

Chapter 3: Communicating decisions

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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 1: Claims](#).

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

Read [Chapter 4: Disputes](#).

3. Communicating decisions

3.1 Introduction

This chapter considers whether Department for Work and Pensions (DWP) processes for communicating decisions to claimants comply with the rule of law principles of transparency, procedural fairness and lawfulness. Claimants require transparency about the rules and procedures and how the rules were applied in their individual case to know whether, and how, to assert their rights to challenge a decision. Our research has found several digital design choices within universal credit (UC) that prevent claimants from understanding and accessing the decisions that the DWP has taken and the appeal rights that come with each decision.

Section 3.2 begins with a summary of the legislation on communicating decisions, followed by an exploration of failures to adhere to the rule of law principles of transparency, procedural fairness and lawfulness, due to inconsistent decision notification, inadequate reasons for decisions, the failure to accurately report a claimant's appeal rights and deficient record keeping within the digital UC account.

3.2 Communicating decisions and record keeping

What the law says

The regulations require that the DWP provides claimants with certain information when notifying of an appealable decision, including the claimant's right to challenge the decision by appeal and the right to a written statement of reasons.²³⁵ Since 2013, the DWP has required a mandatory reconsideration (a revision) to be carried out by the department before a claimant can appeal a decision.²³⁶ However, this requirement only applies if the claimant has received a decision notice explicitly advising them of the mandatory reconsideration requirement, as was explained in *PP v SSWP (UC)* [2020] UKUT 109 (AAC).

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

paragraph 25 'The usual position is that a mandatory reconsideration (a revision by another name) must be undertaken before a claimant's right of appeal can be exercised... But the legal position is not that straightforward...'

paragraph 26 '... the requirement for a mandatory reconsideration to be undertaken as a necessary prelude to an appeal only applies if regulation 7(1)(b) also applies (see regulation 7(2)). There are strict requirements as to the type of notice required for the purposes of regulation 7(1)(b) – see regulation 7(3). There was no such informative notice attached to the notification of the decision in the appellant's journal... It follows logically that the appellant had the right of appeal to the First-tier Tribunal unencumbered by the (usual) need to apply for a mandatory reconsideration.'

²³⁵ Reg 51 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No.381 ('Decisions and Appeals Regulations 2013'). Any entitlement decision under s8 Social Security Act 1998 or supersession decision under s10 is appealable, whether as originally made or as revised under s9, in accordance with s12 of the Act – as are decisions against which an appeal lies in Sch 3.

²³⁶ Reg 7 Decisions and Appeals Regulations 2013

When notifying claimants they must request a mandatory reconsideration before they can appeal a decision, the DWP must inform claimants about the time limits for requesting a mandatory reconsideration.²³⁷ The standard time limit is one month, but it can vary according to whether the claimant has requested a statement of reasons or if the claimant requests an extension and the DWP accepts there is a good reason to grant one. In practice, a decision maker should accept most extension requests within 12 months of the one-month deadline expiring (giving a total 'dispute period' of 13 months), as long as a reason is provided for the delay. After 13 months, a claimant can only initiate a revision if specific grounds apply for an 'any time' or 'specific grounds' revision.

The legislation does not require the DWP to notify claimants of decisions in a particular form. However, numerous judgments have criticised decision letters that fail to identify the type of decision-making mechanism used, the section of the Social Security Act 1998 the decision is being made under, the identification of the previous decision if it is being changed, a specific ground if one is required, and the correct effective date of the new decision (when the change takes effect from). See [Chapter 2 – 'Decision making'](#) for more information.

R(IB) 2/04

paragraph 75 '...The Secretary of State's decision terminating entitlement commonly does not state that a previous decision is being superseded, or indeed even refer to a previous decision at all, or refer to section 10, or even... to the precise ground of supersession which is purportedly being invoked. Regardless of the conclusion we reach below, that is a highly unsatisfactory state of affairs. Commissioners have from the outset of the 1998 Act scheme expressed substantial concern that decisions have been made in disregard of the new statutory language and conditions, and that time and money is then wasted by appeal tribunals and Commissioners in attempting to unravel the consequences. Despite this, there is little evidence of any significant improvement, which we consider unfortunate. The fault may not always lie with decision makers themselves. For example, the fault in incapacity for work cases may lie more with those who design the printed forms to be used by decision makers...'

What the universal credit system looks like and how it works

Historically, the DWP notified claimants of entitlement decisions via physical letters. This communication method is burdened by delays and missing post, and it requires claimants (and advisers) to spend considerable amounts of time waiting in telephone queues to different government departments to investigate the status and history of decision making across multiple benefits. Under universal credit (UC), decision notifications are stored in the online account, giving claimants and advisers access to up-to-date records and evidence of decisions about their combined benefit in one central place. This is one of the key benefits of digitalisation for claimants and advisers, alongside the record of communication with officials recorded in the journal.²³⁸

²³⁷ Reg 7(3) Decisions and Appeals Regulations 2013

²³⁸ Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at [digitalwelfare.org.uk/report/contents](https://www.digitalwelfare.org.uk/report/contents).

Richard (adviser) – August 2021

'I think that the ability to see your payment statements and a breakdown of your benefit is incredibly useful and almost mad that you don't have that normally... your tax credit award letters seem quite archaic now, in terms of being able to see payment statements online. So, that aspect is better... If you're assisting a client and you can get onto their journal, then you can interact with the entire history of their claim... you can find all of the information they provided when they initially claimed. You can go through all of the award statements, you can go through all of the decision making. Over time, probably, it's going to become even clearer how effective it is as a way to resolve historic issues in the awards, whereas previously, you would have had to do a subject access request to get that kind of level of access to what's happened. So, I would think that you can't undersell how big an advantage that is to advice staff.'

*All names have been changed.

Rowan (adviser) – February 2022

'In some ways, it's easier because you can go back and you can look at the journal and you can see their awards and you can see what the calculation of the award is... It also means that then, when you put a comment on the journal, you know it's there in black and white and there's no arguing about it...'

