



DEMANDS TO REPAY:

THE IMPACT AND LEGALITY OF THE DWP'S REVERIFICATION OF UC CLAIMS

June 2022

Summary

At the start of the pandemic, the Department for Work and Pensions (DWP) relaxed some evidence checks for people making a universal credit (UC) claim to provide quicker access to benefits. In January 2021, the DWP began reverifying the details of claims made while evidence checks were eased. This has resulted in some claimants being asked to pay back the entirety of their UC award. More than a year after the exercise started, we continue to hear from people who have had their UC payments stopped, who have received demands to repay all the UC they received, and who are unable to understand or challenge the DWP's decision.

The experiences of people who have been subjected to the DWP's reverification process raise serious concerns:

- Some claimants have been asked to repay all the UC income they received during their claim, including those we assess to be (or have been) entitled to what they received.
- The evidence indicates that the DWP's approach to retrospectively deciding that a claimant was not entitled to UC and proceeding to recover that UC income is unlawful.
- The way that the DWP has attempted to reverify claims has made it difficult for claimants to provide the required evidence, particularly those with complex needs and those with limited digital literacy.
- The DWP requests evidence from claimants to verify their eligibility for UC via the online journal, even from claimants who are no longer in receipt of UC and no longer need to check their journal.
- Some claimants only became aware that there was an issue with their UC claim when they received a letter from DWP Debt Management saying they owed thousands of pounds, months after the DWP decided to revise their benefit award. These claimants cannot therefore challenge the DWP's decision before the one-month deadline.¹ They can make a challenge after this point if they have a 'good reason' for the delay, but few claimants know about this and the DWP does not reliably accept late applications.

¹ The standard deadline for requesting a mandatory reconsideration (the process through which claimants can challenge a decision made by the DWP) is one month.

- Claimants who challenge or appeal the DWP's decision may make repayments of amounts they should not owe, or receive demands from third party debt recovery agencies while waiting for the decision to be overturned. The mandatory reconsideration (MR) process, through which claimants can challenge a decision made by the DWP, can take many months. The issue may not be resolved for over a year if the challenge progresses to a tribunal appeal.
- Claimants are not provided with adequate information to understand why the DWP decided their UC award was an overpayment, and how they can challenge this.
- The design features of the online UC journal make it harder for claimants to access the information they need, and to challenge the DWP's decision.

Last month, as part of its efforts to tackle fraud, the DWP announced that it would establish a team of 2,000 staff who will review 2 million UC claims over the next five years, including those made during the pandemic. **In light of the evidence above it is essential that the DWP addresses the issues with its reverification process before proceeding with any further case reviews.** Specifically, we recommend that the DWP:

- Pause the recovery of UC overpayments while a decision is subject to a challenge (as is the case with other benefits).
- Take decisions affecting claimants' entitlement in accordance with the law by following correct suspension and termination procedures, and by ensuring decision-makers are aware that a single missed deadline by a claimant is not a sufficient reason to change original entitlement decisions, without considering other evidence held by the DWP.
- Provide claimants with comprehensive information about the reason for a decision and overpayment issues.
- Communicate requests for evidence and information which could affect a claimant's entitlement by physical letter, in addition to existing methods. This is particularly important when contacting claimants who are no longer receiving UC.
- Urgently improve the MR process by making it possible to request an MR via a closed digital UC account, and reducing the time claimants wait for the outcome.

About Child Poverty Action Group and our evidence

Child Poverty Action Group 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.

This briefing draws on and includes evidence from our Early Warning System – a database of case studies submitted by frontline workers highlighting some of the challenges facing families in poverty who receive support from the social security system. It also draws on insights from our Access to Justice and Digitalisation in Universal Credit research project, which investigates the extent to which UC upholds rule of law principles such as accessibility and transparency.

Introduction

At the start of the pandemic, the DWP relaxed some evidence checks for people making a UC claim to provide quicker access to benefits. This was known as the 'Trust and Protect' scheme. The easements included replacing face-to-face identity verification checks with telephone calls, and using automated technology to validate claimant information. The DWP states that it told claimants they would need to provide further evidence in the future.

In January 2021, the DWP began reverifying the details of some claims made while evidence checks were eased.² The reverification exercise is ongoing and, in some cases, has resulted in claimants being asked to pay back the entirety of their UC award.

