.uk/written-questions/detail/2023-05-02/183519

³²⁵ House of Commons, Written Answer UIN 14197, 11 June 2021, available at questions-statements.parliament.uk/written-questions/detail/2021-06-11/14197

³²⁶ House of Commons, Written Answer UIN 163695, 21 March 2023, available at questions-statements.parliament.uk/written-questions/detail/2023-03-13/163695

³²⁷ s159D Social Security Administration Act 1992 and reg 41 Decisions and Appeals Regulations 2013 provide that changes to a UC award due to income fluctuations from the RTI feed can be made without a new decision.

³²⁸ s14(4)(a) Data Protection Act 2018; See ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling/ for more information.

³²⁹ s14(4)(a) Data Protection Act 2018

³³⁰ R Griffiths, *Universal Credit: a case of the digital tail wagging the policy dog?*, published online by Cambridge University Press, 2021, available at researchportal.bath.ac.uk/en/publications/universal-credit-and-automated-decision-making-a-case-of-the-digi

examples of this happening both in the initial design of universal credit, and in the DWP's approach to making changes to the system. This is concerning when we think about the democratic processes that underpin the development of our laws and policies, but do not exist in the digital world.

When considering the extent to which the UC system is able to comply with the rule of law, the technology, or the cost of changes to this technology, should not be the driving force behind (non) compliance. The UC system should implement the social security legislation underlying it; therefore, the requirements of the legislation should be deliverable from an operational perspective, and where this hasn't happened, this should be urgently rectified.

One of the most obvious examples of this is the decision by parliament to provide some claimants with the right to make a claim up to a month in advance, which the Minister confirmed through guidance was restricted to prisoners expecting release and care leavers. However, the DWP has not designed a mechanism within the UC digital system to allow these two groups of claimants to access their procedural right to make a UC claim in advance.

Concluding remarks

Digitalisation presents opportunities to improve public services, and UC is no exception. Our research found that there are many potential benefits of digitalisation for UC claimants; however, these have not been fully realised. There are also opportunities to improve compliance with rule of law principles, rather than reducing it. This can still be achieved with some relatively low cost changes to the UC digital system.

Top 10 research recommendations

- The universal credit (UC) digital claim process should be updated to ask all relevant questions and fully investigate claimant circumstances and entitlement.
- The appeals notice in UC should be amended to accurately reflect claimants' appeal rights.
- The payment statement should be updated to provide further information to claimants about how their award has been calculated.
- 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).
- The DWP should introduce a 'request a mandatory reconsideration' function on the UC journal, to help claimants exercise their appeal rights.
- Payment statements should not be overwritten. Original and amended statements should be made available for comparison.
- The DWP should amend the digital claim process to allow for advance claims.
- 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.
- 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.
- The DWP should make the source code for the UC digital system publicly available.

Methodology

Research aim

Our research aim was to understand how ‘the law in the books’ compared to ‘the law in action’ for UC, and any impact that a digital-by-design benefit has had on the gap between the two. We wanted to know whether the design and implementation of the digital universal credit (UC) system, and the actions of the DWP officials working within it, complied with the legislation underpinning UC and with wider rule of law principles. We also wanted to explore whether the advantages of digitalisation have been used to further compliance with rule of law principles.

Research steering group

We put together a research steering group made up of social security academics, legal and digitalisation experts and technologists to provide guidance to the research team at key points during the research.

Literature review

We commissioned a literature review of the existing research in this area to help form our research questions and rule of law framework. We commissioned three different researchers to complete three different chapters on digitalisation and the rule of law, benefits administration and the rule of law and different rule of law typologies.

Rule of Law framework

We decided to use the rule of law as the framework for our research because of the evidence we have gathered during our day-to-day work at CPAG of what happens to individuals and families when the UC they depend on is administered without regard to these principles. We also hoped that the DWP would be minded to act and rectify any breaches to rule of law principles if we raised them, as the rule of law is something the government should be keen to uphold. We understand that other frameworks could have been used for this research.

Following the literature review, we took the eight rule of law principles that Lord Bingham set out in his widely regarded book *The Rule of Law* as the starting point.³³¹ The initial framework condensed these eight principles into the five principles of ‘accessibility and transparency’, ‘application of the law’, ‘exercise of power’, ‘equality and human rights’ and ‘dispute resolution and fair trial issues’. After discussion with the research steering group, this was condensed to the three core principles of ‘transparency’, ‘procedural rights’ and ‘lawfulness’ to make the research more manageable with the time and resources available, and because the majority of issues emerging via the Early Warning System were relevant to these three principles (see below).