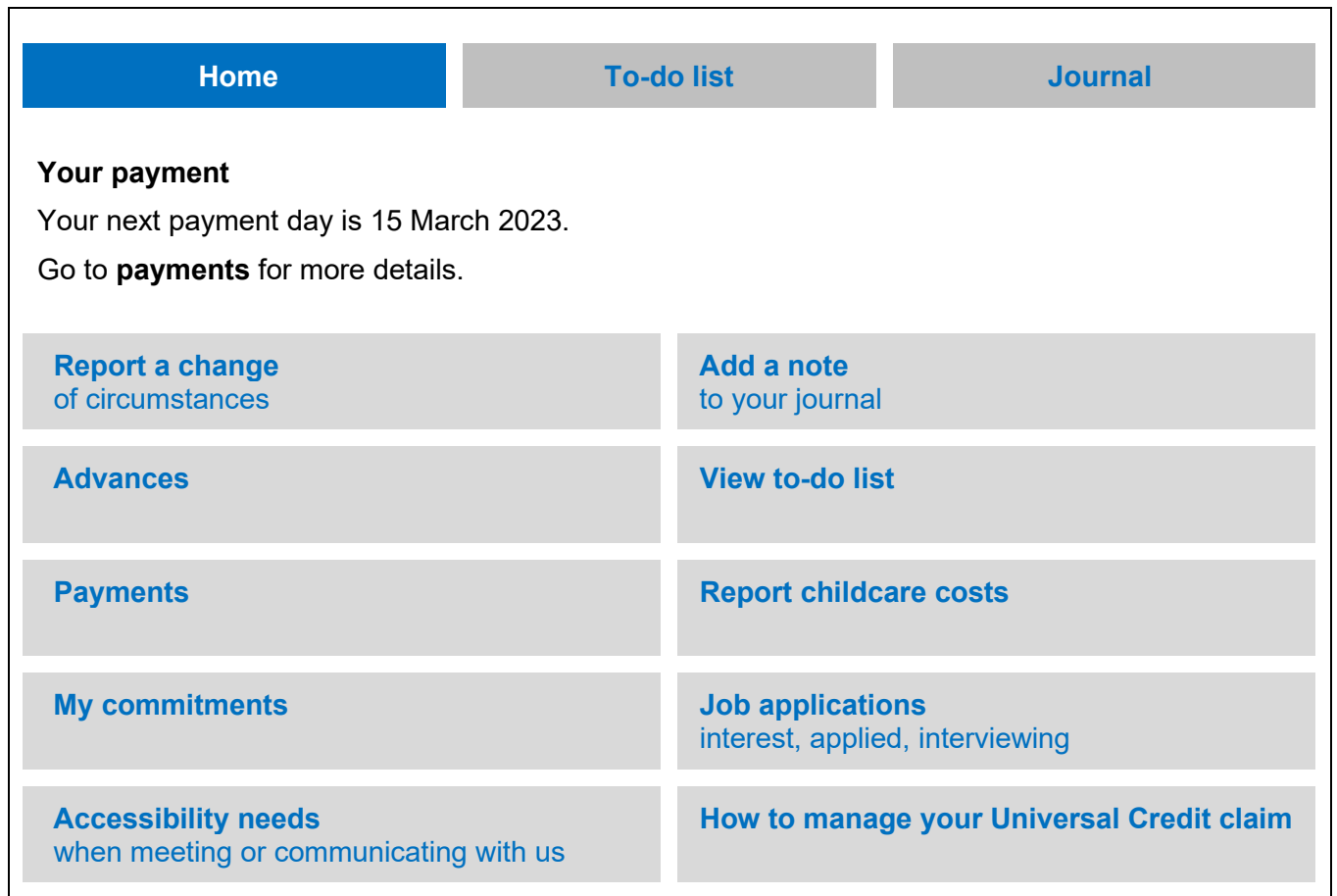
However, there are features of the UC digital account, particularly with regard to decision notifications and record keeping, which undermine some of the progress that has been made. As a digital-by-design benefit, UC has the potential to vastly improve transparency and procedural fairness in the benefit system; however, as things stand, claimants are prevented from being able to take advantage of these developments fully.

3.2.1 Inconsistent decision notification**What happens in practice**

UC decisions are communicated in various formats and in several different places within the digital UC account. As noted in CPAG's first report on this issue, *Computer Says 'No!' Stage one – information provision*, these inconsistencies are 'not conducive to claimants understanding that universal credit is a decision-based system and that decisions can be challenged if they do not agree with them.'²³⁹

²³⁹ CPAG, *Computer Says 'No!' Access to justice and digitalisation in universal credit– Stage one: information provision*, 2019, available at cpag.org.uk/policy-and-campaigns/computer-says-no-access-justice-and-digitalisation-universal-credit, p7.

Figure 3A: CPAG mock-up of the UC account homepage



One type of decision notification, the monthly payment statement, is collected in the ‘payments’ section of the UC online account and displayed as a page on the website, which can be printed or saved as a PDF.

Figure 3B: CPAG mock-up of a payment statement

Important	
Read about extra government payments to help with the cost of living .	
Payments	
Assessment period: 9 January to 8 February 2023 Need help understanding your assessment period?	
Your payment this month is	
£426	
This will be paid by 8pm on 15 February 2023	
What you're entitled to	
Standard allowance	£525.72
You get a standard amount each month. You said you're in a couple	
Housing	£925.01
Need help understanding your housing?	
You said per month the total rent for your property is £1,300.00.	
You will have to pay your housing costs to your landlord.	
Monthly, we can pay you £925.01 towards your housing costs. We cannot pay the full amount you told us about because:	
the amount we pay cannot be more than your Local Housing Allowance	- £374.99
Children	£489.16
You get support for 2 children	
Children in childcare	£1,000.00
Need help understanding your childcare costs?	
You had 2 children in childcare this month	
We pay 85% of your costs each month, up to £1,108.04 for 2 children	
Total entitlement before deductions	£2,939.89

What we take off (deductions)

Take-home pay - £2,545.54

[Need help understanding take-home pay?](#)

Take-home pay is what's left after tax, National Insurance and any pension contributions have been deducted.