This briefing outlines how the reverification process works and raises a number of concerns based on evidence from those who have been subject to it. These are:

- Claimants did not realise that the DWP had asked them to provide evidence.
- Claimants have been unable to provide the requested evidence due to digital access barriers.
- Claimants have faced significant barriers and delays when trying to challenge the DWP's decision to revise their UC award.
- Claimants have not been provided with adequate information to understand and challenge decisions.
- Aspects of the DWP's approach to the reverification process appear to be unlawful.

Claimants did not realise that the DWP had asked them to provide evidence

Claimants who were subject to the reverification process were asked to provide evidence of their identity. Some were also asked to provide evidence of housing costs or children in their household. The DWP's policy was to contact these claimants via their online UC journal and/or by telephone a minimum of three times, accompanied by a text or email prompting them to check their journal.

A man who cannot read or write well claimed UC in March 2020. In November 2021 he attended a telephone interview to reverify his ID at the DWP's request, after which he thought the matter was resolved. Days later a 'to do' was posted on his online UC account, which the man did not notice, asking him to upload ID evidence. A month later his UC award was terminated and an overpayment letter issued. The man also receives new-style employment and support allowance (ESA). It is not clear why the man's identity needed to be reverified for his UC claim when it would have already been verified for his ESA claim.

A number of people weren't receiving any UC by the time the DWP contacted them for evidence, often because they had moved into full-time paid work. This group no longer had reason to check their UC journal. They may have received a text or email saying there was a new message in their journal, but it did not state what the message was about. The DWP did not post physical letters to claimants who failed to respond to journal messages or phone calls/text messages before closing their online accounts and issuing overpayment decisions.

² DWP permanent secretary Peter Schofield's [letter to the Chair of the Public Accounts Committee](#) on 13 May 2021.

A man claimed UC in May 2020 when he had to stop work due to lockdowns. He stopped claiming in June 2021 when he returned to work. The DWP called the man in September 2021 to verify his identity, but the man did not respond as he was in work and no longer claiming UC (the call would have come from a withheld number so he was not aware at the time that it was the DWP calling). The man subsequently received a letter saying that he had to repay the entirety of his award (£7,869), which he cannot afford to do. He has written to the DWP about the matter, but its response merely reiterated the amount of his overpayment, and prior to obtaining advice he thought there was no way to appeal the decision.

The DWP's approach of alerting people by text or email to check their UC journal relied on having up-to-date contact details. Claimants whose phone numbers changed after they made a UC claim would not have received a notification unless they successfully updated the DWP with their new details. Those who were no longer receiving UC would have had no reason to provide the DWP with updated contact details.

Claimants have been unable to provide the requested evidence due to digital access barriers

Often claimants were told to provide evidence that would have required access to a good quality camera and a certain level of digital skills (eg, a standard request was to upload a picture of themselves holding a picture of a photographic ID). Some claimants would have been unable to provide evidence to the DWP in the format requested and by the time limits specified due to digital access barriers.

A man started claiming UC in May 2020, during the pandemic. With the help of welfare rights advisers, he posted a message on his online UC journal saying he was unable to maintain a digital claim. In February 2022, the man was asked via his journal to supply evidence of his identity and in March he received a message that his UC had been suspended due to failure to supply the evidence requested. Four weeks later his UC award was ended and his journal frozen. A message said that all the UC he received between May 2020 and February 2022 had been an overpayment. Each of the messages were communicated via the online journal, despite the note stating that the man could not manage a digital claim, and he was not able to respond.

Claimants have faced significant barriers and delays when trying to challenge the DWP decision to revise their UC award

Claimants who failed to provide the evidence by the deadline were notified via their journal that their 'claim had been closed', and that they would need to repay the entirety of their UC awards. For many claimants, this amounted to thousands of pounds.

A man who cannot read was supported by family members to claim UC during the pandemic. In December 2021 he was called by the DWP to verify his identity, and subsequently asked for further evidence to be uploaded to his UC journal within two weeks. The man received reminders through his journal during this period, which he did not see as he had no one to help him manage the claim. His UC award was ended in January and the man received a letter stating that the entirety of his UC award had been an overpayment (amounting to £8,000). The man has fallen into high rent arrears.

For claimants who did not see decisions posted to their online UC journal, the first notification they received was a physical letter from DWP Debt Management saying they owed thousands of pounds, without explaining why the debt had occurred or providing adequate information on how to challenge it.

