



## **COMPUTER SAYS 'NO!'**

Stage one: information provision

**May 2019**

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Written by Sophie Howes and Kelly-Marie Jones

### **About Child Poverty Action Group**

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.

### **About CPAG's Early Warning System**

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

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

<http://www.cpag.org.uk/earlywarning-system>.

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## Foreword

It's a fundamental principle in a democracy that governmental bodies must have reasons for their decisions. It's equally fundamental – or should be – that they should be able to explain what those reasons are. And if the explanation does not stack up, then, again on first principles, the decision should be open to review or appeal.

Yet, as this publication demonstrates, the Department for Work and Pensions is repeatedly falling down on every element of these public law obligations in its administration of universal credit. The communication of a decision is frequently opaque, making it hard to comprehend how the amount has been arrived at – how much has been allocated to housing costs, how much to childcare, and so on. This in turn makes the final amount difficult to challenge – a disaster not only if it is too little but if it is too much, since an overpayment, despite having been used in good faith, may be deducted from future benefits.

None of this is compatible with the rule of law. The rule of law means many things to many people, but its common thread is, first, that everyone must know, or be able to find out, the rules and laws by which their lives are regulated; and secondly, that everyone is entitled to challenge, whether by internal review mechanisms, by appeal or by judicial review, the lawfulness of their treatment.

This report documents the systemic failure of universal credit to meet these basic standards. People in need are left to guess at and grope for things which should be clear and tangible. The consequences are not limited to over- or under-payment. They feed into the stress and worry that so many people managing on low incomes experience, which in turn can affect family life for children growing up in these environments. There is something Orwellian about a system which is intended to alleviate hardship yet is administered in ways which generate and aggravate human misery.

Whether this is happening by accident or by design is an argument for another time and place. Child Poverty Action Group, with its long and honourable record of standing up for the poorest members of our society, has made a powerful and well-documented case for demystifying the process by which government is computing the benefit support on which hundreds of thousands of our poorest citizens now have to depend, and for ensuring that errors can be identified and corrected. If the rule of law is to mean anything, it must at least mean this.

Stephen Sedley

The Rt Hon Sir Stephen Sedley, former Lord Justice of Appeal

## Summary

This report presents case studies and analysis from CPAG's Early Warning System (EWS) to highlight problems with the information provided to people claiming universal credit (UC). The report focuses on two key areas: the information provided to claimants about payment decisions, and the information provided to claimants about their right to challenge decisions if they do not agree with them. The first is important because it is only if the basis of a decision is properly explained that a claimant can easily work out if a mistake has been made. The second is important because having identified a mistake, a claimant needs to know how to go about getting it fixed.

The information that is currently provided to claimants about their UC payment and how to challenge a decision if they think a mistake has been made is inadequate and, in some instances, unlawful. The government's own survey of UC claimants found that nearly a quarter (23 per cent) felt that the decision about their UC claim had either not been explained at all, or had not been explained clearly.<sup>1</sup> This situation is particularly worrying because of the high number of cases received by the EWS where UC payments have been incorrectly calculated.

### Understanding universal credit payment decisions

Information provided to claimants about payment decisions is problematic for a number of reasons:

- The information provided via the UC online account (the main way claimants manage their UC claim and communicate with the Department for Work and Pensions (DWP)) does not make it clear that UC is a decision-based system, which has consequences when claimants need to challenge decisions relating to their claim. Decisions are scattered across the account in the form of payment statements, letters and, in some case, via informal chats with their work coach. This can make it difficult for claimants to identify decisions in order to challenge them.
- UC, by design (combining six benefits into one payment), can be difficult to understand, and the rules for calculating payments are complex. Establishing whether a claimant is being paid the correct amount is made more difficult by the lack of information provided in UC payment statements.
- It can be difficult for claimants to work out how the housing costs element in their payment has been calculated because of the lack of information provided in UC payment statements. The information provided to claimants about childcare costs is also not clear, making it difficult to understand how the childcare element of an award has been calculated and whether it is correct.

If claimants have questions about their payment and how it has been calculated, getting help from the DWP can be difficult. DWP staff on the UC helpline do not have access to a full calculation of awards, so claimants may not be able to get a full explanation. Claimants have a legal right to request a written statement of reasons from the DWP, but EWS cases show that claimants experience barriers when they try to do so, and the information that is subsequently provided can vary in quality.

When errors have been made, the consequences for claimants can be serious. The EWS has received case studies where claimants have been underpaid for months on end, causing serious hardship. Other claimants have been overpaid due to DWP errors, and then subject to automatic repayment plans, leaving them very little to live on.

### Understanding how and when to challenge a decision

The information provided to claimants about their right to challenge decisions they do not agree with needs urgent improvement. As it currently stands, the information provided does not meet legal requirements.

Regulations state that claimants can request reasons for a decision, and the information that is subsequently provided should be adequate so that a person can understand the decision sufficiently well to be able to challenge it. Regulations also require that decisions must include notification of the right to challenge a decision through the mandatory reconsideration process (a request for the DWP to look at the decision again) or through the appeals process. The notification must include information about the time limits for doing so. The notice that is currently provided to claimants about their appeal rights does not contain sufficient information to comply with regulations, and does not provide even the basic information that would assist claimants to understand what their appeal rights are and how to exercise them.

The report concludes with a number of recommendations for the DWP, including the recommendation to conduct an urgent review of the information provided to claimants regarding their UC claim to ensure that the system is compatible with the law and that claimants can understand their UC payment decision. Reviewing the UC payment screen and the notice provided to claimants about their appeal rights are a priority.