Earnings reported by your employer

£2,413.23

The amount we'll use to work out your Universal Credit is £2,413.23

Earnings reported by your employer

£2,359.02

The amount we'll use to work out your Universal Credit is £2,359.02

The total take-home pay for _____ and _____ this period is **£4,772.25**

The first £344.00 of your take-home pay doesn't affect your Universal Credit monthly amount. Every £1.00 you earn in take-home pay over this amount reduces your Universal Credit by 55 pence.

Total deductions - **£2,435.54**

Your total payment for this month is **£504.35**

Whereas, the DWP uploads mandatory reconsideration, habitual residence test, overpayment and underpayment decisions and determinations as digital letters in the form of PDFs in the journal, which claimants access via a hyperlink in an individual journal message.

There is nothing to distinguish a message which contains a link to a formal decision from other types of communication between the claimant and DWP officials. When there is an extensive history of messages recorded in the instant messaging communication style of the journal, it can be difficult for claimants to identify decisions with appeal rights. There is no ability to filter the journal by type of communication or time period. By way of

example, how is the claimant to know, from looking at the journal message given in the first example, that the 'attached letter' is in fact a notification of a decision which carries rights of challenge? That point is revealed only by looking at the letter.

Figure 3C: CPAG mock-up of an individual journal message with decision letter attached as a hyperlink

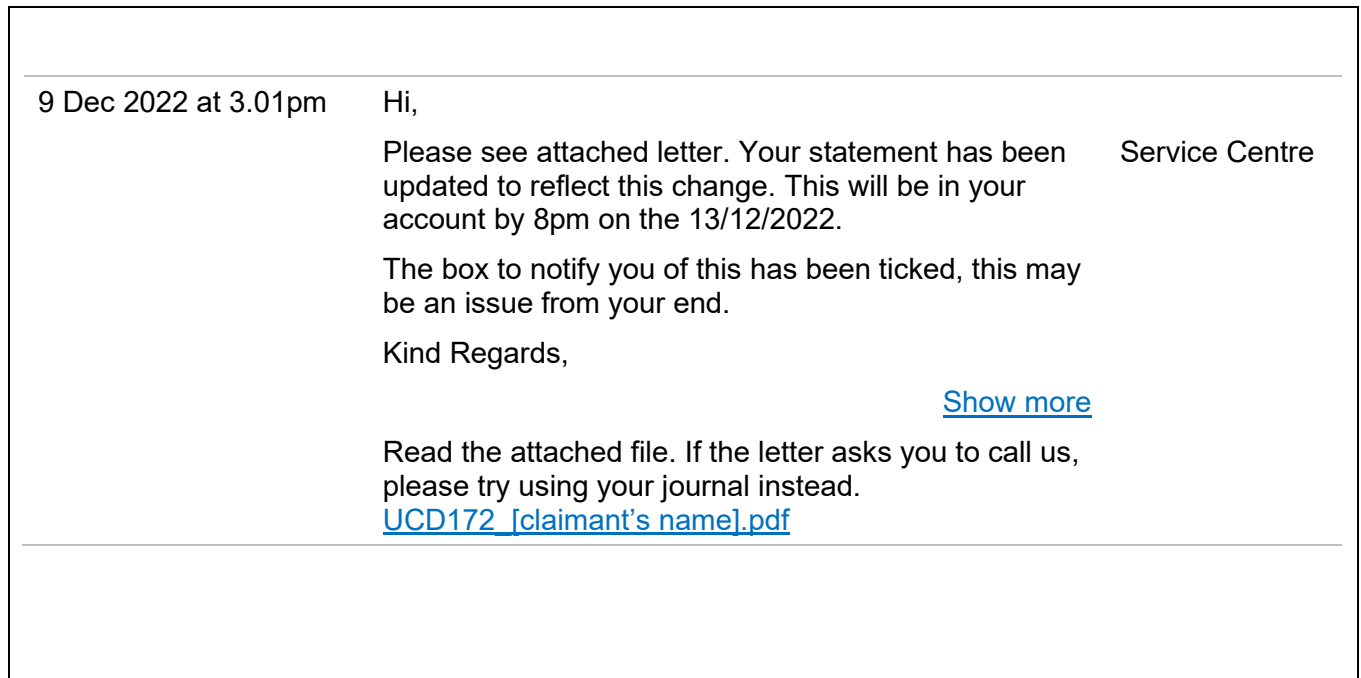


Figure 3D: CPAG mock-up of multiple messages in the journal including a message containing a decision letter

5 Feb 2023 at 10.41pm	Report childcare costs	
5 Feb 2023 at 10.41pm	Childcare costs - declare changes completed	
31 Dec 2022 at 4.22pm	Provide proof of your childcare costs completed	
31 Dec 2022 at 4.21pm	Report childcare costs	
31 Dec 2022 at 4.21pm	Childcare costs – declare changes completed	
9 Dec 2022 at 4.56pm	Please note that I have not received a text message alert to notify me of the most recent journal entry. Please enable text message alerts on my account or confirm who I need to contact to request them. Many thanks	
9 Dec 2022 at 3.01pm	Hi, Please see attached letter. Your statement has been updated to reflect this change. This will be in your account by 8pm on the 13/12/2022. The box to notify you of this has been ticked, this may be an issue from your end. Kind Regards,	Service Centre
	Show more	
	Read the attached file. If the letter asks you to call us, please try using your journal instead. UCD172 [claimant's name].pdf	
9 Dec 2022 at 2.09pm	I did not read the journal message about a discrepancy with childcare costs until 9 days after it was posted because I was not notified of your entry on my journal. Please send me a text message alert when you have made an entry on my journal. Please note my previous request for the same. If you are unable to enable the text alerts, please tell me who I need to contact who is able or whether a formal complaint, contacting my MP and escalating to other DWP contacts is preferable.	
9 Dec 2022 at 2.03pm	I have resubmitted evidence of the childcare costs paid this month. Please kindly recalculate the award asap.	
9 Dec 2022 at 2.02pm	Provide proof of your childcare costs completed	
9 Dec 2022 at 2.01pm	Report childcare costs	
9 Dec 2022 at 2.01pm	Childcare costs – declare changes completed	

One adviser described an additional barrier for claimants in accessing decision letters as PDFs on their phones if they do not have a PDF reader installed on their device.

