

CPAG's early warning system – report on universal credit top issues

CPAG's early warning system collects reports from welfare rights and other frontline advisers around the country about the impact of social security reform and issues arising with the benefits system.

Advisers select and submit cases which they think are of particular note, which illustrate their most serious concerns or which they believe merit a policy response. The early warning system is not limited to issues related to universal credit, but this has turned out to be by far the largest area of concern. The early warning system has received around 400 cases since 2017 relating to Universal Credit.

The top UC issues reported to the early warning system so far are the following:

1. Administrative error (122 cases)
2. Problems with housing costs (55 cases)
3. Difficulties establishing and maintaining a claim (37 cases)
4. Migration issues (34 cases)
5. Delays (30 cases)
6. Issues with the award of disability-related elements (28 cases)
7. Communications with the DWP and processing of evidence (23 cases)
8. Issues with appeals and mandatory reconsiderations (20 cases)

These eight issues have all received over 20 reports so far and are discussed in detail below. As will be seen in the examples below, some cases touch on multiple issues. These are all cases submitted by advisers and people working with families, because they have been concerned or found them difficult to resolve. We believe that where we are seeing multiple similar cases, it is likely that this is a sign of a systemic problem which many other claimants will be facing.

The cases we receive are not restricted to a single jobcentre or local authority. We have cases from (among others): Aylesbury, Ayrshire, Barnsley, Basingstoke, Bath, Birmingham, Bournemouth, Brighton & Hove, Bristol, Bury, Canterbury, Cardiff, Cheltenham, Cheshire, Colchester, Cornwall, County Durham, Croydon, Cumbria, Derbyshire, Dudley, Flintshire, Gateshead, Halifax, Hastings, Hertford, Lancashire, Leeds, Leicestershire, London, Manchester, Newcastle, Northumberland, Nottingham, Oxfordshire, Peterborough, Portsmouth, Salford, Scarborough, Solihull, Southampton, Staffordshire, Stockport, Suffolk, Swansea, Warrington and Wolverhampton.

1. Administrative error (122 cases)

This is by far the biggest category of submissions to the Early Warning System. Issues range across the misapplication of the law in a decision, mishandling or loss of evidence by the DWP, and misinformation given to claimants. Notably a full 37% of our UC cases feature an element of administrative error. These cover a wide range of issues including: wrong advice about which benefits should be claimed in live and full service areas and who is entitled to Universal Credit, including confusion about entitlement to contributory benefits, and failure to include elements in claims for children or limited capability for work/work-related activity.

Transition from Employment and Support Allowance to UC

A disabled woman in Somerset was claiming Employment and Support Allowance and had been placed in the 'support group' following a work capability assessment. This means that she was not required to look for work or undertake any work-related activity, because of the severity of her disability.

In January 2018, her housing situation changed and she needed to claim help with housing costs. This triggered a move from her existing benefits on to UC. When moving from ESA on to UC, people in the ESA support group should be automatically awarded an extra element of UC (the 'limited capability for work-related activity element') and should not be required to undertake any work-related activity. However this did not happen and the claimant was refused this element.

We have received several similar cases, which result in people missing out on money which they are legally entitled to, and in some cases being asked to undertake inappropriate work-related activities which they may be unable to do due to their disability (see also below).

Missing child elements

A claimant's child element was missed from her entitlement for four months despite her providing evidence on four separate occasions, leading to extreme poverty, selling her jewellery to survive, and weight loss. The claimant also suffered increased bedroom tax as she was seen as having two spare rooms rather than one.

A young woman who became responsible for her sister (aged 8) did not have a child element added to her claim for eleven months. She was sanctioned for work search failure despite being a kinship carer, and refused a hardship payment.

Terminally ill client not offered special rules

Special rules exist for terminally ill people expected to live less than six months, to fast-track their claims for benefits and to allow certain health-related payments to be paid at the highest rate available without needing a further assessment. A case submitted to our early warning system concerned a terminally ill woman who applied for UC and was incorrectly told that there was no special rules provision under UC. She was therefore asked to provide evidence that she could not carry out work-related activities before she could receive the extra payments due to her and have her work-related requirements lifted.

A DWP visiting officer (responsible for checking that people's benefit payments are correct) again told her that special rules did not exist under UC. Fortunately the officer realised this error when a form she was completing revealed that special rules needed to be considered.