## 1. Introduction

This report is the first in a series looking at problems with understanding decisions, challenging errors and protecting the rights of people claiming universal credit. This report focuses on the first step, information provision. It includes case studies from CPAG's Early Warning System (EWS) to illustrate the problems with the current system, as well as recommendations for fixing these problems.

Being provided with adequate information about important decisions relating to your benefit entitlement, and what to do if you do not agree with a decision, is fundamental to a rights-based social security system. As universal credit (UC) continues to be rolled out, it is clear that many claimants are not being provided with enough information to understand their entitlement. In turn, this is making it more difficult for them to challenge decisions when errors have been made.

The government's own survey of UC claimants' experiences found that nearly a quarter (23 per cent) felt that the decision about their claim had either not been explained at all, or had not been explained clearly, and 16 per cent of UC claimants reported that they had been given incorrect or contradictory information by the Department for Work and Pensions (DWP) in relation to their claim.<sup>2</sup> Another government survey of UC claimants found that over 40 per cent of claimants received a different award than they were expecting, and over 30 per cent disagreed with the statement: 'My universal credit account makes it clear what entitlements I am being paid for.'<sup>3</sup>

These figures are worrying for a number of reasons. Firstly, people have a right to clear and accessible information about government decision making that has such an impact on their livelihood and wellbeing. Without a transparent and accountable system that communicates clearly to claimants how decisions about their entitlement have been made and what they can do if they do not agree with these decisions, claimants are left in a vulnerable position: reliant on the system to make the correct decisions, yet ill-equipped with a lack of information if errors have been made.

Secondly, cases received via the EWS suggest that significant numbers of claimants have experienced errors with decision making in relation to their UC claim. CPAG's EWS has received over 1,100 cases since mid-2017 relating to UC, and a significant proportion of these concern problems with decision making. When errors do occur in the UC system, the implications for people's lives can be serious. Delays in payments can push people into crisis and drive them to food banks. Errors in calculating housing costs are causing people to fall into rent arrears, and in some cases people are facing eviction and homelessness. Erroneous reduced payments for disabled people are causing hardship for people in vulnerable circumstances. It is therefore essential that any errors which are made in determining UC entitlement can be identified and rectified quickly.

UC, by design (combining six different benefits into one payment), is a complex system to understand. By adding payments for different entitlements together, the system itself makes it difficult for claimants to understand the decisions that have been taken about their claim and how their award has been calculated each month, as the following example illustrates.

A man with terminal cancer was claiming employment and support allowance, which included the support component. He moved in with his partner and they started a new claim for UC, which should have included a limited capability for work-related activity element (the UC equivalent of the support component). The UC statement showed a standard allowance and the couple assumed that this was their full entitlement, including any additional amount paid because of the man's illness. After several months of trying to manage on a restricted income, they sought advice. The benefits adviser spotted that the limited capability for work-related activity element was missing and helped them to get it included in their award. It is worth £328 per month.

With so much complexity as well as room for error, it is even more important that people are provided with clear and accessible information about how decisions have been made, and how to challenge these decisions if they do not agree with them. However, the evidence we have received through the EWS suggests that there are serious gaps and weaknesses in this information. This report highlights some of the key ways in which information provision in the UC system is either inadequate or unclear for claimants, including case study examples from CPAG's EWS. The report concludes with recommendations for how to improve the information provided to claimants about awards and decisions in UC and their options for challenging them. If implemented, these changes would assist claimants to better understand their awards (which, in turn, would help them to understand future entitlement and budget for future months), identify any errors, and challenge decisions they do not agree with.

## 2. Identifying decisions

As part of the social security system, UC is a decision-based benefit. Caselaw has emphasised that claims and payments must be decided by DWP officials and formal decisions must be communicated to the claimant about any claim or award, including changes to any award.

### Universal credit: a decision-based system

What is meant by this is that the system proceeds, or is based, on *formal decisions* being given. If a benefit is awarded it *must be awarded by a formal and identifiable decision*. If that decision is to be altered by, for example, increasing or decreasing the amount involved, *it can only be done by another formal and identifiable decision*. Likewise, a decision is required if the period of the award is to be terminated, shortened, or extended. If a payment of benefit is to be suspended, leaving the underlying entitlement in being, *a formal decision is again required*.

Commissioner Powell, CA/1020/2007

The UC online account (the main way claimants can communicate with the DWP about their UC claim and payments) does not make it clear that UC is a decision-based system. Decisions about awards are provided in two places in the UC online account: in the 'payments' tab and the 'journal' tab. Scattering information about decisions across a claimant's online account is not conducive to claimants' understanding that UC is a decision-based system and that decisions can be challenged if they do not agree with them.



### Award decisions communicated via payment statements

The UC payment statement (see Figure 2) appears in the 'payments' tab in a claimant's online account. It does not make it clear that it is a formal decision about a claim – eg, the word 'decision' does not appear at all in the body of the statement, but only in the end section headed 'What can I do if I think this statement is incorrect'.

### Award decisions communicated via the online journal

Other decisions (eg, a decision about whether a claimant qualifies for the limited capability for work-related activity element) are communicated to claimants via letters posted on their online journal.

**Figure 1:** example of a decision letter posted on a claimant's online journal

15 Jun 2018 at 1:41pm	Hello [REDACTED]. Please read the attached letter Read the attached file: <a href="#">Letter [REDACTED].pdf</a>	Mick  Preston Service Centre
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In this example, it is not clear from the information provided that the letter contains a decision, or indeed what the subject of the letter is. The letter is only available from a link in the journal and there is no central place on the UC account where letters containing decisions are stored and made accessible for claimants. If this claimant wanted to access this letter at a later date, s/he would have to search through her/his journal entries, which would be time consuming as there is no search function for filtering journal entries and a lack of identifiable information in the journal entry to distinguish it from other letters.

