

Chapter 1: Claims

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About this research

This chapter forms part of a longer piece of research, by Rosie Mears and Sophie Howes, published by CPAG in June 2023.

The [full report can be found here](#).

Read [Chapter 2: Decision making](#).

Read [Chapter 3: Communicating decisions](#).

Read [Chapter 4: Disputes](#).

1. Claims

1.1 Introduction

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

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

1.2 Pre claim

1.2.1 Lack of information and transitional protection for natural migration

The introduction of universal credit

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

What the law says

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

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

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

²⁹ Regs 44 and 45 Transitional Provisions Regulations 2014

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

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

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

What the universal credit system looks like and how it works

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

What happens in practice

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

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

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

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

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

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

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

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

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

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

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

Josie (claimant) – January 2022

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

*All names have been changed.

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

Finley (adviser) – November 2021

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

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

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

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

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

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

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

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

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

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

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

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

Richard (adviser) – August 2021

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

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

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

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

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

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

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

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

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

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

Zoe (adviser) – December 2021

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

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

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

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

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

If you already get other benefits

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

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

Universal Credit replaces these benefits:

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

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

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

I have read and understand

Continue

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

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

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

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

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

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

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

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

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

1.3 Overview of the digital claims process

What the law says

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

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

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

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

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

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

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

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

Setting up an online account

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

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

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

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

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

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

Universal Credit online

Use this service to:

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

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

If you have made a Universal Credit claim before

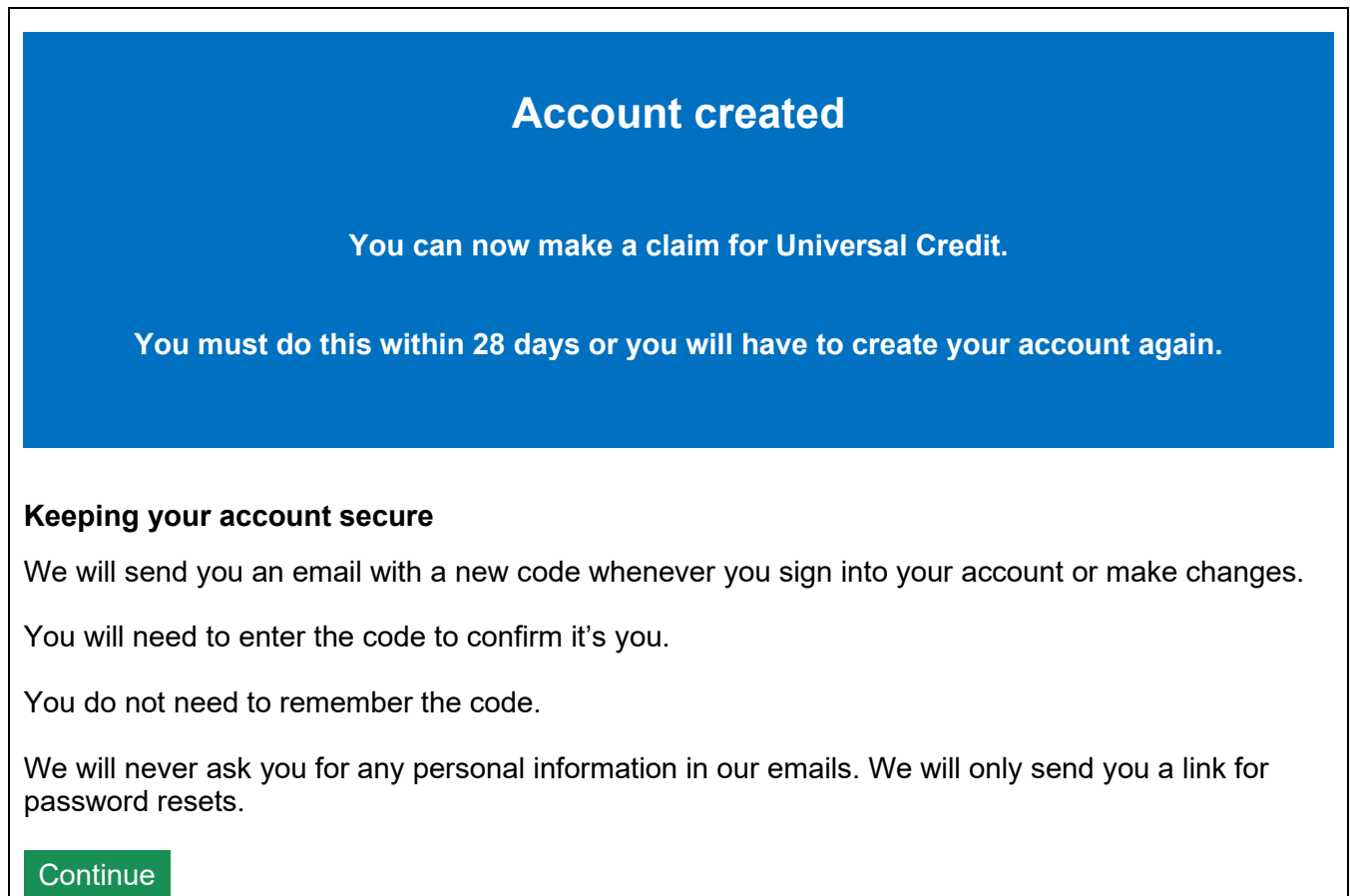
[Sign in](#) to return to an existing claim, report a change or make a new claim.