CPAG has also heard other cases of terminally ill clients being treated inappropriately, for example delays in processing forms giving evidence of terminal illness (see below under 'delays'), claimants being called for inappropriate medical assessments or claimants who do not know they are terminally ill (who are supported by representatives) being telephoned by the DWP inappropriately.

1. Problems with housing costs (55 cases)

This category includes:

- Failure to pay housing costs altogether, because for example tenancy agreements are lost, tenants without standard tenancy agreements (with licenses instead) being refused housing costs.
- Wrong calculations of housing costs, for example misapplication of the shared room rate to care leavers aged under 22 years old, failure to recognise exemptions from housing costs contributions from tenants or non-dependants, or the decision to only pay 50% of rent in cases where one tenant has left or is ineligible for help with rent.
- Claimants not being paid full housing costs where they have moved house during the month.

Single mother of a child with cancer only paid 50% of rent

A single mother lives in a council home with two young children, the elder of whom – a boy aged nine – has cancer which is being treated with chemotherapy. This severely lowers his immune system and he is receiving disability living allowance (DLA) due to his care needs. Last year the claimant separated from her husband because he was no longer supporting the family or helping with her son's care. As she was caring for her son she was unable to work, and so claimed Universal Credit (in July 2017). She was accepted as single for the purposes of her claim, however she was only awarded housing element for half the rent even though she was liable for the full amount, because her husband's name was still on the tenancy. Rent arrears accrued and the local authority started possession action. She was only able to prevent eviction by using her son's DLA award. This meant that she was unable to use the money to cover his needs, causing her to become increasingly depressed.

The claimant posted several entries on her journal asking why the other half of the rent was not covered. On each occasion the reply was that this was not possible because she had a joint tenancy, and that she needed to change her tenancy into her name only. No information was given about how she might challenge this decision, or the possibility of obtaining discretionary housing payments. This is in spite of the fact that specific provision does exist in the Universal Credit regulations for her rent to be covered in full given her circumstances.

In April 2018 Citizens Advice supported her to request a mandatory reconsideration. Universal Credit responded by requesting proof that her husband had left, and again asked for the tenancy to be put into her name only. However this was impossible: her husband had refused to cooperate in providing any evidence, and legally when a joint tenant a rented property leaves there is no obligation on the landlord to create a new tenancy. The claimant would have had to apply to the courts to create a new tenancy, a procedure which could take months.

With the support of Citizens Advice the claimant was able to respond making these points and eventually made a complaint. In mid-June 2018 the decision was changed in her favour, allowing her to receive full rent payment. However it took ten months, a great deal of stress for a family in very difficult circumstances, and access to expert independent advice to achieve this. Were it not for being able to divert her son's DLA to make rent payments, this family could have been evicted.

Single father only paid 50% of rent after his wife moved out

A single father lives with his teenage son in a two bedroom council flat. He has claimed UC since 2017. Several years ago the client's wife moved abroad and she has no intention of returning to the UK. The man's tenancy officer refuses to remove the wife from her tenancy agreement without her consent, although he is aware that she is abroad and unlikely to return, nor will she give consent for this. Because of this, the claimant has received only half of his entitlement to housing costs and has slipped into rent arrears during his claim for UC.

Torture victim left without housing support

A female claimant, who was a victim of torture, moved into temporary accommodation during her universal credit claim. At the end of the assessment period in which she moved, she was found not to be entitled to any

housing costs from UC from the start of the assessment period, because temporary accommodation is exempted from UC and instead paid through Housing Benefit, but UC will only pay on the basis of which accommodation the claimant is living in *on the last day of their assessment period*. Housing benefit would only pay for the period after she moved into temporary accommodation, leaving a substantial period in which this highly vulnerable client was entitled to no help with housing costs. This is an in-built problem with the design of universal credit, as claimants are only eligible for housing costs relating to their circumstance on the last day of their assessment period, regardless of actual rents incurred during the month.

Non-dependant deductions misapplied

An adviser has told us that she is advising at least five claimants who receive PIP for Daily Living but are repeatedly – incorrectly – having deductions for non-dependants taken from their housing costs despite repeatedly informing UC of their PIP award. According to this adviser when she, or the claimants themselves, first raise this via the journal, they are often told by the work coach that they are incorrect, showing a gap in understanding around these rules. We understand that the UC system does not permit the PIP award to be logged so that deductions are stopped on an ongoing basis; rather they have to be manually stopped each month. This can mean claimants having to ask or remind their work coach every single month, or seeing their deductions return out of the blue after having already proven that they are exempt. Several advisers who have contacted us are very worried about this.