‘Transparency’ comes from Bingham's first rule of law principle that *‘the law must be accessible and as so far as possible intelligible, clear and predictable’*. Three of Bingham's rule of law principles concern ‘procedural fairness’. First, *public officers at all levels must exercise the powers conferred on them in good faith and fairly*. Second, *adjudicative procedures provided by the state should be fair*. And third, *means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide [genuine] civil disputes*. Finally, the ‘lawfulness’ principle contains elements of four of Bingham's eight principles: First, the vast majority of decisions must be decided according to rules and criteria set out in the legislation rather than the exercise of discretion. Second, the same rules and criteria must apply to all equally *‘save to the extent that objective differences justify differentiation’*.

³³¹ T Bingham, *The Rule of Law*, Allen Lane, 2010

Third, **‘the law must afford adequate protection of fundamental human rights’**, such as those contained in the Human Rights Act 1998, including that the law itself must not be discriminatory. Fourth, **‘public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably’**.

Although there is a vast literature on exactly which principles form the requirements of the rule of law, and some wider aspects of Bingham’s conception of the rule of law are debated (such as the principle of committing to international law), the principles that we focus on are commonly accepted across different definitions of the rule of law.³³²

Research questions

- How has the UC digital system been designed to implement UC legislation?
- How does UC legislation (‘law in the books’) apply in practice for claimants (‘law in action’)?
- To what extent do the UC digital system and the benefit administrators working within it comply with the rule of law principles of transparency, procedural fairness and lawfulness?
- Has digitalisation been used to increase compliance with the rule of law principles of transparency, procedural fairness and lawfulness?
- What are the implications of the digitalisation of social security administration on claimants and their rights?

Methods

We have taken a mixed-methods approach for our investigation, largely using qualitative methods, due to their flexibility and power in gathering depth and context:

- semi-structured interviews with welfare rights advisers;
- semi-structured interviews with claimants;
- documentary analysis of evidence collected from claimants’ online UC accounts;
- an examination of case studies from the Early Warning System;
- documentary analysis of UC legislation, relevant caselaw, guidance and training materials;
- analysis of publicly available administrative data (some obtained via freedom of information - FOI);
- an examination of the Rightsnet discussion forum on universal credit;
- a ‘big question’ for the Covid Realities project group.

³³² P Craig, ‘The rule of law’, in House of Lords, *Constitution: sixth report*, 2008, available at publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15115.htm

Data collection	Numbers
Interviews with welfare rights advisers	14
Interviews with claimants	33
FOI requests	50 (approx.)
Early Warning System case studies	2,500 (approx.)
1 Covid Realities 'Big question'	19 responses

The prevalence of some of the issues described in this research is hard to quantify. For example, the issue of gatekeeping the mandatory reconsideration process, by its very nature, will not be encompassed by statistics on mandatory reconsideration numbers or processing times. However, as UC can either be the entirety of a person's income or a top-up to other income sources deemed to be too low, the impact of a miscalculated award or a barrier to the appeals process to any individual is often considerable.

The legislation

The first step was to summarise the UC legislation and relevant caselaw concerning the UC claims process, entitlement conditions, elements of the award, calculation of income and capital, revisions, supersessions and decision notice requirements. We decided not to include the legislation underpinning the work-capability assessment, work-related requirements and sanctions from the outset. We hoped to do a separate piece of work on discretion in the UC system, which would consider work-related requirements and sanctions. We decided not to include the work-capability assessment due to the interaction with a private contractor for the health assessments. At a later stage, we decided to remove payments and the benefit cap from the research scope due to resource and time limitations.

Early Warning System

The Early Warning System (EWS) is a database of over 6,500 case studies (120 a month on average) of the impact of welfare reforms since 2013 on individuals and families. The case studies are either gathered from frontline advisers when they contact CPAG advice services for second-tier support or by advisers or claimants who submit evidence to the EWS directly via the CPAG website. These cases are categorised automatically by the relevant benefit and then summarised and manually coded with up to three topic codes to inform CPAG's welfare rights, policy and legal work.

Between January 2020 and December 2021, we searched CPAG's Early Warning System database for case studies which were coded with topic codes relevant to the identified legislation – eg, cases coded with the topic code 'backdating' were included as this comes under the legislation on claims, whereas cases coded with the topic code 'conditionality' were left out as this relates to work-related requirements and sanctions. Cases coded with overarching topic codes including 'automation', 'UI [user interface]', and 'delay' were also included. We reviewed approximately 2,500 case studies during this period (out of a total of approximately 3,000 cases received during the same period).

The Early Warning System database provided a broad picture of the recurring issues with decision making and access to justice in UC and an initial long list of potential issues requiring further evidence or investigation. We decided to include some of the issues that did not have an apparent digital aspect to build a more complete

picture of the partially digitalised UC system and to illustrate some of the continuities and similarities with legacy benefits. Advisers and members of the public usually submit evidence to the Early Warning System, or advisers usually seek second-tier advice, when something has gone wrong and therefore the Early Warning System will underrepresent positive experiences of UC.