As well as scattering decisions across different locations and making them difficult to identify, the informal nature of the online journal, which encourages claimants to 'chat' online with their work coach, compounds the problem further. Claimants may receive information via the journal from DWP officials that is, in fact, a decision about their claim or award, but it may not be clear that it is a formal decision. Receiving information in a relatively casual fashion does not support claimants to understand that UC is, as with any other welfare benefit, a decision-based system.

## 3. Understanding universal credit payment decisions

UC combines payments for multiple purposes (adults, children, housing, disability) into a single monthly amount. Claimants may then have certain deductions made from their payment – eg, because of the 'benefit cap', the amount of their earnings, or to repay debts. Unless information about the various elements that make up a UC award is provided to claimants, it can be difficult to understand how an award has been calculated and whether it is correct. In addition, the rules for calculating the individual elements and reductions can be complex and it is not easy for claimants to work out how much they should receive each month, except in the most straightforward cases.

Some of the most complex elements of UC include (but are not limited to): earnings counted each assessment period if paid non-monthly; deductions for advances and other debts; housing costs contributions; childcare costs; the 'minimum income floor' for self-employed people; surplus earnings rules; and transitional arrangements when moving onto UC from a previous benefit.

Figure 2 is an example of a UC payment statement, which is provided to claimants each month to notify them of their UC payment award. The monthly payment statement does not include a full breakdown of how the payment

has been calculated. It also does not provide a nil entry for elements for which claimants are not considered to qualify.

Figure 2: example of a UC payment statement

# Statement



Your payment this month is

# £531

This will be paid by 8pm on 5 January 2019

## How we calculate your payment

Your payment is based on what you've told us and covers the period between **30 November** and **29 December**.

<b>Standard allowance</b>	<b>£317.82</b>
You receive a standard Universal Credit allowance each month	

<b>Housing</b>	<b>£476.08</b>
You said that your rent is £553.58 per month	

The housing element is £77.50 a month lower than the rent. This statement does not explain why.

<b>Limited capability for work and work-related activity</b>	<b>£328.32</b>
You said your health affects you at work or prevents you from working	

<b>Total before adjustments</b>	<b>£1,122.22</b>
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### Advances

We deduct money from your payment to repay any advances

For a list of advances, please refer to your [journal](#). ([/journal](#))



## The total we take off for advance repayments is

**£66.67**

The amounts taken off to repay the advance and other debts do not show how much is left to repay, or which recovery rate is being applied.

### Debts and loan repayments

Tax Credits recovery

**£47.67**

Call 0800 916 0647 to find out more about your debt and loan repayments.

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## The total we take off for debts and loan repayments is

**£47.67**

### Payment to your landlord

We currently pay this to your landlord towards your rent.

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## The total we take off for payment to your landlord is

**£476.08**

The statement shows how much is being paid directly to the landlord, but not how much rent is left for the claimant to pay themselves.

## Total payment for this month

**£531.80**

As the above example illustrates, the DWP provides some basic information about standard payment decisions. Statements show the elements included in the award and their amounts, earned income taken into account in that assessment period, unearned income – its source and amount taken into account in that assessment period – and deductions and what they are. However, the information provided is minimal. For example, it does not include information about elements to which a claimant may be entitled, but which are not being received – a scenario which is explored further below.

### Housing costs element

The minimal information provided about the housing costs element of the payment is particularly problematic. Claimants are shown the amount of the housing costs element and their rent/service charge amount. No information is provided about how the DWP calculates this. When the housing costs element does not match the rent amount, it can be difficult to ascertain why.

In the example below, the housing costs element is £150.16 lower than the rent, but there is not enough information to understand why, or to check that it has been calculated correctly.

**Figure 3: example of a housing costs element section of a UC payment statement**

**Housing** **£499.84**  
 You said that your rent is £650 per month

If the full calculation was provided, as set out below, the claimant would immediately be in a better position to be able to challenge the amount if any of the information used in calculating it was incorrect.

**Figure 4: example of a model housing costs element of a UC payment statement**

**Calculation of housing costs element**

<i>Portion of rent attributable to claimant:</i>	
Claimant is sole tenant, so is liable for 100% of the rent	£650
<i>Application of size criteria:</i>	
Claimant lives with her 22-year-old daughter and 15-year-old son, so is entitled to three bedrooms under the size criteria	
Claimant has a private tenancy, so her housing element is capped at the local housing allowance for three bedrooms at £132pw or £572pcm	
	- £78.00
<i>Housing costs contributions:</i>	
Claimant's 22-year-old daughter counts as a non-dependant and attracts a housing costs contribution	
	- £72.16
<b>Maximum housing costs element</b>	<b>£499.84</b>

The amount of rent taken into account in the calculation is not necessarily the amount of rent due. Joint tenants only have their share of the rent taken into account, unless the DWP accepts that the claimant is wholly liable. Private tenants have their rent amount capped by the local housing allowance, which differs according to the rates in each local authority area and the 'size criteria' which applies to the claimant's household. The size criteria also affects social tenants, whose rent amount is reduced by the under-occupancy charge ('bedroom tax'). The rent amount taken into account for the housing costs element can also be reduced by a housing costs contribution if any non-dependants live in the claimant's household.