Housing costs not backdated for a vulnerable man with learning difficulties

A man with a severe learning disability was helped to claim UC at a London jobcentre. Because he had received help with the rent through Housing Benefit in the past, he ticked “no” when asked about liability for rent. This omission was only highlighted weeks later when his landlord asked for direct rent payments from UC due to rent arrears, and was told that no housing costs were in payment.

The man was subsequently moved to temporary accommodation because his home was taken over by drug dealers, and he successfully claimed Housing Benefit for the new accommodation. He was not paid housing costs for the days from the beginning of the UC assessment period in which he moved, to the actual date on which he moved to temporary accommodation, and now faces possession proceedings concerning rent arrears on the original property.

Since this case, and others like it, the DWP has changed the wording on the UC claim form to avoid the confusion which led to no housing costs being paid. However it seems that people left with arrears as a result of this confusion before the form was changed are not always able to have their housing element backdated. In CPAG’s view the award of housing costs ought to be treated as a revision not a supersession in such circumstances.

2. Difficulties establishing and maintaining a claim (37 cases)

These examples predominantly concern people who are unable to make a claim because they have no computer access or lack the necessary digital skills. Some then encounter further problems in maintaining their claim via the online journal.

It has been reported that DWP staff are in some cases instructing people to rely on support from voluntary organisations such as CAB in order to make and manage their claims online, rather than assisting them to manage their claim in other ways. While voluntary services may step in to help people make their initial claims, this is clearly not a long-term solution for people to manage their claims on an ongoing basis, given the heavy demands on local services such as CABs and limited slots in public libraries.

We have also heard about notable numbers of clients having difficulty making new-style ESA claims in full service jobcentre areas, and clients wrongly told to claim UC in circumstances where no claim was required.

Woman with mental health difficulties told to use CAB computers

A woman living in East Anglia suffers with severe phobias meaning that she finds leaving the house difficult. She also has a learning disability and is not computer-literate. After several attempts she was given a telephone claim number for UC, but after a twenty minute wait on the line was told she would have to claim online at the CAB office who were supporting her phone call. DWP staff recommended that future communication with her work coach be done using CAB computers although there was no agreement between the CAB and DWP that this CAB would provide such a service, and no guarantee that CAB would have a computer available.

People with difficulty using computers

A single mother in London, with learning disabilities and no computer access, received no UC for four months because of difficulties arranging a home visit.

A part-time worker who was receiving UC in a live service area was asked to “engage with online claim” when her area went full service. She was unable to navigate the system and received no help from the jobcentre. As a result her UC stopped, with no payments for three months, leading to rent arrears of £2,000.

A couple in a full service area have no computer and receive little support to manage their claim. They are forced to rely on their 12-year-old son to manage their claim online. This is clearly an inappropriate level of responsibility for a child who may lack understanding of terms used, or the relevance of detail; not to mention that confidential financial or medical matters may need to be discussed.

3. Migration issues (34 cases)

The predominant issue arising here is clients whose permanent right to reside was accepted under legacy benefits but who have been refused UC on right to reside grounds, and are instead wrongly treated as jobseekers. This suggests that many UC decision makers are not fully aware of the range of circumstances by virtue of which a client can establish a right to reside.

European migrants with permanent right to reside being denied UC

An Italian national who had established a permanent right to reside (as a worker for over five years in the UK) was forced to claim UC when she was transferred to a new job after her business changed hands, but the new employer failed to offer her any employment because she objected to some work on religious grounds. Her claim for UC was refused on right to reside grounds in spite of her history providing a permanent right to reside. This decision was overturned on mandatory reconsideration but a similar disallowance decision was made immediately afterwards.

A lone parent who was born in Romania had established a permanent right to reside having worked in the UK for over five years from 2009. When she became a single parent she stopped work and claimed income support. When her daughter turned five she stopped claiming income support (and other legacy benefits) and claimed UC. The DWP treated her as a jobseeker for right to reside purposes and ignored her permanent right to reside status.

4. Delays (30 cases)

Delays in processing documents and responding to evidence, making decisions concerning entitlement, and making decisions to lift suspensions, have all resulted in claimants left without sufficient income for long periods. In some cases this has meant claimants turning to foodbanks. Some claimants affected are highly vulnerable, as the cases below show. There seems to be no good reason why these decisions should take so long.

Terminally ill claimants

A terminally ill cancer patient's claim for UC was delayed by 31 days after he submitted evidence that he was terminally ill (form DS1500) with the support of a hospital in London.