Zoe (adviser) – December 2021

‘Because decisions are attached in a PDF, people cannot always open them. I recently had to teach someone how to open PDF documents and assisted him over the phone how to download Acrobat Reader and stuff, and he failed but he later told me when I spoke to him: “Oh you know what, after we stopped talking I managed to do it” ... Not everybody can access those or knows what to do.’

Another interviewee described how the DWP had uploaded a PDF decision letter to his journal without a printed date when the letter says: ‘Tell us if you have more information, or if you think we have overlooked something which might change the decision. Do this within one month of the date on this letter.’

Timothy (claimant) – March 2021

‘Because how UC works, there’s only a certain amount of time for you to challenge their decision. It should be dated letters, but what they send, they are not dated letters. It looks like a copy paste form that someone has filled... how can you challenge them... in one month from which date if it’s not dated?’

Finally, some decisions, such as the outcomes of real-time information (RTI) disputes (the first stage in the dispute process when a UC award has changed due to income information received automatically from HM Revenue and Customs (HMRC) – see [Chapter 4 – ‘Disputes’](#): section 4.3 for more information), can be communicated informally as typed messages from DWP officials in the journal itself.²⁴⁰ These types of informal decision notifications are not accompanied by a statement of appeal rights.

Figure 3E: CPAG mock-up of a journal message with outcome of RTI dispute

13 Oct 2020 at 2.09pm	<p>Hello</p> <p>The RTI dispute has come back saying “I have checked the RTI feed and in this Ap [assessment period] we are using earnings of £2222.45 paid to claimant on 31/08/20. An amount similar to what the claimant thinks we should be using is reported as being paid on 30/09/20 and will be used in APE [assessment period ending] 10/10/20”</p> <p>Kind Regards</p>	Service Centre
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Without a single location and consistency of style for decision notifications, claimants may struggle to understand that UC is a decision-based system with appeal rights when the DWP decides their claim or alters their award in

²⁴⁰ Reg 41 Decisions and Appeals Regulations 2013 provides that if a claimant wants to dispute the amount of earnings from the RTI feed, then the DWP must alert them that they are entitled to a decision, which should be provided within 14 days, and it is that decision that is appealable, which in practice is the outcome of an RTI dispute.

any way. If claimants cannot easily identify and access all decisions taken about their benefit, this is a failure to adhere to the rule of law principle of transparency.

3.2.2 Payment statements

What happens in practice

The DWP has significantly improved the monthly payment statement since CPAG first began investigating this issue.²⁴¹ Progress has most notably been made with the information provided to claimants about the housing cost element, with additional details now available on the ‘bedroom tax’, housing cost contributions and the local housing allowance (LHA). The DWP now provides claimants with a better explanation of why the amount paid to them for their housing may be lower than their actual rent, and warns when a managed payment to landlord will be insufficient to cover the total rent.

However, evidence suggests there is still insufficient detail in the payment statement for claimants to understand all aspects of the calculation, including student finance and childcare costs.

Henry (adviser) – October 2021

‘The explanation of the student loan deduction can be a bit elusive and not really explained properly... Actually, you can find out more about the student loan from the student loan letters than you can from the government. They will say: “this is the amount that the government will use to reduce your benefits.” “This amount is not counted...” The first thing I always say is can I see a student finance letter because that will tell me what is eligible and what is not eligible. But the universal credit account will just say, £900 per month because you have a student loan, and that is all.’

Chloe (claimant) – October 2022

‘... The statement is pointless and means nothing... To this day, I still don’t understand what it’s telling me... I’m not illiterate. I can read it. It makes no sense... I asked them on the phone to explain... And they told me that they couldn’t and that I wasn’t allowed to know how they’d come up with the number... All of the information I was entitled to was on the statement and if the statement doesn’t make any sense, well bummer..

I like to have all of the information because giving me some information isn’t helpful. All it does to me is ask me the questions in my head of, “What information are you not giving me?”’

²⁴¹ CPAG, *Computer Says ‘No!’ Access to justice and digitalisation in universal credit – Stage one: information provision*, 2019

Martha (claimant) – October 2022

‘What really, really is confusing, is how they work out what they pay you in each statement... Maybe this is because we’re self-employed and we have a reporting period for our self-employed income, maybe that makes it different, but because they do 85 per cent of your childcare costs that you have paid, it doesn’t actually add up to a real amount.

We pay for our childcare costs once a month. We pay a monthly invoice that runs from the 1st to the 30th or the 31st of the month, but the UC assessment period runs from the 24th of the month to the 23rd of the following month. So that is the childcare that we are paid for, which obviously doesn’t match in any way. It’s not 85 per cent of the invoice that we have paid. It’s a little bit of one invoice and a lot of the next invoice. So I still have no idea if what I’m getting is the correct amount and I gave up trying to work it out because it’s too confusing because it just doesn’t make any sense... to the point where I’m struggling to explain it.

So I’ve tried to work out before if what we’ve got on the statement for the childcare is the correct amount and sometimes I’ve gone, “Well, that seems about £30 out,” but I’m not really sure. Other times, I’ve gone, “Oh, it seems like they’ve paid us about £15 too much.” So I just gave up.’

In particular, there continues to be a lack of information about the different possible elements, exceptions or exemptions that might apply to a claimant if the system does not recognise them as applicable to the specific individual. As such, claimants do not always know what the DWP has decided they are not entitled to, which makes it difficult to identify if something is missing.