In 2023, a search of the EWS database was carried out to find more recent evidence of the issues previously identified for the research. EWS Scotland, a separate bank of case studies managed by CPAG in Scotland, was also reviewed for relevant case studies.

Adviser interviews

Interviews with claimants provide an in-depth view of individual experiences; however, they are less good at identifying systemic issues. We also recognised that claimants would often not understand the detailed legislation underpinning UC and their rights within it. Therefore, we decided to gather the experiences and interpretations of welfare rights advisers due to their expertise with both the law and the problems claimants routinely face. We conducted 14 interviews with 13 welfare rights advisers to investigate their experiences of supporting individuals to claim UC, manage awards and challenge decisions.

We advertised for advisers to take part in research interviews by posting an advert on the project page of the CPAG website which we shared via the email signature for CPAG welfare rights advisers providing second-tier advice to frontline advisers, at CPAG training events for advisers, and via the NAWRA (National Association of Welfare Rights Advisers) mailing list. We interviewed a maximum of two advisers from the same advice agency. The advisers came from local authority teams, Citizens Advice bureaux, national organisations and independent charities or law centres. From our sample of advisers, we identified a gap in the evidence on how housing providers experienced the UC digital system. So we searched recent posts on the Rightsnet discussion forum (peer-to-peer casework support on social security law) to identify advisers who worked as housing officers or welfare rights advisers within councils or housing associations, whom we directly approached via the forum with an advert for the research project.

All interviews

Participants were offered a £25 voucher for taking part in the research. Participants who responded to the adverts were provided with an information sheet about the project and a consent form. The researcher also discussed confidentiality and anonymity at the beginning of the interviews to ensure the claimant was giving informed consent. The interviews were semi-structured based on a topic guide of questions. Researchers encouraged interviewees to talk about any issues not covered by the topic guide or to focus on one particular issue in detail if this was preferred. If the participant had a particular area of expertise, additional questions were asked about this topic – eg, housing advisers were asked about the landlord portal. Participants were provided with a copy of the sections of their transcripts which would be reproduced anonymously in the final report in advance of publication. The interviews were recorded on Microsoft Teams and transcribed using a paid-for transcription service. All client documentation will be stored securely in a password-protected folder until the end of the project, in accordance with data protection requirements.

Claimant interviews

We conducted 33 interviews with 28 claimants (some claimants were interviewed twice) to hear about their experiences of claiming UC, maintaining their award and challenging decisions.

We initially advertised for claimants to take part in the research via advisers who used CPAG's second-tier advice service, as described above. The research participant advert said we were interested in hearing about both positive and negative experiences of claiming UC and managing an award, and a mixture of the two. If an adviser was interviewed, they were asked if they could share the research project advert with their clients. We interviewed a maximum of two clients from the same advice agency.

We decided that one of the most important criteria was whether or not a claimant had received professional advice, due to the likely differences in their experiences. We thought it was particularly important to speak to claimants who had recently completed the claims process without professional support, as professionals were likely to provide additional instructions that are not available as part of the online claims process. We, therefore, advertised for non-advised claimants using the Entitledto online benefits calculator. Specifically, the advert was for claimants who had made a claim within the last month without professional support. Nine of the 28 claimants we interviewed had not received professional advice to support them with their UC claim or award. There was also an advert on the project page on CPAG's website inviting self-referrals. Seven of the research participants had taken part in a different UC research project conducted by CPAG, when they were offered the opportunity to take part in further research into UC. These participants had responded to an advert held on a UC support Facebook group. A small number of the claimants took part in a three-way interview with their adviser and the project interviewer. In one case, the client had difficulties speaking but wanted to participate in the research, so he asked his adviser to speak on his behalf about his experiences. Although our sample was not selected according to specific criteria other than whether the claimant had the support of a welfare rights adviser, the claimants covered a range of experiences and circumstances, including education level, computer literacy, age, employment status, disability or health condition, receipt of disability benefit, length of UC award and receipt of a previous legacy benefit(s).

Claimant journal session

If, during the initial interview, the client discussed decision letters or communication with DWP officials via the journal, we offered a follow-up 'journal session' to gather this evidence. Claimants were invited to log into their UC account and share their screen with the researcher – the researcher would then take screenshots of relevant evidence or provide instructions for the claimant to save the relevant evidence to provide to the researcher following the interview. This could include specific decision letters, screenshots of journal communication or a PDF of the entire journal history.

Subject access requests

An advert was placed in a training session for welfare rights advisers on UC for claimants to request a subject access request for their UC records to share with researchers. Two further claimants volunteered via their adviser to share their records. They were offered the opportunity to take part in an interview in addition to sharing their UC records, but both declined so are not included in the number of interview participants. These two claimants were provided with a £25 voucher as a thank you.