A terminally ill young man claimed UC but this did not go into payment for three months. UC repeatedly insisted he attend a medical, in spite of having provided a DS1500 form and evidence of cancer treatment.

Domestic abuse survivor

A claimant living in a women's refuge following domestic abuse had her UC suspended over suspicions that she was working. Even after supplying evidence to the contrary, the client was told she would have to wait a further eight weeks before a decision on the suspension could be lifted. In the first eight weeks of her UC claim she was paid only an advance of £100.

Delays organising work capability assessment

A man living in Derbyshire with physical health problems and severe depression waited almost a year for a work capability assessment. During this time he was subject to all work-related requirements despite providing medical certificates – which were lost – and evidence of receipt of Personal Independence Payment.

A claimant supplied medical certificates for six months while waiting for a work capability assessment. When the medical was scheduled this clashed with a job interview (one of her work-related requirements) so the claimant could not make the arranged time. No further appointment was then arranged.

5. Issues with the award of disability-related elements of UC (28 cases)

A recurring problem is the failure to include a limited capability for work (LCW) or limited capability for work-related activity (LCWRA) element in a claim for UC for people moving from Employment and Support Allowance (ESA), *who had already been assessed as entitled to the equivalent element in ESA*. These components are supposed to be automatically included in UC but we have seen several cases where this is not happening. Some clients are explicitly told that they cannot receive these elements until they have undergone a new work capability assessment for UC, which is incorrect.

For people claiming UC and needing a work capability assessment because they have not previously received ESA, there can be long delays (in the order of six months) before these assessments are arranged. This is true even where there is clear evidence of ill-health or disability, and means claimants miss out on additional payments and may be given inappropriate requirements to look for work while they await their assessment.

Missing elements for people transferring from ESA

A claimant in Manchester who had been in the support group on ESA claimed UC but was not paid the LCWRA element.

A claimant who had been in the work-related activity group for ESA made a claim for UC and the LCW element was not added to his claim until an adviser working on another issue noticed the omission.

A single housing association provided details of four tenants who had moved from ESA to UC and were not awarded their LCW or LCWRA elements. At least one was told by jobcentre staff that he would need a new work Capability Assessment.

A single parent with a baby, who has learning difficulties and a mental age of 12, was in the support group of ESA. When she claimed UC, no LCWRA element was included even though her social worker had accompanied her to her first meeting with her work coach and provided a DWP letter confirming her entitlement to ESA and the support component. It took a further two months and the intervention of a welfare rights advice worker for the LCWRA to be awarded. In the meantime she fell into substantial rent arrears and had to use foodbanks.

A refugee with significant health problems and two children was in the ESA support group. When he claimed UC, he had help from an advisor who noted on his journal that he was entitled to the LCWRA due to his prior ESA claim. However the LCWRA element was not included in his claim and his claimant commitment included a work search requirement. In response to further querying over the journal, a note was posted on his journal stating that *“UC benefit is different to ESA, until he goes to his work capability assessment, we will need to see him and he needs to provide fitnote”*. It was not until a complaint was lodged that LCWRA was finally included, three months after his claim was made.

Long wait to be referred for a work capability assessment

A vulnerable claimant from who lived in supported accommodation (because he required support to live independently) and who had an existing award of Personal Independence Payment had still not been referred for a work capability assessment after claiming UC for six months. During this time he was subject to all work-related requirements despite evidence of his PIP award and residence in supported accommodation, and incurred a sanction.

See two more examples in the ‘Delay’ case studies above. Many advisers who contact us have advised that it is common to see long waits for work capability assessments.

6. Communications with the DWP and processing of evidence (23 cases)

This area includes a variety of issues covering:

- Communications from DWP to claimants (e.g. inappropriate requests for evidence, inaccurate records of payments on journals);
- Responses to communications from claimants (e.g. failure to respond to messages on journals and over the helpline, evidence submitted not being taken into account, mandatory reconsideration requests being ignored);
- Communication between advisers and the DWP (e.g. difficulties faced when trying to intervene on behalf of clients); and
- Internal DWP communications (for example evidence submitted by claimants being sent to the wrong department).

Terminally ill clients have been asked to provide evidence of their condition when evidence (DS1500 form) has already been supplied in connection with their existing claim for personal independence payment. New evidence should not be required by UC and these requests create stress and administrative burdens for terminally ill people.

Advisers have reported difficulties intervening on behalf of vulnerable clients, often when discretion is required, for example if the client is terminally ill, following new rules in UC abandoning the previous system which allowed third parties such as welfare rights advisers to work on behalf of clients under ‘implicit consent’.