Claimants can challenge an overpayment decision by applying for an MR within one month of the decision being made. This deadline can be extended by up to 12 months if the claimant can justify the delay. We have seen evidence that DWP officials refused to accept late MR applications, even when the reason for the delay was that claimants only became aware of the overpayment after receiving a letter in the post from DWP Debt Management.

Even if an MR application is accepted, overpayments continue to be recovered while the application is processed, which can take several months. This means that some claimants are paying back money they do not owe while they wait for the decision to be overturned. Sometimes they will be repaying via deductions from UC, if they have been able to reclaim after their award was terminated. Sometimes they will be repaying directly out of their wages. Others continue to receive letters from third party debt collection agencies while they are waiting for an MR to be carried out.

A lone parent had her UC claim closed by the DWP in June 2021, when her child was just three months old, and her entitlement was retrospectively revised from March 2020. This generated an UC overpayment exceeding £14,700. An MR was submitted in November 2021, but five months later a decision had still not been made.

Claimants have not been given adequate information to understand and challenge decisions

At multiple points in the process, claimants are not provided with enough detail about the reason for the decision and how it can be challenged. For example:

- The DWP refers to both the terminations of awards and the revision of entitlement decisions as 'claim closure'. While the DWP is not required to specify what type of decision has been made, or the grounds for it, the failure to do so makes it harder for claimants and those supporting them to understand if the decision is correct and lawful.³ Not using the language of the statutory decision-making framework makes it harder for the DWP decision-makers to apply the law correctly, making it more likely that decisions will be wrong.
- **Overpayment decision letters** are delivered to claimants as links to a PDF document in their online UC journal. The letters do not include enough detail about the reason for the overpayment, and how it was calculated, to identify and challenge potential errors. The explanation for an overpayment can be as brief as 'because of failure to provide ID'.
- Debt recovery **letters from DWP Debt Management** do not explain why the debt occurred or provide adequate details on how the decision can be challenged. Both the letters from DWP Debt Management and the original decision letters posted to UC journals only provide the postal address for DWP Debt Management, rather than the UC freepost address. This is particularly important for claimants who cannot communicate via their 'frozen' UC journal to make a written MR request and supply the requested evidence.

³ R(IB) 2/04

- If a claimant calls the **Debt Management phone line** and presses the option to say they disagree with an overpayment decision, an automated message explains that Debt Management cannot explain how the overpayment occurred. It says that people seeking to challenge the decision should visit the gov.uk website. It does not reroute the caller to the relevant benefit department.

The design of UC's online system can make it even harder for claimants to access information about their claim and challenge a decision. When a claimant's award is terminated or revised to remove entitlement, their online journal is frozen. This prevents the claimant from disputing a decision there, forcing them to raise a dispute by phone or letter, or by making a new UC claim and requesting an MR in their new journal. However, if someone makes a new claim for UC, their journal is overwritten and claimants lose information about their previous claim, including decision letters and records of communication relevant to the dispute.

Aspects of the reverification process are unlawful

The DWP is entitled to request evidence and information from any person *currently* entitled to UC, to check whether their UC award is correct.⁴

If the DWP intends to terminate a UC award due to a failure by a current claimant to provide requested evidence, legislation requires the DWP to notify the claimant of exactly what evidence is needed and give them 14 days to provide it. The DWP also must let claimants know they can request more time to provide the evidence if needed.⁵ If the evidence is not provided by the deadline, the DWP can suspend future UC payments.⁶

One month after the suspension, if the claimant hasn't provided the requested evidence, and hasn't explained why they can't or asked for an extension, the DWP can terminate their UC award. Unless entitlement ceases on an earlier date for some reason other than the claimant's failure to provide the requested evidence, their UC can only be terminated from the date of suspension and no earlier.⁷ A claimant should never be overpaid and in debt to the DWP because of their benefit being suspended and terminated under this process.

This process only applies to claimants who are entitled to UC at the time the request for information or evidence is made. It is not clear what legal power the DWP has to request evidence from former claimants who are no longer receiving UC.