Freedom of information requests

We used freedom of information requests to collate further information, including guidance, documentation, administrative statistics and training materials.

For a number of the issues, the first step in the investigation was to view the relevant internal agent to-dos (page requiring action) the DWP officials used when gathering and processing information or making decisions to see

whether there was any aspect of the design that was having an impact – eg, the wording of questions and instructions, missing questions or the options provided by drop-down menus etc.

The DWP would not release screenshots of the internal agent to-dos used by DWP officials in different circumstances due to the ‘dynamic’ and ‘branching’ nature of UC, which was a considerable barrier when attempting to understand how the system has been designed and appears to officials.³³³ To work around this, we requested the relevant training materials related to the issue in question or the materials related to the relevant to-dos which we identified from a full list of to-do names provided via FOI (the names are explanatory, such as ‘change from phone claim to online’). Some training materials include screenshots of the internal system and the to-dos, but this was not guaranteed. Requesting training materials was also a slow process as the DWP would only share small amounts of training materials in one FOI request and decided that multiple training materials on different UC topics could be aggregated and therefore within the same FOI cost limit.

For some issues, we requested quantitative administrative data to try to investigate the prevalence of specific processes or claimants in particular situations, where appropriate.

Additional evidence

We monitored the Rightsnet discussion forum on ‘universal credit administration’ for queries.

We invited advisers to share anonymised DWP decision letters via an advert in the NAWRA mailing list.

CPAG was a research partner for the Covid Realities research project, which investigated the experiences of parents and carers on low incomes during the pandemic. We recorded a video of a ‘big question’ asking participants to tell us their views and experiences of claiming and maintaining UC as a digital benefit. We received written feedback from 19 participants.

Issues investigated

There were initially over 150 individual issues collected from the Early Warning System. We applied the rule of law framework, and another three criteria to reduce this list to the ones covered in the main report.

1) Whether there was a clear breach of the rule of law principles of transparency, procedural fairness or lawfulness.

2) The strength of the evidence – eg, the number of EWS case studies, whether one of the interviewees had described the issue in more detail, and how recent the evidence was.

3) Whether the issue had a large effect on claimants – eg, affecting large numbers of claimants or resulting in a loss of income.

4) Whether there is a clear digital element to the issue or we have evidence of the cause of the issue.

³³³ FOI2021/07752, available at whatdotheyknow.com/request/722572/response/1716361/attach/html/3/FOI2021%2007752%20Reply.pdf.html; FOI2022/05415, available at cpag.org.uk/sites/default/files/files/policypost/FOI2022_05415_response.pdf and FOI2022/13818, available at cpag.org.uk/sites/default/files/files/policypost/FOI2022_13818_response.pdf

Limitations

Although we made it clear in interviews that we were interested in both positive and negative experiences, the fact our research was focused on potential breaches of the rule of law meant we were more likely to hear about negative experiences of UC. Similarly, some of our main sources of evidence were more likely to contain negative experiences – for example, the Early Warning System, and the fact that interviewees were a self-selecting group and more likely to volunteer for interview if they had experienced problems or issues in relation to claiming UC, or advising someone claiming UC.

The FOI approach is an inadequate method for generating data about how the digital UC system has been designed to the level of detail required to identify the exact causes of repeated errors in decision making.

Ethics

There are ethical issues with being an expert social security advice organisation and not providing advice to the claimants interviewed during the research. Although CPAG does provide second-tier advice, it does not usually provide welfare rights advice directly to clients. It was decided that if it became apparent during one of the claimant interviews that there was a potential issue which might require welfare rights advice, this would be raised with the claimant during the interview or in a follow-up email. If the claimant had an adviser, they were told their adviser could contact the CPAG advice line for second-tier advice. If the claimant did not have an adviser, they were signposted to their local advice agency, identified using the [advice local](#) postcode search to find an adviser, who could then contact CPAG for second-tier advice if required.³³⁴

Findings not covered in the final research report

Many of the research findings on the claim process have not been featured in this final report as they fell outside the framework of a breach of the three rule of law principles. All of the advisers interviewed shared their experiences of the large number of claimants who struggled with the administrative processes required to set up the claim, including creating and remembering usernames, passwords and security questions, linking the account with an email address and phone number using a verification code, and linking two accounts together to make a joint claim using the linking code system. In addition, many of the claimants interviewed discussed the difficulties they had in answering specific questions accurately for their circumstances. The rule of law breaches raised in this research should be viewed within this wider context of claimants' experiences.

Opportunities for further research

DWP

One perspective on our research questions that was not gathered as part of our research was the perspective of the different DWP officials working within UC, including those responsible for digital design and implementation, case managers, work coaches and decision makers. Gathering evidence from DWP officials on their experience of administering the UC digital system would be extremely valuable for any future research in this area.