**Childcare costs element**

Case studies received through the Early Warning System (EWS) indicate that claimants struggle to understand the complex rules and procedures on reporting and payment of childcare costs, particularly where childcare receipts submitted cover multiple assessment periods, parts of assessment periods and so on.<sup>4</sup> Claimants receive an amount for their childcare costs element in a given assessment period and this is listed in the UC payment statement, however it can be difficult to work out whether this is the correct amount as no explanation of the calculation is provided to claimants.

**The problems this causes for claimants**

Case studies submitted to the EWS demonstrate the problems that are caused for people when they do not understand how payment decisions have been made. The confusion that is generated for people should not be underestimated. Regardless of whether a decision is correct, if people are unsure how their entitlement has been calculated and how it relates to their circumstances it can make it very difficult to plan and budget for the months ahead. Two core elements of the UC system championed by the government are that it is supposed to provide a clear understanding of the relationship between work and income, and that it enables good budgeting by supporting people to take control of their finances. Both of these arguments are undermined if claimants are not provided with clear accessible information about their entitlement and how it has been calculated.

Where errors have been made, the consequences for claimants can be serious.

**Claimants cannot see why housing costs are lower than expected**

As outlined above, there is very little information provided about how people's housing costs have been calculated under UC. This makes it particularly difficult for people to identify errors and challenge decisions, because of the lack of information provided to claimants about how the decision was arrived at.

**Grandmother subject to the 'bedroom tax' in error**

A grandmother, mother and children live together in a three-bedroom property; all the bedrooms are occupied. The grandmother claimed UC, but the housing costs element was very low. She did not know why and she did not obtain a full breakdown of the calculation until six months later. This showed that she had been wrongly subject to both the bedroom tax (on the basis that she was not entitled the third bedroom) and a non-dependant deduction, causing her to have been underpaid for months on end.

**Disabled mother subject to deductions in housing payments in error**

A disabled mother and her adult child moved into a new property and claimed UC. The first payment was very low and the mother was so distressed about affordability that she contacted her social landlord about ending the tenancy. The UC statement listed amounts for her standard allowance and her housing costs element. It was not clear to her that UC had not taken into account her eligibility for the limited capability for work element, nor that her housing costs element was being reduced by a non-dependant deduction. This only became apparent when her welfare rights adviser investigated the matter. Without the adviser's expertise, she would not have been able to challenge the missing element or the non-dependant deduction (from which she was exempt because she receives a qualifying disability benefit).

**Claimants do not know elements are missing or being underpaid**

Being unable to see how an award has been calculated means that people are at risk of being underpaid or having missing elements without being aware of this. The EWS has received cases where claimants are being substantially underpaid, causing significant hardship, and have not realised until they sought help from a welfare rights adviser.

**Working mother underpaid by £400 a month**

A working mother with two part-time jobs claimed UC, but the award was much lower than she was expecting. Her UC statement showed the standard allowance, housing costs element and her earnings, plus the earnings taper, but she could not see anything wrong with them. When she saw a welfare rights adviser, she picked up that there was no child element included for her daughter, and there was no work allowance included because she was a working parent. This meant that the woman and her daughter were approximately £400 worse off each month as a result of the errors.

This example highlights how a lack of information, combined with a complex system of entitlement to the various components of UC makes it very difficult for claimants to see if they are being underpaid, even with a relatively simple error such as a missing child element. Spotting an error like this would arguably be much easier if the various elements in the award were clearly separated and accounted for in the payment information provided to a claimant. The way UC payment statements currently stand, there is no easy way for claimants to work out if they are missing elements that they are entitled to.

**Claimants are overpaid without knowing it**

Underpayments of UC cause obvious hardship to children and families living on very low incomes, but overpayments can also cause long-term financial problems. EWS has received cases where claimants have been overpaid in error by the DWP for months on end, and then required to repay this money when they were not aware of the overpayment in the first place. This situation can leave families who are managing on tight budgets in significant debt, which the DWP then recovers automatically from their UC, leaving them with very little to meet their basic needs.

**Mother overpaid and then left in debt as a result**

The mother of three children accidentally told the DWP that she was a guardian for one of her children, not realising that this term has a particular legal meaning. As a consequence, the 'bedroom tax' was not applied (as it would have been if the DWP had counted her as the child's parent). In her UC statement, an amount was listed for the housing costs element, but there was nothing to indicate whether or not a reduction because of the bedroom tax had been applied or the number of bedrooms permitted in the calculation. The claimant was oblivious to the fact that she was being overpaid, but the overpayment will nonetheless be recoverable, leaving her in significant debt.

The longer payment errors go unnoticed, the more serious the consequences for claimants. If there has been an overpayment, people may be left with unmanageable debt. If there have been underpayments, people are left struggling with insufficient resources to live on and may accrue other debts in the meantime (which may then be deducted from their future UC awards).

Our mock-up UC statement on page 21 provides some practical suggestions to remedy the lack of information currently available in UC payment statements. The mock-up statement includes the additional information that should be provided to claimants to help them understand their UC payment and how it has been calculated.

## 4. Getting awards explained

The lack of accessible information provided to claimants makes it very difficult for people to work out how their payments have been calculated, and therefore if these payments are correct. One universal credit (UC) claimant who we spoke to explained the difficulty he experienced trying to calculate his UC payment, despite having some experience of accountancy.