Natalia (adviser) – November 2021

‘Usually errors are the claimant not including components. Literally, “Oh, I didn’t realise I could claim that.” I had one this morning on the food bank line... she has parental responsibility for her nephew who lives with her permanently. She claims child benefit for him, so she should be getting child element and she hasn’t. She was, “Oh, I didn’t realise. I only thought I could get child benefit.” He’s disabled and attends a special school so he could in theory also get the disabled child element. So there’s like £400 a month that’s she’s not getting... she was phoning the food bank because she didn’t have enough money to afford food.’

Early Warning System: claimant did not realise there was a disabled child element – February 2023

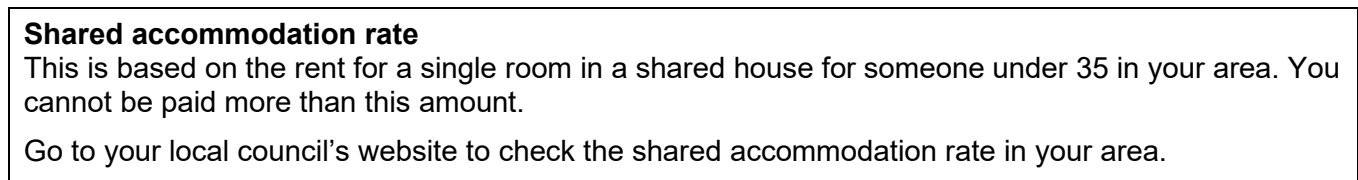
‘I have a client, whose son was awarded disability living allowance [DLA] over a year and a half ago and the client was not aware this would have any impact on her UC claim. Since speaking to her, we have been established that she could have been receiving the disabled child element for the duration of this time. I have asked the client to report the change on her journal and request the decision takes effect from the date of the DLA award so she can be paid the arrears, but the decision from the DWP is that this cannot be done due to the change not being reported within the year of it happening. [Note: The DWP is incorrect. See [Chapter 2 – ‘Decision making’](#): section 2.4.1 for more information on this issue.]

In some circumstances, claimants are relied upon to self-identify as satisfying a particular condition as the DWP does not ask all claimants all the relevant questions during the claim process (see [Chapter 1 – ‘Claims’](#): section

1.4.1). These aspects of the calculation are also less likely to be automated, making them vulnerable to human error (see [Chapter 2 – ‘Decision making’](#): section 2.3).

One of the improvements the DWP has made is to provide additional guidance called *Help Understanding Your Statement*, which claimants can access via hyperlinks in a number of different places on the payment statement. Although this additional guidance is welcome, the level of detail is insufficient for claimants to understand the substantive rules of entitlement. For example, the section on the shared accommodation rate of LHA for private renters does not detail the various circumstances in which an individual under 35 may be entitled to the higher one-bedroom rate rather than the lower shared accommodation rate – eg, those in receipt of certain disability benefits.²⁴² In fact, the guidance states ‘you cannot be paid more than this amount’, which is incorrect for people who meet one of the exemptions. The lack of transparency as to all elements, exceptions or exemptions in the legislation on the payment statement or in the *Help Understanding Your Statement* guidance means that claimants, including those with protected characteristics, may unknowingly be missing out on their full legal entitlement.

Figure 3F: CPAG mock-up of the *Help Understanding Your Statement* guidance on the shared accommodation rate



Despite significant improvements, there is still a lack of adequate information in the UC payment statements. The *Help Understanding Your Statement* guidance improves the situation somewhat; however, even with this additional guidance, claimants are not given sufficient information to understand the underlying legislative requirements, the procedural requirements and how the DWP arrived at its decision. Without this information, claimants cannot identify errors or make meaningful representations when challenging decisions, which does not comply with the rule of law principle of transparency.

3.2.3 Communication of appeal rights

What happens in practice

UC's statement of a claimant's appeal rights does not contain sufficient information to comply with legal requirements or assist clients in understanding their rights and how to exercise them.

Statements of appeal rights in UC vary slightly, depending on the type of decision notification. The payment statement notice of appeal rights is not automatically immediately visible within the payment statement itself. Instead, a claimant must click on the words ‘If you think we've made a mistake or want to appeal’ at the bottom of the statement, which expands to include the following information.

²⁴² Sch 4 para 29 Universal Credit Regulations 2013 No.376 ('UC Regulations 2013'); 'disability benefits' in this research refers to disability living allowance, child disability payment, personal independence payment, adult disability payment and attendance allowance.

3G: Payment statement notification of appeal rights

If you think we've made a mistake or want to appeal**If you think we've made a mistake**

It is important that you tell us straight away.

You can ask for a written explanation. You need to contact us **within 1 month of the date on this statement (9 February 2023)**. You can write to us at Freepost DWP UNIVERSAL CREDIT FULL SERVICE, or call us.

Contact us

You can contact Universal Credit:

- through your [online account](#)
- using the Universal Credit helpline

Universal Credit helpline

- Telephone: 0800 328 5644
- Welsh language telephone: 0800 328 1744

Monday to Friday, 8am to 6pm (closed on bank holidays). Calls to 0800 numbers are free from landlines and mobiles.

If you cannot speak or hear on the phone

You can use the [Relay UK service \(opens in new tab\)](#) to make a text-supported call to the Universal Credit helpline.

[Find out more about using Relay UK \(opens in new tab\)](#).

From your laptop, desktop or mobile

[Download the Relay UK app \(opens in new tab\)](#). Once you have set up the app, dial 18001 followed by the Universal Credit helpline. If you are redirected to your device's default calls app, return to the Relay UK app to join the call.

From your textphone device

Dial 18001 followed by 0800 328 1344.

If you use sign language

You can use the Video Relay Service (VRS) to make a British Sign Language (BSL) interpreted call to the Universal Credit helpline.

[Find out more about using the VRS \(opens in new tab\)](#).