Fraud

The most digitally advanced aspect of UC is the area of fraud detection; however, from the outset it was decided that fraud detection was outside of the scope of this research. The reason for this is that there is even less

³³⁴ advice.local.uk/find-an-adviser

transparency about fraud detection processes than other aspects of the digital system. There are a lot of civil society organisations focused on investigating these processes out of concerns for potential discrimination, inaccuracy and privacy (including CPAG). Nearly all FOI requests made to discover detailed information about the ‘advances fraud risk model’, the ‘Integrated Risk and Intelligence Service’ (IRIS), and the relevant data protection impact assessments have so far been refused by the DWP on the grounds that it would ‘compromise the effectiveness of our response to fraud’ under section 31 of the Freedom of Information Act.³³⁵ When the expectation of gathering information was so low, it was decided the research should focus on aspects of the UC digital system, where we were more likely to be able to gather evidence and CPAG was best placed to use our expertise.

³³⁵ whatdotheyknow.com/request/universal_credit_advances_fraud; whatdotheyknow.com/request/iris_common_risk_engine#incoming-2249985

Glossary of terms

Adjudication / Adjudicator

To make a judgement on a disputed matter / a person who makes a judgement on a disputed matter.

Advance claims

When a person makes a claim for a benefit at a time when they do not satisfy the conditions of entitlement but will satisfy them at a future date.

Agent

A generic term to describe a DWP official. A DWP agent could refer to a case manager, a work coach or another official.

Any grounds revision

The DWP can change a decision for any reason at the request of a claimant. A claimant must request an any grounds revision within the time limit, which is usually one month from the date of the decision under dispute, but can be extended by a maximum of 12 months beyond that if the claimant explains in their application the 'special circumstances' which caused them to be late and the DWP considers it reasonable to grant the extension.

Any time revision (or specific grounds revision)

The DWP can change a decision if specific grounds apply, such as if there has been an official error or there was a mistake or ignorance of facts when making a decision. There is no time limit for requesting an any time or specific grounds revision.

Appeal

When a claimant asks for an independent tribunal to look at a benefit decision and consider whether it should be changed. Under universal credit, claimants usually need to request a mandatory reconsideration before they can appeal a decision.

Artificial intelligence

Machines designed to imitate intelligent human behaviour.

Assessment period

The monthly period on which universal credit payment is calculated.

Automation

Making a process or system operate automatically without (or with little) human intervention.

Backdating

When you can get a benefit from a date before the date on which you actually claimed it. Not to be confused with getting arrears of benefit – eg, after winning an appeal. The legislation actually provides for an extension of the time for claiming forwards from the first day of entitlement rather than 'backdating' it.

'Bedroom tax'

A reduction in the amount of the housing costs element for tenants of local authorities and housing associations who have a spare bedroom(s).

Benefit cap

The maximum amount of social security benefits that someone can receive if they are in a non-working or low-earning household. This includes most benefits, but there are some exceptions and some groups of people to whom the cap does not apply.

Brexit transition period

The time between the UK leaving the European Union (EU) on 31 January 2020 and 31 December 2020 when the UK remained part of the single market and the customs union so EU free movement rights, and the benefit entitlements of those exercising those rights, remained broadly the same as before the UK left the EU.

Claimant commitment

A document setting out what someone must do while claiming universal credit, and the possible penalties if its terms are not met.

Common travel area

The UK, Ireland, Isle of Man and the Channel Islands.

Complex needs

Life events, personal circumstances, health issues or disabilities that could affect a claimant's ability to access and use universal credit services according to the DWP.

Conditionality

What claimants are required to do in return for their benefit.

Contributory benefit

A benefit for which entitlement depends on having paid a certain amount of national insurance contributions.

Customer information system

A computer system used by the DWP to store basic identifying information such as names, addresses, dates of birth, national insurance numbers and limited records of current and previous benefit awards. The DWP uses a program called Searchlight to retrieve customer information.

Decision-based system

When a person claims a benefit, the DWP must make a decision as to whether the claim resulted in an award of benefit or a refusal of the claim. A decision is final unless the DWP changes it by a revision (a correction of the decision with full retrospective effect) or a supersession (a replacement of the decision at a later date, most commonly because circumstances have changed), both of which require a new decision to be made.

Decision maker

A DWP official who makes social security decisions on claims and applications (eg, for a mandatory reconsideration) on behalf of the Secretary of State for Work and Pensions. Some decisions are made by other DWP officials.

Decision / revision / supersession

The three types of decisions the DWP can make under the Social Security Act 1998. When a person claims a benefit, the DWP must make a decision on entitlement as to whether the claim resulted in an award of benefit or a refusal of the claim. A decision can be changed by a revision, which is a correction of the decision with full retrospective effect. A decision can also be changed by a supersession, which is a replacement of the decision at a

later date, usually because circumstances have changed since the original decision was made. All three types of decision carry appeal rights.