*'I would say there have been five periods [five one-month assessment periods in UC] at least, which required a lot of untangling. I'm not an accountant, but I'm used to dealing with... numbers. I've found it quite incredible the amount of burden that's required to untangle some of these situations. I can't possibly see how an average person with less than an accounting degree can deal with all this stuff because it was complicated for me. For someone who doesn't have free time, has kids, it's... next to impossible to untangle the mistakes.*

*The problem was the summary statement... I find it quite rudimentary. It doesn't go into much accounting and calculations. The untangling ended up with me looking at the rules of what the payment is supposed to be. There's a formula of 85 per cent or whatever for childcare, plus ceilings and floors that they set up. Basically, trying to work out what I think it should have been and if it looks incorrect. Sometimes I haven't got a big salary and my wife didn't get big earnings, but somehow the payment is very small. I have to go back to them and ask, "Why is this so low?"*

*I would do [this] both on the journal and the helpline. My experience of the journal was not so good. I got the impression the people who are on the other end of the journal are not particularly qualified and they're there just to give fairly basic advice. I received quite a lot of incorrect information through the journal and incorrect statements.'*

Self-employed father claiming UC in London, autumn 2018

At present, there is no easy way for claimants to identify whether the information the DWP has about their circumstances is correct, which can be the reason why mistakes are made in relation to their claim.

There is nowhere in the UC online account for a claimant to easily check the circumstances on which their entitlement is based, and claimants wishing to check the DWP's understanding of their circumstances have to scroll through all their journal entries looking for entries marked 'New claim details submitted' or 'Change of circumstance submitted'. This scattering of information used to calculate the award throughout the journal means claimants cannot easily match the circumstances they have reported to the DWP with their UC award.

This is causing confusion for claimants. Government survey results show that 25 per cent of claimants did not agree with the statement: 'The payments I receive through universal credit match what I would expect to receive.'<sup>5</sup> As illustrated in the case studies above, claimants can be underpaid or overpaid without realising that something has been incorrectly calculated. The EWS has heard about cases where errors are eventually identified by welfare rights advisers, but it is possible that many other claimants are receiving incorrect awards without being aware of it.

### Asking for an explanation from the DWP

Claimants can ask the DWP to explain their UC award, and may do so by requesting a written statement of reasons. The DWP has a legal duty to provide a written statement of reasons when one is requested for UC decisions that are appealable, if the reasons for the decision have not already been provided.<sup>6</sup> However, EWS

cases show that claimants are experiencing barriers when trying to access their legal rights in order to understand a claim or award, and the information that is subsequently provided can vary in quality.

Claimants are often directed to call the UC helpline for an explanation, even though they raised their query via the journal and even when the DWP is obliged to provide a written statement of reasons. Calling the UC helpline does not always help to clarify UC awards. DWP staff on the UC helpline do not always have access to a full calculation of awards, so if a claimant seeks help to understand her/his claim s/he may not be able to get a full explanation. The information that is provided appears to vary in quality, with no standardised process or pro forma. The government's own survey found that 19 per cent of UC claimants reported that DWP staff had not provided them with correct information on the phone.<sup>7</sup>

When the DWP responds to a request for a written statement of reasons, the response is not always helpful to the claimant and, in some instances, is not compliant with its legal duty, as these EWS case studies highlight.

#### **Worker frustrated by partial explanations**

A man who was paid monthly had his UC reduced by two wage packets in one assessment period. He was not able to manage and fell into rent arrears. When he asked questions in his journal about why his UC award had changed, he received incomplete explanations which did not clarify whether there had been an error by his employer or with the HM Revenue and Customs 'real-time information system'. The DWP agreed to call him and his adviser numerous times to discuss the problem, but failed to do so.

#### **No breakdown available in journal**

A claimant asked via his online journal for a detailed breakdown of his UC award. The DWP entered into a discussion with the claimant and answered his specific questions, but failed to provide a complete breakdown so he could check the award as a whole. The claimant felt that he was left in a position where he needed to know the rules for calculating UC in order to ask the right questions about specific elements, when what he had requested was a detailed breakdown of his award.

#### **Directed to phone**

A claimant asked via her online journal for a written statement of reasons to explain the reduction in her entitlement. DWP staff responded to say that the information was not available in the journal and if she wanted to know more about her UC award, she needed to call the helpline.

In some cases, claimants receive no response at all.

#### **Journal entries ignored**

A claimant submitted sick notes for a couple of months, but had not heard about being sent for a work capability assessment (which is triggered after 28 days of sick notes). The claimant's partner kept asking what had happened via her journal but never received a response.

A claimant sent numerous questions via her journal asking why her housing costs element was being reduced, but did not receive a response to any of her entries until weeks later when a welfare rights adviser helped her



to call the DWP and discovered that a housing costs contribution had been applied when it should not have been.

A claimant asked for a written statement of reasons when he was refused UC, but his request was ignored for over two months, at which stage a benefits adviser helped him to escalate a complaint and eventually obtained the statement.

The lack of information available in the UC online account is partially mitigated by the claimant's ability to request an explanation of their UC award, but this limited assistance is of no use at all when journal entries are ignored completely.

Claimants have a legal right to request a written statement of reasons in order to understand the basis of the decision that has been taken in relation to their award. Being able to access an explanation and further information so that claimants can understand their claim and how it has been calculated is the first step towards rectifying errors when they have been made. At present, claimants experience a number of barriers when they try to access this information, and when they do receive an explanation the information provided varies in quality, sometimes failing to meet basic legal requirements.

## 5. Knowing how and when to challenge a decision

### Providing information about how to challenge decisions: what the law says

The law states that claimants can request written reasons for a decision within a month of being notified of the decision, and that they must be provided with these reasons within 14 days of their request or as soon as reasonably practical.<sup>8</sup> The information that is subsequently provided should be adequate so that a person can understand the decision sufficiently well to be able to bring a challenge against the decision if it is wrong.