Housing costs evidence sent to the wrong DWP team

A client who sought advice at a foodbank in London had not been paid housing costs under UC for three months because the tenancy agreement she submitted as proof of her housing costs was sent to the wrong DWP team, leading to significant rent arrears. When arrears were subsequently paid, payments appeared on her online journal as if made on the dates which they *ought to have been paid* rather than making clear that an arrears payment had been made for several months' entitlement. This made it very difficult for this claimant to explain the cause of her arrears to a sceptical landlord.

Evidence on disability not being taken into account

A claimant is the carer for her husband who has severe mental illness. Despite alerting DWP to payment of Personal Independence Payment at a rate which exempts the household from housing costs deductions several times, housing costs deductions were taken by Universal Credit. This led to the claimant, who had never been in arrears while on legacy benefits, falling into arrears and being taken to court. Her adviser noted that a request for mandatory reconsideration on the journal concerning the housing costs contribution had been ignored.

Communications by claimant ignored

A claimant found that payment of his housing costs element stopped suddenly in March 2017, without explanation. He raised the issue twice on his journal, without response for fourteen days. He contacted the UC helpline and was twice told he would receive a call back but these were not received. Eventually he was forced to make a formal complaint and an advice agency helped to escalate and resolve the case.

A claimant in London noted on her journal that she had misquoted her housing costs in her claim, and attached confirmation from her landlord of the correct rent. The new rent was not applied until the following assessment period, creating an overpayment.

A Cantonese speaker was told to sign a claimant commitment or her UC would not be paid, despite saying that she did not understand the agreement (her English is poor and she has had no formal education). The jobcentre would not agree to use an interpreting service. She signed the commitment and was subsequently sanctioned four times for failures to meet all requirements; these were all eventually overturned on appeal.

A claimant with children had non-dependant deductions made from her housing costs in spite of her partner's PIP award. Her request for an MR via her journal was ignored. This caused substantial rent arrears and the threat of eviction.

Failure to offer a reasonable interview time

A single mother who works 30 hours a week claimed UC and was required to attend an interview at the jobcentre. The only slots offered were during working hours Monday to Friday and the woman's employer will not grant her time off. The jobcentre refused to offer any alternatives.

7. Issues with Appeals and Mandatory Reconsiderations (20 cases)

We have encountered many instances where the right of appeal is effectively refused, as job coaches have responded to requests for mandatory reconsideration - made by claimants over their journals - by telling the client that these requests must be made only by phone, or that a declaration has to be agreed before the request can be considered. We have also seen incorrect assertions that some decisions (e.g. on housing costs) could not be subject to an appeal, and that mandatory reconsiderations cannot be considered if submitted more than a month after the relevant decision.

Legally a mandatory reconsideration request must be considered if it is made using any channel of communication, and there is no requirement for a declaration or form to be completed. The DWP has introduced a form which it would like claimants to use to ensure that mandatory reconsideration requests contain the necessary information, which may be helpful but should not be presented as compulsory. If claimants are unable to challenge decisions this leaves them at risk of losing out on significant amounts of money over a long period and with their legal rights to eventually move to an appeal (the next stage after a mandatory reconsideration) denied.

Gate-keeping of the mandatory reconsideration system by UC staff

A claimant requested a mandatory reconsideration of the decision to close his claim, more than a month after the decision. The work coach responded by saying that the case was closed due to a “rule change” and that a mandatory reconsideration could not be considered if submitted longer than a month after the relevant decision. After this was challenged, the work coach agreed that a mandatory reconsideration was in fact possible, but wrongly told the claimant that they had to call a number and agree to a declaration before the mandatory reconsideration could be processed.

Another claimant became responsible for her younger sibling when her mother was taken into hospital. No child element was added to her claim, and she requested a reconsideration of this decision via her journal. There was no response. It took repeated calls to the helpline and a letter from a solicitor to the DWP, for the mandatory reconsideration to be completed and the child element to be added to her claim.

These claimants were able to resolve the situation because they had access to expert advice, but it is likely that many claimants will simply accept what they are incorrectly told. This sort of ‘gate-keeping’ of the mandatory reconsideration system is worrying; any request for a mandatory reconsideration should automatically be passed to a decision-maker.

For further information or to submit cases to the Early Warning System, please visit

<http://www.cpag.org.uk/early-warning-system> or contact Josephine Tucker on jtucker@cpag.org.uk.

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