Defective claim

When a claimant does not complete a benefit claim in accordance with the instructions of the Secretary of State. Claimants are entitled to a month or longer to correct any defects while their original claim date is protected.

Determination

The 'building blocks' or individual aspects of a decision, which are not challengeable until they have been incorporated into a formal decision.

Digital-by-default

Digital-by-default was the phrase used in the Government Digital Strategy in 2012 to mean the creation of digital public services *'that are so straightforward and convenient that all those who can use them will choose to do so whilst those who can't are not excluded'*.³³⁶

Digital-by-design

When digital technology is at the core of system design rather than an addition.

Digital-first

The prioritisation of accessing services via digital methods.

Digitalisation

More than digitisation, digitalisation is the use of digital technology to change processes – eg, using data to automate systems.

Digitisation

The conversion of analogue information into digital information – eg, e-books.

DWP official

A generic term to describe all DWP roles, including case managers, work coaches and decision makers.

Early Warning System (EWS)

CPAG's Early Warning System collates case studies and evidence from frontline advisers and members of the public to demonstrate the impact of changes in the social security system.

Easements

The DWP temporarily reduced or removed a number of evidence checks in order to process the increased number of claims made during the initial month of the Covid-19 pandemic. The DWP called the easements the 'Trust and Protect' regime.

Effective date

The date from which a decision should be changed.

³³⁶ Cabinet Office, *Government Digital Strategy: December 2013*, available at [gov.uk/government/publications/government-digital-strategy/government-digital-strategy](https://www.gov.uk/government/publications/government-digital-strategy/government-digital-strategy)

European Economic Area (EEA)

Covers all European Union states plus Iceland, Liechtenstein and Norway. European Economic Area nationals have free movement within these and all European Union member states.

Fetters discretion

When a public body has discretion in legislation, but it does not exercise the discretion properly in individual cases and applies over-rigid policies.

Finality of decisions

When a social security decision is made, it cannot be changed unless there are grounds to change it (by revision or supersession).

Gatekeeping

The control of access.

Grace period (benefit cap)

A period of nine months when a claimant will not be affected by the benefit cap if they have claimed universal credit after stopping employment or their earnings have reduced, but their previous earnings for each of the previous 12 months were above a set amount.

Habitual residence test

In order to meet the qualifying conditions for universal credit, a person must be both present in Great Britain and 'habitually resident' (meaning the UK is your main home and you intend to keep living there), which includes having a 'right to reside' in the common travel area.

Habitually resident

Someone who has a settled intention to stay in the UK, and who has usually been living here for a period, which includes having a right to reside.

Help to Claim

The government-funded Citizens Advice and Citizens Advice Scotland service to provide support to new universal credit claimants from the online application through to the first full payment.

Initial evidence interview (IEI)

Initial evidence interviews are to gather information to confirm the identity and circumstances disclosed as part of a universal credit claim and any additional information required to calculate the correct award. Initial evidence interviews can include standard identity and evidence interviews, biographical identity interviews and initial gateway interviews for self-employed claimants. A claimant commitment interview is not an initial evidence interview.

Judicial review

A way of challenging the lawfulness of government decisions. The three main grounds for judicial review are illegality, procedural unfairness and irrationality.

Legacy benefits

The benefits that are being replaced by universal credit: income support, income-based jobseeker's allowance, income-related employment and support allowance, housing benefit, child tax credit and working tax credit.

Limited capability for work (LCW) element

An extra amount of universal credit paid to some people who are ill or disabled and who are not expected to work.

Limited capability for work-related activity (LCWRA) element

An extra amount of universal credit paid to people who are too ill to prepare for work or who have a severe disability.

Local housing allowance (LHA)

The maximum amount of universal credit or housing benefit that someone can get to help them pay private rent. The allowance varies based on household size, circumstances and location.

Machine learning

Machine learning is a form of artificial intelligence which uses data and algorithms to make predictions and classifications while improving its own performance and accuracy.

Managed migration

The term used by the DWP for the official process of transferring legacy benefit claimants to universal credit. The DWP writes to a legacy benefit claimant and tells them that their legacy benefit is ending and that they need to make a claim for universal credit instead.

Mandatory reconsideration (MR)

The requirement to have a decision looked at again by the DWP before an appeal can be made.

Maximum amount

The amount of universal credit that someone is eligible for based on their household circumstances before income is taken into account.

Means-tested benefits

A benefit that is only paid if someone's income and capital are low enough.

Mechanism

A process or procedure.

Natural migration

The term used to describe the situation in which someone transfers to universal credit having decided to make a claim for it outside of the official managed migration process, usually following a change of circumstances for which it is not possible to get the old means-tested benefits.