The law requires that decisions must include notification of someone's right to challenge a decision, through the mandatory reconsideration (a request for the DWP to look at the decision again) or through the appeals process (claimants must first request a mandatory reconsideration before making an appeal). The notification must also include information about the time limits within which a mandatory reconsideration must be requested.<sup>9</sup> The time limit is whichever of the following dates applies:<sup>10</sup>

- Within one month of the decision notice being issued to the claimant.
- Within one month and 14 days of the decision notice being issued, if the claimant requested reasons for the decision within a month of being notified and those reasons were provided within the initial month.
- Within 14 days of the reasons for the decision being issued if the claimant requested reasons within a month of the decision notice being issued but the reasons were not given until after a month had elapsed since the decision was issued.
- Within a further 12 months of whichever of the above dates applies, provided the decision maker accepts that it is in the interests of justice to extend the time limit, the claimant has asked for an extension of time, and had good reasons for applying late and could not have applied earlier.<sup>11</sup>

What this means is that the law requires the decision notice to set out all of the above time limits, so that a claimant can work out which time limit is relevant in her/his case.

## Providing information about how to challenge decisions: what happens in practice

In practice, notification of a claimant's right to request reasons or right to challenge a payment decision does not meet the requirements set out in law. The following is an example of the notice that is provided with a UC statement to inform claimants of their right to challenge a decision.

Figure 5: information currently provided on a UC payment statement about challenging decisions

### What can I do if I think this statement is incorrect?

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 of this statement (30 December 2018)**. Call us on 0800 328 5644 (Textphone: 0800 328 1344). Alternatively, you can write to us at Freepost DWP UNIVERSAL CREDIT FULL SERVICE.

This appears to be the date of the entitlement decision for this assessment period.

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**.

There is no information about the deadline for requesting an MR, or the effect on that deadline of an earlier request for a written explanation.

### 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.

The wording suggests that claimants can only request an MR if there is new information or the DWP have overlooked something. This is not accurate; the law is clear that disagreeing with a decision is grounds for requesting an MR.

Not only does the notice not contain sufficient information to comply with the legal requirements set out in the regulations, it does not provide basic information that would assist claimants to understand their appeal rights and how to exercise them.

The notice is legally inadequate in the following ways:

- **Time limits.** The law requires notification of the time limit within which a mandatory reconsideration must be requested. This requires an explanation of a number of potential dates so that a claimant can work out the date that applies in her/his case. However, the standard notice does not contain any information about time limits. One would have to assume that the time limit given for requesting a written explanation also applies to the time limit within which a mandatory reconsideration must be sought in order to appreciate that there was any time limit at all. This is not how most people would interpret what is written, and even if they did interpret the notice in this way it would still be inadequate – the time limit is only a month in a case where reasons are not provided or time is not extended for a late application.
- **Circumstances in which a mandatory reconsideration can be made.** The notice suggests that a mandatory reconsideration request can only be made in a case where 'you have new information that could affect your payment or think something has been overlooked'. This is incorrect. The right to request that the DWP looks at a decision again is not limited to situations where a claimant has new information or thinks something has been overlooked. It could also be requested, for example, if the claimant simply thinks the DWP is mistaken in how s/he is affected by her/his health problems.

- How a mandatory reconsideration request can be made.** The regulations are silent about the ways in which a mandatory reconsideration request can be made. It is generally accepted (including by the DWP) that any statement made by a claimant to the DWP that s/he is unhappy with a decision (whether in writing or by phone) is a request for a mandatory reconsideration. However, the notice limits the route to requesting a mandatory reconsideration to telephone or by post. That leaves out the simplest and quickest method by which a claimant can challenge a decision – by making an entry in the journal on her/his online account.

Additionally, the notice is unhelpful in not setting out any details about how long a claimant should expect the DWP to take in conducting a mandatory reconsideration.

The DWP is providing notices that are unlawful to hundreds of thousands of claimants each month. It is self-evident that fairness requires that where a legal deadline applies, those subject to the deadline are notified of it. A person who does not know that there is a time limit (or wrongly thinks that the time limit has expired when it could be extended) may either not bring a challenge because s/he thinks there is still time to do so in the future or because s/he does not realise s/he still can. Where decisions affect the income that is provided to people in particular circumstances, for example to meet their basic needs and the needs of their children, and to pay for housing, the importance of correctly notifying claimants of these time limits is critical. However, the consequences of not respecting legal rights are broader than the impact on individuals. As this report has outlined, the social security system is built on a rights-based framework, and by not upholding these standards within the design of the UC system the DWP risks undermining the law.

**Figure 6:** The information that should be provided to claimants about challenging decisions



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.

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

#### Deadlines to request MR

Legislation is clear that the deadlines for challenging a decision must be communicated to claimants with the decision.

A longer explanation of the deadlines is necessary to adequately inform claimants of their rights.

#### Contacting UC

The DWP has confirmed that any route is acceptable for submitting an MR request. The UC statements should reflect this.

## 6. Conclusion and recommendations

Inadequate information is being provided to people about important decisions affecting their universal credit (UC) payments, as well as their right to challenge these decisions. To make this situation worse, case studies submitted to the Early Warning System (EWS) suggest that the quality of decision making within the UC system can be poor, with significant numbers of claimants experiencing errors in relation their UC payments. The combination of poor decision making and a system that is not transparent about how decisions have been made is causing significant hardship in people's lives.