The DWP can only revise a decision to award UC more than a month after the original decision if it was an 'official error', or because the decision was made in ignorance of, or based on a mistake about, a primary material fact.⁸ Once an award is in place, and in the absence of a request from the claimant for a decision to be revised, the

⁴ Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Claims and Payments) Regulations 2013/380, regulation 38

⁵ Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Decision and Appeals) Regulations 2013/381, regulation 45

⁶ Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Decision and Appeals) Regulations 2013/381, regulation 45. It is also possible for the DWP to suspend UC payments at the same time as the evidence request is made (Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Decision and Appeals) Regulations 2013/381, regulation 44)

⁷ Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Decision and Appeals) Regulations 2013/381, regulation 47

⁸ Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment Support Allowance (Decision and Appeals) Regulations 2013/381, No.9

burden of proof is on the DWP to demonstrate that the claimant was not entitled in order to revise their decision and remove entitlement.

Our evidence shows the DWP has revised entitlement decisions of claimants who failed to provide a satisfactory response to a request for evidence, and pursued repayment of entire awards. We have seen multiple decision notices which state that an overpayment has been raised because of a failure to provide evidence by the deadline.

A man with learning disabilities and mental health conditions claimed UC from March 2020 to March 2021. In April 2021 he found work, which he notified to the DWP, and his UC payments stopped. The man verified his identity with the DWP at the start of his claim by providing his passport and driving licence via the Post Office while the 'Trust and Protect' protocol was in place. In July 2021 he received a letter from the DWP stating that his UC had been overpaid as he failed to attend appointments to verify his ID. The man's mother, who is his appointee, contacted the DWP to inform them that the ID had been provided and she was told to request an MR. The MR was turned down and the man and his mother are still not aware of what ID is needed. The overpayment debt has been referred to a third party debt collection agency.

If the proper statutory process of notifying requests for evidence and suspending an award has been followed by the DWP, a failure to provide evidence before the deadline is sufficient grounds to *prospectively* terminate an award. By itself, it is not a sufficient ground to revise a previous UC entitlement decision and pursue repayment of all the money paid during the award. The approach to decision-making in the reverification exercise appears to be unlawful as, in the cases we've seen, DWP decision-makers haven't demonstrated the original entitlement decisions were based on a mistake about a primary material fact. In other cases, we have seen claimants who provided the evidence requested but it wasn't acknowledged by the DWP, and claimants who explained why they couldn't provide certain evidence who were ignored.

Recommendations for the DWP

Last month, as part of its efforts to tackle fraud, the DWP announced that it would establish a team of 2,000 staff who will review 2 million UC claims over the next five years, including those made during the pandemic. In light of the evidence presented in this briefing, it is essential that the DWP addresses the issues with its reverification process before proceeding with any further case reviews. The DWP must:

- **At a minimum, identify potential overpayments in accordance with the law**, and in a way that preserves claimants' ability to understand and challenge decisions made about their benefit award.
- **Contact claimants in a variety of different ways.** Physical letters must be sent, both with requests for information (particularly where UC is no longer in payment and claimants are no longer checking their journals), and with information on the decision which has resulted in an award ending. Improvements could also be made to existing forms of communication (for example, text messages asking claimants to check their journal could mention the subject of the correspondence rather than a generic message without further details).
- **Urgently improve the mandatory reconsideration process.** The MR process is laden with issues that need to be reviewed and addressed, including:
 - the failure to recognise or accept requests for an MR;
 - the overly narrow interpretation of the circumstances in which MR applications are accepted after the one-month deadline;
 - the timeframes for processing an MR;

- 'resolution' of MR requests which have been accepted without issuing an appealable decision;
- the ways that existing and former claimants can submit an MR; and
- the information provided to claimants about submitting an MR and their appeal rights.
- **Pause the recovery of overpayments while an MR or appeal is pending.** UC is the only benefit that has this unfair policy. The recovery of all other benefits is suspended while an in-time MR or appeal is pending.⁹
- **Improve the quality of the information provided to claimants** from UC and DWP Debt Management about the reason for overpayments, the calculation and the dispute process.
- **Reconsider the practice of freezing UC journals after awards have ended, and the overwriting of journals after new claims are made.** If the DWP is unwilling to stop freezing journals, it should contact claimants beforehand in multiple ways (including physical letters), keep journals live for a period after awards have ended, and create a 'request mandatory reconsideration' function for frozen journals. All records of decision-making and communication should remain available for claimants once a new claim has been made (as is currently already available for previous job applications.)

Acknowledgements

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Thank you to everyone who has contributed to our Early Warning System – to every adviser who has submitted a case and to rightsnet which hosts invaluable benefit forums for advisers.

⁹ Department for Work and Pensions, [Benefit overpayment recovery guide](#), 2022, paragraphs 4.2-4.13