From your laptop or desktop

[Open the VRS \(opens in new tab\)](#).

From your mobile

Download the InterpretersLive! app from your app store. Once you have set up the app, use it to contact the Universal Credit helpline.

If you have new information that could affect your payment or think something has been overlooked, you can request a **mandatory reconsideration**. When we've looked at the decision again, we'll explain our reasons in a **mandatory reconsideration notice**.

Can I appeal?

If after a mandatory reconsideration, you still disagree with our decision you can appeal it. Your mandatory reconsideration notice includes details on how to do this.

Evidence received by the Early Warning System suggests this design choice is not sufficiently transparent for all claimants to understand their appeal rights.

Early Warning System: comment on statement of appeal rights – October 2022

'The payment statement award letters carry appeal rights but they are not made clear enough to claimants. You have to open the "If you think we've made a mistake or want to appeal" link to understand how long you have to appeal. People I speak to do not seem to be aware of this and it leads to difficulties. This fundamental stuff needs to be clearly accessible/obvious.'

The law requires that a decision letter includes notification of the time limit within which a claimant can challenge a decision by mandatory reconsideration.²⁴³ The time limit differs depending on whether the claimant requests an explanation of the decision first or makes a late request (see [Chapter 4 – 'Disputes'](#)). However, the payment statement notification of appeal rights does not contain any information about the different time limits for requesting a mandatory reconsideration or the requirement to provide a good reason for a delay beyond a month. Claimants may assume that the one-month time limit given for requesting a written explanation of the decision also applies to requesting a mandatory reconsideration. If claimants interpret the notice this way, then this would be incorrect as the time limit for requesting a revision is only a month if the DWP does not provide reasons for the decision or there is no extension for a late application.

By comparison, the statement of appeal rights at the end of PDF decision letters states: 'Do this within one month of the date of this letter.' The different statements of appeal rights displayed to claimants when the DWP refuses a claim or brings an award to an end (the 'closed claim' statement of appeal rights – see [Chapter 2 – 'Decision making'](#)) goes one step further and states claimants 'need to ask' the DWP for a revision within one month. A further worrying example is decision notices which attempt to communicate the time limit by stating the final day of the limit, such as in Figure 3H.

²⁴³ Reg 7(3)(a) Decisions and Appeals Regulations 2013

Figure 3H: CPAG mock-up of the statement of appeal rights on a 'closed claim' decision notification

Ask us to reconsider

You can also ask us to look at the decision again. This is called a 'mandatory reconsideration'.

You need to ask us by **19 August 2022**.

That time limit was given in a notification for a decision made on 20 July 2022. The mistake is that a revision request would be 'within a month' of 20 July 2022 if it was submitted by 20 August 2022 and not the 19th. Such a mistaken communication of a time limit has arisen either because this type of decision notification allows a DWP officer to fill in the final date for seeking a mandatory reconsideration (which is worrying, as it leaves this subject to human error) or, more likely, is a result of the system having been set up to auto-generate the final date based on the date of the letter (which is worrying, given that the final date used is wrong).²⁴⁴

Across the different statements of appeal rights, there is a complete lack of transparency about the possibility of applying for a late revision up to 13 months after the decision, if a claimant explains why they are applying late and the DWP considers it reasonable to grant an extension, or about the possibility of revisions at any time if specific grounds apply – eg, the DWP has made an official error.²⁴⁵ The consequence of this lack of transparency could include claimants unknowingly missing time limits, decisions going unchallenged if claimants wrongly believe deadlines have expired and cannot be extended, or claimants failing to provide reasons why they could not apply for a revision within the one-month period.

The information given about when a revision can be sought also suggests that a claimant can only request a revision in a case where 'you have new information that could affect your payment or think something has been overlooked'. However, the right to request that the DWP look at a decision again is not limited to situations where a claimant has new information or thinks something has been overlooked. A revision is a complete reconsideration of the decision, which means a decision maker can come to a different conclusion on the basis of exactly the same evidence. By suggesting that the DWP can only change a decision if it failed to consider new or overlooked information, the DWP is not completely transparent about the situation in which a revision is possible.

The previous CPAG report on this issue included a suggested rewording of the template appeal rights notification to ensure it reflects the legislation, makes clear the different options available to claimants if they disagree with, or do not understand, the decision, and fully notifies claimants of the time limits for, and methods of requesting, an appeal.²⁴⁶

²⁴⁴ See R(IB) 4/02, available at rightsnet.org.uk/?ACT=39&fid=8&aid=60_e2INQmt48MPrw0jq3Nqe&board_id=1 and *SSWP v SC (SF)* [2013] UKUT 607 (AAC), available at casemine.com/judgement/uk/5b46f1ff2c94e0775e7efb21, which make the point that an act is done 'within a month' of a date if it is done by the end of the same date on the following month.

²⁴⁵ Regs 6 and 9 Decisions and Appeals Regulations 2013

²⁴⁶ CPAG, *Computer Says 'No!' Access to justice and digitalisation in universal credit - Stage one: information provision*, 2019

Figure 3I: CPAG's mock-up of a suggested statement of appeal rights that complies with legal requirements previously published in *Computer Says 'No!' – Stage one: information provision*

What can I do if I think this statement is wrong?

You can ask us to explain our decision about your entitlement. You can also ask us to reconsider our decision – this is called making a mandatory reconsideration request. If at the end of this you still don't agree, you can appeal to an independent tribunal.