As the case studies in this report highlight, it is often only once claimants seek welfare rights advice that they are able to remedy mistakes, which is problematic for a number of reasons. Firstly, the availability of welfare rights advice (which has been cut in recent years) is not sufficient to identify and challenge all the incorrect UC payment decisions, particularly once UC is fully rolled out. Secondly, regardless of the quality of UC decision making, which undoubtedly needs to improve, claimants have a right to adequate and accessible information about government

decisions that have such a significant impact on their lives. Claimants should not have to rely on the expertise of a welfare rights adviser to understand and interpret these decisions.

### Recommendations

It is within the power of the DWP to improve information provision within the UC system. While we recognise that this may carry a cost, it would bring significant benefits for claimants, and we urge ministers to address this matter urgently. The consequences of not doing so should not be underestimated. As this report highlights, the current UC system is failing to meet minimum legal requirements set out in social security law and therefore monthly payment statements/awards are currently unlikely to be lawful.

Below we set out a number of recommendations for how to help resolve some of these problems, reduce confusion among claimants, and ensure the UC system is compliant with the law.

- The DWP must urgently review the information provided to claimants about their UC award to ensure the system is compatible with the law and claimants can understand the UC payment decision. Reviewing the UC payment statement and the notice provided to claimants about their appeal rights is a priority. This report contains a mock-up payment statement (see page 21) and notice (see page 18), showing how improvements could be made. Some of the additional information could be included in clearly labelled drop-downs – eg, 'Click for more information about how your housing costs are worked out' on the main payment screen, if it is felt that including all this information on the screen at first glance would be overwhelming. Various options could be tested to provide all the necessary information in a clear and accessible way and CPAG would be happy to discuss this further with DWP officials.
- The UC online account requires a central place where documentation and information relating to decisions, other than the monthly payment statements, are automatically stored and clearly labelled, so that claimants and advisers can access this information easily.
- In the vast majority of cases, the UC system automatically calculates claimants' awards. DWP staff need access to calculations so they can see how awards have been worked out, in order to provide better quality support to claimants who have queries regarding payment decisions (on the phone or in person).
- While improvements are being implemented, funding for welfare rights advice is essential to ensure claimants are supported when they do not understand payment decisions and/or when errors have been made. Other programmes of social security reform of this scale (eg, the introduction of tax credits) were accompanied with funding for welfare rights advice services. It is urgent that the government provides funding to the welfare rights sector to ensure that advice is provided to people while problems and issues in the UC system are being resolved.<sup>12</sup>

## Appendix

Example UC payment statement with suggested additions

# Statement

Name

Your payment this month is

# £1,116.85

This will be paid by 8pm on 5 January 2019

## How we calculate your payment

Your payment is based on what you've told us and covers the period between **30 November** and **29 December 2018**.

<p><b>Standard allowance</b> <span style="float: right;">£317.82</span></p> <p>You are over 25 and single</p>	<p><b>Standard allowance</b></p> <p>Age and single/couple status affect amount.</p>
<p><b>Housing</b> <span style="float: right;">£476.08</span></p> <p>You said that your rent is £553.58 per month or £127.75 per week</p> <p>You are liable for 100% of the rent</p> <p>You are entitled to two bedrooms under the size criteria</p> <p>Your housing costs element is reduced because you have a spare bedroom</p> <p>Your housing costs element is not affected by housing costs contributions for non-dependants</p>	<p><b>Housing</b></p> <p>Weekly as well as monthly rent figure so easy for claimants to check.</p> <p>Alternative explanation of factors in housing costs element calculation may include:</p> <ul style="list-style-type: none"> <li>- You are liable for 50% of the rent</li> <li>- You do not have any spare bedrooms</li> <li>- Your housing element is reduced because you have more than one spare bedroom</li> <li>- Your housing element is capped by the Local Housing Allowance for 2 bedrooms</li> <li>- Your housing element is reduced because other adults live with you and you/they do not qualify for an exemption from a housing costs contribution.</li> </ul>

<b>Children</b>	<b>£508.75</b>
You get support for 2 of your 3 children	
You have three children included in your universal credit	
Your universal credit is affected by the two-child limit	

**Children**  
Currently claimants are told how many children are included in their claim but claimants should be informed if the two-child limit applies to them.

<b>Disabled children</b>
None of your children are receiving disability living allowance or personal independence payment

**Disabled children**  
Set out relevant circumstances which affect entitlement.

<b>Childcare</b>	<b>£148.75</b>
You have one child in childcare	
You report spending £175 on relevant childcare in this period	
The maximum we take into account is £646.35	

**Childcare**  
Reported childcare costs figure helps claimants check their entitlement. Telling claimants the maximum that can be taken into account is helpful for workers looking to increase their hours and also helps claimants whose costs exceed the maximum to understand their entitlement.

<b>Limited capability for work and work-related activity</b>	<b>£328.32</b>
Your health affects you at work or prevents you from working	

<b>Carer</b>
You do not qualify for the carer element

**Carer**  
Listing the element here even when it's not payable helps claimants who may be missing out. Alternative text could be:  
-You qualify for the carer element  
-You qualify for the carer element but you are already getting the LCWRA element.

<b>Total before adjustments</b>	<b>£1,779.72</b>
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<b>Take-home pay</b>
Take-home pay is what's left after tax, national insurance and any pension contributions have been deducted
Your take-home pay for this period is £313.20
You had earnings from employment of:

**Take-home pay**  
Breakdown of the wages so claimants understand the overall figure, and can check the wage amounts are correct. Where there are no earnings, keep the item in the list with text: *You told us you had no earnings*  
See additional notes on **Self-employment\*** at end of statement.