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

[Start](#)

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

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



Gathering and inputting the relevant data

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

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

Start claim

Relationships

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

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

[Continue](#)

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

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

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

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

Journal

You cannot use your journal until you have completed your to-dos.

Journal entries

| Date and time | Message | Added by |
|------------------------|----------------------------------|-----------------|
| 27 Feb 2023 at 1.21pm | Do you have a partner? completed | Claimant's name |
| 27 Feb 2023 at 1.01pm | Previous Address completed | Claimant's name |
| 27 Feb 2023 at 1.00pm | Address completed | Claimant's name |
| 27 Feb 2023 at 12.55pm | Contact details completed | Claimant's name |

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

Finalising the data

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

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

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

Your responsibilities

Thank you,

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

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

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

Your partner will need to agree their own commitments

I understand these commitments.

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

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

Declaration

By submitting this claim, you agree that:

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

Calls to 0800 numbers are free from landlines and mobiles.

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

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

I understand and agree

Submit claim

1.4 Claim questions

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

Gemma (claimant) – November 2021

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

Peter (claimant) – August 2021

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

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

1.4.1 Not all relevant factors are investigated during the claims process

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

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

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

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

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

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

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

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

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

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

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

Rightsnet thread [16972](#): housing costs paid at wrong rate – January 2021⁵⁵

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

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

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

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

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

⁵⁴ Email from DWP to CPAG, 4 April 2023

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

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

Charlie (adviser) – February 2022

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

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

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

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

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

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

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

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

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

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

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

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

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

What the law says

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

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

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

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

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

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

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

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

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

What the guidance says

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

What happens in practice

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

⁶¹ Reg 30 Claims and Payments Regulations 2013

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

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

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

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

⁶⁶ ADM Memo 3/23, available at

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

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

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

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

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

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

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

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

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

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

Charlie (adviser) – February 2022

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

Rowan (adviser) – February 2022

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

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

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

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

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

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

⁶⁹ Reg 8 Claims and Payments Regulations 2013

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

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

What happens in practice

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

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

Cleo (claimant) – November 2021

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

Chloe (claimant) – October 2022

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

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

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

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

⁷⁴ Reg 26 Claims and Payments Regulations 2013

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