<p>You can ask us to explain</p> <p>You, or someone who has the authority to act for you, can ask us within one month of the date on this statement (30 December 2018) to explain your entitlement by providing you with a statement of reasons.</p>	}	<p>You can also ask us to reconsider (mandatory reconsideration)</p> <p>You, or someone who has the authority to act for you, can tell us if you think we've overlooked something, or you have more information that affects your entitlement or for any reason you think the decision is wrong. You need to do this before your deadline, which may vary (see below)</p> <p>When we have looked at what you have told us, we will post a letter on your journal to tell you what we have decided and why. We call this letter a mandatory reconsideration notice.</p>	}	<p>When you've done this, you can appeal</p> <p>If you disagree with the mandatory reconsideration notice, you can appeal to a tribunal.</p> <p>You must wait for the mandatory reconsideration notice before you start an appeal.</p>
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Your deadline for asking us to reconsider is: (a) **one month** from the date of this statement (30 December 2018) unless:

- (b) You requested, and we gave you, a written explanation within that month. Then your deadline is one month + 14 days from the date of this statement.
- (c) We gave you a written explanation after that month. Then your deadline is 14 days from the date of the written explanation.
- (d) You are making a late request and:
 - + **Your request is made within 12 months of the original deadline – ie, whichever of (a), (b) or (c) above applies.**
 - + There are good reasons for the deadline to be extended.
 - + You made your request as soon as you could.
 - + You are clear about which decision you disagree with.
 - + You explain the delay.

You can contact us by telephone, in writing, or use your journal.

Telephone: 0800 328 5644
Textphone: 0800 328 1344
Address: Freepost DWP UNIVERSAL CREDIT FULL SERVICE

Unfortunately, the DWP has not made any changes to the UC statement of appeal rights to reflect CPAG's concerns.

The inadequacy of information provided to claimants about their appeal rights is concerning when considering the extent to which the UC system upholds rule of law principles. If claimants do not have sufficient information about their appeal rights or how to exercise them, this is a lack of transparency which results in procedural unfairness.

3.2.4 Overwritten payment statements

What happens in practice

When a decision is revised or superseded with effect from an earlier date, that can change the award to generate an overpayment (if the amount of the award after the change is less than was previously awarded) or an underpayment (if the amount of the award after the change is more than was previously awarded). To understand the effect of a decision notice stating that a decision has been changed, it is necessary to compare the changed award with the original award, which means looking at the original decision notice.

However, when a UC decision is changed from an earlier date, the payment statements on the journal are automatically updated to display only the new decision. The new statements replace the originals rather than making both the original and amended decisions available for comparison.

It is difficult even to tell whether or not a decision has been changed at all, let alone the effect of the change. The only way claimants or advisers can tell whether the statement has been overwritten after a change is to click on the words 'If you think we've made a mistake or want to appeal' at the bottom of the statement and see whether the date in the statement of appeal rights matches the assessment period in question or was made at some later date.

Figure 3J: CPAG mock-up of an extract from the payment statement statement of appeal rights

You can ask for a written explanation. You need to contact us **within 1 month of the date on this statement (9 February 2023)**. You can write to us at Freepost DWP UNIVERSAL CREDIT FULL SERVICE, or call us.

The DWP's design choice to overwrite payment statements, rather than archiving them when decisions are changed so they are still accessible, makes it difficult for claimants and advisers to check whether overpayments and underpayments have been calculated correctly, especially if there have been multiple changes over the period in question.

Early Warning System: lack of information on revised payment statement – January 2021

‘A major bugbear I have with UC is that when they change a decision for a past period, the payment statement simply updates with the new info. However, there is nothing on it to show it was revised and you have to do a subject access request to get a copy of the original. My issue with this is that the payment statement is now factually incorrect. This is a big issue when trying to challenge an overpayment, as you can’t see the before and after to see what has occurred.’

Rightsnet thread [11258#50](#): overpayment was actually an underpayment – July 2021²⁴⁷

‘It is certainly an issue where there is no visible audit trail of the UC payments due to the overwriting of the original payment statement when there has been a change of circumstances. I currently have a client with an overpayment because of the reinstatement of carer’s allowance after the son won his personal independence payment appeal. The DWP are adamant that the client received the carer’s element payment during the overpayment period because that is what the payment screen shows! The client is providing bank statements to show the payments received had no carer element included but it gets complicated as there were also housing costs initially paid to client then direct to landlord. The DWP do not make it easy for themselves but even less easy for clients to understand.’

Early Warning System: lack of transparency of arrears calculations – June 2022

‘Overwritten payment statements are causing major difficulties when trying to advise about a housing costs underpayment. I have had to request a subject access request to get access to the current and previous payment statements to check whether the arrears payment has been calculated correctly.’

Overwritten payment statements also present a false narrative of decision making and payments, as described by the interviewees below.

²⁴⁷ Rightsnet thread 11258, available at rightsnet.org.uk/Forums/viewthread/11258/P30/#82718

Timothy and adviser Amelia – interview transcript

Amelia: Can you show me what you got for housing?

Timothy: Housing, £860.

Amelia: You didn't get £860.

Timothy: No, I didn't.

Amelia: You got £780. Why has it been changed to £860?... I've got the one that's showing £780.

Timothy: That's a bit naughty if they are changing it afterwards.

Amelia: Yes. I don't like that at all. They shouldn't be doing that.

Timothy: Because now it looks as if it had been always like that since the beginning, which isn't the case... It seems to me like they are cleaning there.

Amelia: But those were your records. It's not theirs to do that... it's like changing a bank statement. You don't go and change bank statements.

Martha (claimant) – October 2022

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

Victoria (claimant) – August 2021

'My statements were amended a few times, so even though I've had the statements from January, then I looked at it in April or in May, it was different to what I've saved in January, and it was especially happening when there was a tribunal thing going on. So it was like somebody was messing with my statements just to make it look good for them, if that makes sense? ... I shouldn't have to find out myself that somebody was messing with it... because I argued over something that is not correct anymore. Unless I saved it myself and I can see it there...'

When compared to non-digital benefits, the overwriting of payment statements would be the equivalent of the DWP removing and replacing previous decision letters received through the post without leaving copies of the

originals. More than one person interviewed as part of the research made the comparison with the transparency expected and received from banks concerning financial records.