£125.28 on 30/11/2018  
 £125.28 on 14/12/2018  
 £62.64 on 28/12/2018

You qualify for a work allowance. £287 of your take-home pay does not affect your universal credit amount. Every £1 you earn over £198 reduces your universal credit entitlement by 63 pence.

**The total we take off for your take-home pay is £72.45**

#### Work allowance

Clear that work allowance is or isn't included and amount of work allowance. Alternative text: *You do not qualify for a work allowance. Every £1 you earn reduces your Universal Credit entitlement by 63 pence.*

#### Other Income

We take account of other income that you have, such as pensions or educational grants.

You told us that you do not have any other income

**The total deducted for other income is £0.00**

#### Adjustments and deductions

List these items even if entitlement is unaffected so that claimants remain aware of what may affect their entitlement.

#### Other benefits

You told us that you do not receive any other benefits

**The total deducted for other benefits is £0.00**

#### Savings and investments

We make a deduction for any savings, investments and capital you have if they are over £6,000

You told us that you do not have over £6,000 of savings, investments and capital

**The total deducted for savings and investments is £0.00**

#### Benefit cap limit

You are exempt from the benefit cap because you receive the limited capability for work-related activity element in your universal credit

**The total deducted by the benefit cap is £0.00**

#### Benefit cap limit

When the cap doesn't apply, be clear why so claimants are put on notice of when it may affect them. Alternative text may include: *You are in the grace period so the benefit cap does not affect your Universal Credit yet.* When the cap does apply, include explanatory text outlining cap amount and possibility of exemption: *Your Universal Credit amount is affected by the benefit cap and you do not qualify for an exemption. The total amount of benefits you get can't be more than £1,667 including child benefit.*



**Advances**

We deduct money from your payments to repay any advances

After this month's repayment, you have £727.23 left to pay

At this rate, your advances will be repaid after 11 more payments

You are repaying at a rate of 20% of your standard allowance

For a list of advances, please refer to your journal

**The total we take off for advance repayments is**

**£66.67**

**Debts and loan repayments**

We deduct money from your payment to repay rent arrears, overpayments and to third parties on your behalf, such as your landlord or utility companies

**Rent arrears deduction**

After this month's repayment, you have £582.98 to pay

At this rate, your debt will be repaid after 13 more payments

You are repaying at a rate of 15% of your standard allowance

We deduct money from your payments to repay any advances

Call 0800 916 0647 to find out more about your debt and loan repayments

**The total we take off for debts / loans is**

**£47.67**

**Repayments**

The DWP has access to all the relevant information to confirm the amount outstanding and the projected number of remaining repayments in UC statements. Including the rate of repayment helps claimants confirm that their repayments don't exceed the maximum 40%, and/or ask for a lower rate when it's causing hardship.

**Sanctions**

Where sanctions apply, they can be set out similarly to repayments.

- After this month, you have 47 days of sanctions left to serve

Information could also be included to encourage sanctioned claimants to sustain their earnings:

- If you earn over £702.48 per month for 6 months, your sanctions may be cancelled
- If you carry on earning over £702.48 per month for 4 more months, your sanctions may be cancelled.

**Payment to your landlord**

We pay this to your landlord towards your rent

**Payment to your landlord**

Moving this item further down makes it less confusing for claimants whose remaining entitlement is less than the Housing Element (for example because earnings, sanctions and other deductions have reduced the amount payable). Giving the amount of the rent shortfall makes it much easier for claimants to keep up with their rent.

The payment to your landlord does not cover all of your rent

Your need to pay £77.50 per month to your landlord plus any other charges not included in your universal credit

The total deducted for payment to your landlord is **£476.08**

**Total payment this month £1,116.85**

*Note: items in pink are suggested additions to the statement. Items in black reflect information provided in current payment statements, to the best of our knowledge*

**\*Self-employment**

Profit from self-employment may also be listed under take-home pay. Make sure claimants know the amount of their minimum income floor and

how it affects their entitlement.

- Your profits are above the minimum income floor of £1,187.55 so your entitlement is based on your actual profits.
- Your profits are below the minimum income floor of £1,187.55 so you are treated as if your earnings from self-employment are £1,187.55.
- Your profits are below the minimum income floor of £1,187.55. You are in the 12-month grace period, so your entitlement is based on your actual profits until the grace period is over or your profits exceed the minimum income floor.

## Notes

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<sup>1</sup> DWP, [Claimant Service and Experience Survey 2017–2018](#), January 2019

<sup>2</sup> DWP, [Claimant Service and Experience Survey 2017–2018](#), January 2019

<sup>3</sup> DWP [Universal Credit Full Service Survey](#), June 2018

<sup>4</sup> DWP [Submission to the Work and Pensions Select Committee's Inquiry on universal credit and childcare costs](#)

<sup>5</sup> DWP [Universal Credit Full Service Survey](#), June 2018, 5.1.5

<sup>6</sup> Regulation 51 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No.381)

<sup>7</sup> DWP, [Claimant Service and Experience Survey 2017–2018](#), January 2019

<sup>8</sup> Regulations 7(3)-(4) and 51 of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No.381)

<sup>9</sup> Regulation 7(3)(a) of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No.381)

<sup>10</sup> Regulations 5(1)(b) and 6 of The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (SI No.381)

<sup>11</sup> Regulation 7(3)(a) requires the notice to include information about the time limit in regulation 5(1). Regulation 5(1)(b)(iv) is part of those time limits and refers to the rules in regulation 6 allowing late applications made up to 12 months after the usual limit expires.

<sup>12</sup> In September 2018 the DWP provided funding to Citizens Advice to assist people with making a UC claim. The [Help to Claim](#) service that is provided to people is not welfare rights advice.