'New-style' employment and support allowance (ESA)

A contributory form of employment and support allowance for those claiming under the universal credit system.

'New-style' jobseeker's allowance (JSA)

A contributory form of jobseeker's allowance for those claiming under the universal credit system.

Official error

An error by a benefit official, such as getting the law wrong or ignoring relevant information. Not every decision that you disagree with counts as official error – eg, if a decision maker takes a different but reasonable opinion on the evidence available.

Overpayment

When an amount of benefit is paid that is more than a person's entitlement.

Payment statement

A breakdown of how a universal credit award has been calculated for an assessment period and details of how to challenge the calculation.

Pre-action protocol letter

Also known as a 'letter before claim', it is a letter (usually in a standard format) to a public body outlining the issue, the legal grounds for a dispute, what the claimant expects the public body to do about it, and that the claimant intends to bring judicial review proceedings if the issue is not resolved. The pre-action protocol letter is an opportunity to avoid judicial review court proceedings.

Pre-settled status

Limited leave to remain granted under the European Union Settlement Scheme to European Economic Area nationals, their family members and those with derivative residence rights who have lived in the UK for less than five years.

Procedural fairness

Whether a public body follows the correct and fair procedures when making a decision, and treats the person subject to the decision fairly. For example, a person who is the subject of a decision must know the case against them in order to challenge it. A lack of procedural fairness is a ground for judicial review.

Procedural requirements

The procedures a claimant must comply with in order to have entitlement to universal credit – eg, the requirement to make a claim.

Procedural rights

The right a claimant has to access certain procedures, such as the right to challenge a decision in front of an independent adjudicator. By comparison, a substantive right is based on the conditions of entitlement in the legislation – eg, to be provided with the difference between your assessed income and your maximum amount of universal credit provided you meet the basic conditions of entitlement.

Qualifying young person

A dependent young person aged 16 to 19 in full-time, non-advanced education who can still be included in their parent's or guardian's benefit claim in the same way as a child would be.

Real-time information (RTI)

A system where employers send HM Revenue and Customs information about employees' earnings every time they are paid, which is then used by the DWP to adjust universal credit awards.

Refusal

When a person makes a claim for a benefit and they do not meet the conditions of entitlement, so no award of benefit is made.

Relevant benefit

The benefits listed in Chapter 2 of Part 1 of the Social Security Act 1998, which includes universal credit, child benefit, carer's allowance and personal independence payment.

Relevant period

A three-month waiting period before universal credit claimants who are found to have limited capability for work-related activity (LCWRA) for the first time can have the LCWRA element included in their universal credit award.

Reverification

The retrospective verification of awards made during the initial months of the Covid-19 pandemic when the DWP temporarily reduced or removed a number of evidence checks in order to process the increased number of claims.

Revision / revise

A statutory method that allows benefit decisions to be changed, effective from the date of the original decision.

Rights-based system

Where entitlement to benefit of a specified amount is conferred on everyone who meets certain defined conditions and that is enforceable in law.

Right to reside

A residence requirement, mainly affecting European Economic Area nationals, which must be satisfied in order to claim certain benefits. The right to reside depends on someone's nationality, immigration status and whether they have rights under European Union law.

Rightsnet

A service providing updates on social welfare law, online tools and peer-to-peer casework support for advisers via discussion forums.

Settled status

Defined in immigration law as being ordinarily resident in the UK without any restrictions. Generally used to refer to those with indefinite leave granted under the European Union Settlement Scheme.

Severe disability premium (SDP)

An extra amount in old means-tested benefits for someone who gets certain disability benefits, lives alone (or counts as living alone), and for whom no one gets carer's allowance.

Social Security Advisory Committee (SSAC)

An independent statutory body that provides impartial advice on social security and related matters including scrutinising secondary legislation.

Specific grounds revision (or any time revision)

The DWP can change a decision if specific grounds apply, such as if there has been an official error or there was a mistake or ignorance of facts when making a decision. There is no time limit for requesting an any time or specific grounds revision.

Spotlight on...

A form of DWP operational guidance which is not made publicly available unless requested via a freedom of information (FOI) request.

Subject access request

Making a request to a public body for the records it holds about the individual making the request.

Substantive rights

The rights a claimant has based on the conditions of entitlement in the legislation – eg, the right to be provided with the difference between your assessed income and your maximum amount of universal credit, provided you meet the basic conditions of entitlement. By comparison, an example of a procedural right is the right to be able to challenge a decision in front of an independent adjudicator.

Supersession / supersede

A statutory method which allows a benefit decision to be changed some time after it was made, usually as a result of a change in circumstances.

Suspension

The DWP may suspend the payment of benefit where a question has arisen about the claimant's entitlement to the benefit or a claimant has failed to respond to a request for information or evidence.