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

Finley (adviser) – November 2021

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

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

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

Henry (adviser) – October 2021

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

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

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

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

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

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

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

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

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

1.4.4 Delays in submitting claims and incomplete claims

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

Sandy (claimant’s friend) – November 2022

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

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

Gemma (claimant) – November 2021

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

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

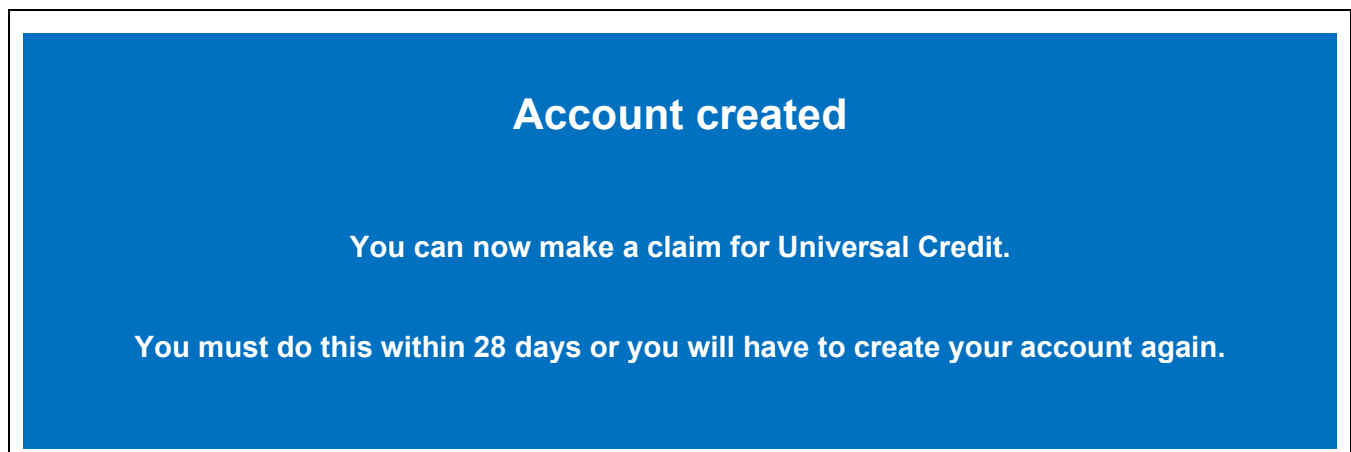
⁸¹ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), footnote 11

Elena (adviser) – November 2021

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

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

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



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

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

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

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

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

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

1.4.5 The universal credit system can't accept advance claims

What the law says

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

What the guidance says

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

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

What happens in practice

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

⁸⁶ Reg 32 Claims and Payments Regulations 2013.

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

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

⁸⁹ The system automatically deletes any information after 28 days.

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

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

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

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

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

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

Will (adviser) – October 2021

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

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

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

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

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

⁹² Reg 26 Claims and Payments Regulations 2013

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

1.5 Telephone claims

What the law says

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

What the guidance says

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

What the universal credit system looks like and how it works

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

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

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

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

⁹⁶ Reg 8(2) Claims and Payments Regulations 2013

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

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

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

Spotlight on: claims by phone

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

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

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

What happens in practice

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

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

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

Early Warning System – April 2021

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

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

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

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

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

Things to consider

- *Are they getting other benefits?*

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

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

Check if they are a corporate or personal appointee.

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

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

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

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

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

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

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

¹⁰¹ DWP, *Spotlight on: claims by phone*

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

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

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

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

Natalia (adviser) – November 2021

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

Finley (adviser) – March 2021

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

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

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

1.6 Claims chapter conclusions

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

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

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

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

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

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

A gap in knowledge

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

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

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

1.7 Claims chapter recommendations

Quick fix

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

Medium-term fix

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

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

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

Long-term reform (some recommendations require legislative change)

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

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About CPAG

Child Poverty Action Group (CPAG) works on behalf of the more than one in four children in the UK growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good. We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high-profile legal work to establish and protect families' rights. CPAG is a charity registered in England and Wales (registration number 294841) and in Scotland (registration number SC039339), 30 Micawber Street, London N1 7TB.