Tameside duty

The duty on a decision maker to make reasonable enquiries before making a decision, which arose from the judgment in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1976] UKHL 6.

Termination

A termination is a form of supersession. A benefit can be brought to an end when a claimant has failed to respond to a request for evidence or information by a certain (extendable) time limit, and the benefit has been suspended in full.

To-do

A page of the digital universal credit system requiring action by a claimant or DWP agent.

Transitional element

An additional amount of universal credit for people who are moved to universal credit under the managed migration process and whose universal credit award is lower than their previous benefits.

Transitional protection

A way of making sure that a person being transferred to universal credit under the official managed migration process from another benefit will not receive less money on universal credit than they did before.

Transitional SDP element

A payment to compensate people who had a severe disability premium in their old benefit and have transferred to universal credit by 'natural migration' and lost income as a result.

Trust and protect regime

The DWP's name for when it temporarily reduced or removed a number of evidence checks (easements) in order to process the increased number of claims made during the initial month of the Covid-19 pandemic.

Two-child limit

A restriction on the number of child elements included in universal credit for children born after April 2017. There are exceptions – eg, if a child is adopted or for multiple births.

Universal credit (UC) account

The online universal credit account which includes the journal, the to-do list and payment statements.

Universal credit (UC) journal

A chat function within the universal credit account which provides the main route of communication between claimants and work coaches and case managers. The journal is also a record-keeping function for when a claimant completes any to-dos.

Universal credit (UC) to-do list

A list of any to-dos (pages requiring action) which the DWP has asked claimants to complete.

Voluntary migration

The DWP's concept of when a claimant decides to claim universal credit at any time, not necessarily because of a change in their legacy benefits, outside of the formal managed migration process and without any transitional protection. Voluntary migration is a form of 'natural migration'.

Work allowance

The amount of earnings ignored before a person's universal credit award starts to be reduced. The amount depends on personal circumstances, and not everyone is entitled to a work allowance.

Work capability assessment (WCA)

An assessment of whether someone has limited capability for work / work-related activity.

Work coach

Someone employed by the DWP to draw up claimant commitments, update them and check that claimants are meeting their work-related requirements.

Work-related requirements

The activities that a person must undertake to continue to receive the full amount of universal credit. Requirements vary depending on a person's circumstances.

Abbreviations

AP – assessment period

CA – carer's allowance

CIS – customer information system

CTC – child tax credit

DLA – disability living allowance

DWP – Department for Work and Pensions

EEA – European Economic Area

ESA – employment and support allowance

EUSS – European Union Settlement Scheme

EWS – Early Warning System

LCW – limited capability for work

LCWRA – limited capability for work-related activity

LHA – local housing allowance

MA – maternity allowance

MR – mandatory reconsideration

PAYE – pay as you earn

PIP – personal independence payment

RTE – real-time earnings

RTI – real-time information

SDP – severe disability premium

FOI – freedom of information

HB – housing benefit

HMRC – HM Revenue and Customs

HRT – habitual residence test

IEI – initial evidence interview

IS – income support

JSA – jobseeker's allowance

LA – local authority

SAR – subject access request

SMP – statutory maternity payment

SSAC – Social Security Advisory Committee

SSWP – Secretary of State for Work and Pensions

TC – tax credits

UC – universal credit

WCA – work capability assessment

WTC – working tax credit

Links to decisions and judgments

[AA v Leicester CC \[2009\] UKUT 86 \(AAC\)](#)

[AM v SSWP \(UC\) \[2022\] UKUT 242 \(AAC\)](#)

[GDC v SSWP \(UC\) \[2020\] UKUT 108 \(AAC\)](#)

[DS v SSWP \(PIP\) \[2016\] UKUT 538 \(AAC\), reported as \[2017\] AACR 19](#)

[R \(CJ\) and SG v SSWP \(ESA\) \[2017\] UKUT 324 \(AAC\), reported as \[2018\] AACR 5](#)

[R \(Johnson and others\) v Secretary of State for Work and Pensions \[2020\] EWCA Civ 778](#)

[R \(TD and Reynolds\) v SSWP \[2020\] EWCA Civ 618](#)

[PP v SSWP \(UC\) \[2020\] UKUT 109 \(AAC\)](#)

[MS v SSWP \(DLA and PIP\) \[2021\] UKUT 41 \(AAC\)](#)

[Moore and Others v SSWP \[2020\] EWHC 2827 \(Admin\)](#)

[R\(IB\) 2/04](#)

[R\(IB\) 4/02](#)

[SK v HMRC and SSWP \[2022\] UKUT 10 \(AAC\)](#)

[SSWP v SC \(SF\) \[2013\] UKUT 607 \(AAC\)](#)

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