Rhys (claimant) – February 2022

'It's very hard to go back and check for yourself what has happened over the last two or three reassessments. If I go onto my bank account... I can look at transactions I've made any time in the last six years. You know, I can pick the date, I can pick the payment, I can click on it, and it comes up – who I paid, how much, when I paid it. Trying to find out what your last but one universal credit calculation was, you almost need a master's degree in IT, to manage to do that.'

Equally, if not more concerningly, there is a risk that the DWP's own 'back end' record does not always capture these changes when the new statements are later presented to an independent tribunal as part of appeal papers prepared by the DWP, so they do not evidence the decision as it was originally made.²⁴⁸

In September 2022, the DWP stated: *'UC design are currently exploring areas of the overpayment and underpayment process... The discovery phase has highlighted the issue of previous versions of statements not being visible to claimants. Changes which would allow the claimant to see both the original and amended statement require complex behind the scenes work to make it technically possible. The design team are now exploring various design improvements for the whole process which will be addressed in priority order.'*²⁴⁹

Overwritten payment statements are problematic from a rule of law perspective. The digital design choice to overwrite and replace decision notifications lacks transparency and is procedurally unfair, as claimants have insufficient information to identify whether the outcome arrived at is correct. The overwriting of payment statements also undermines one of the main advantages of a digital benefit over legacy benefits for claimants: the potential for recordkeeping. It appears that the DWP is aware of this issue and will take steps to address it at some point; however, it is disappointing that such a significant barrier to claimants' understanding of their UC award, and therefore their ability to exercise their rights, has not been a priority for the DWP.

3.2.5 Overwritten journals

What happens in practice

Claimants are advised to make a new claim following the refusal of their claim or the end of their award. Once a new claim is made, the claimant loses access to their previous journal as it is overwritten by the digital system when a new one is created. This means claimants cannot access the decision notifying them about the refusal of their previous claim or the end of their previous award and any journal messages which may be relevant to a dispute. Welfare rights advisers have learnt to screenshot and save any information that may be relevant to a challenge before a new claim is made. However, this is not always possible and does not help those without representation or those who have already made a new claim before seeking advice. Once a new claim has been made, claimants are only able to access the previous journal by querying the information available via the UC helpline, applying for a subject access request for their records or waiting for the information to be reproduced in an appeal bundle if they challenge the decision at the First-tier Tribunal.

²⁴⁸ See Rightsnet thread 11258, posts #43 and #48, available at rightsnet.org.uk/Forums/viewthread/11258/P30

²⁴⁹ rightsnet.org.uk/forums/viewreply/88015

Natalia (adviser) – November 2021

‘Claim closure is an issue in terms of again having this paper trail. It’s all very well telling someone to take screenshots of their journal in the event that the claim is closed and they have to reclaim, or whatever. But they don’t know if the claim is going to be closed, so how can they be expected to take screenshots of stuff when there’s no reason for them to do it?’

Chloe (claimant) – October 2022

‘When they did the new claim, it deleted my access to my old journal... I didn’t have access to my own information... New claim submitted 24th May... “Hi there. I was previously in conversation, over my journal, about alleged overpayments. I did not realise that doing the new one would remove me... Is there going to be any continuity? What’s going on? I’ve lost access to the old journal. So, I can’t see if anybody has said anything about this overpayment...” ... I did get confirmation. “In regard to your request for mandatory reconsideration, I have referred this for you. The decision maker will be in touch if there’s anything for you and to provide you with an outcome.”

They actually suggested that they could print it off and send it to me, if that would be convenient. I said: “Uh, yes. Frankly, that’s probably about the least you could do.” I would have assumed what they could have done is reactivate... So that I could get into that old claim and still interact with it...’

Ben (claimant) – August 2021

‘They’ve deleted all of this [first] claim... I thought: “I’ll go in and have a look, and I’ll be able to get the dates and tell you.” I should have framed my appeal letter, because it was a moment of pride. But I haven’t even got that. I’m guessing I could get it with a subject access request for all my records from DWP. It just says, from last year, “Reclaim started”. That’s the history of it. None of this is there, which I think is terrible for an online system.’

By contrast, previous job application history remains available when a claimant’s journal is overwritten. The two extracts from the same UC account below show that the earliest available journal message was from 4 October 2021, whereas there is a job application record visible from as early as February 2021. This difference suggests the overwriting of the journal was an intentional, claimant-unfriendly, digital design or implementation choice. In response to this research, the DWP has stated that one of the reasons for not providing previous journal messages is the possibility that household make-up may have changed between claims and this could cause issues with regards to information sharing. For example, new partners cannot have access to information about previous partners.²⁵⁰

²⁵⁰ Email from DWP to CPAG, 31 May 2023

Figure 3K: CPAG mock-up showing date of earliest journal message (4 October 2021)

Date and time	Message	Added by
4 Oct 2021 at 8.04pm	Income other than earnings completed	
4 Oct 2021 at 8.03pm	Savings and investments completed	
4 Oct 2021 at 8.03pm	Work and earnings completed	
4 Oct 2021 at 8.01pm	Who lives with you? completed	
4 Oct 2021 at 8.01pm	Housing completed	
4 Oct 2021 at 7.54pm	Nationality completed	
4 Oct 2021 at 7.54pm	Previous Address completed	
4 Oct 2021 at 7.54pm	Address completed	
4 Oct 2021 at 7.54pm	Contact details completed	

Figure 3L: CPAG mock-up of the job application information from an earlier date (22 February 2021)

Paediatric Nurse **Applied** 270 day(s) ago

[Update job](#)

Notes

Updated on 22 February 2021

3.2.6 Inadequate reasons for decisions

What happens in practice

For claimants to meaningfully access their appeal rights, they require decision notices with adequate information to identify what led to the particular outcome decision. Our research has found that the DWP fails to add sufficiently personalised and detailed information to their standard template UC letters to satisfy these requirements – in particular, the notification of overpayment or underpayment decisions and when a claimant fails the habitual residence test.

Overpayment and underpayments

There is insufficient detail in overpayment and underpayment decision notifications for claimants to understand what caused the over- or underpayment and how much they owe the DWP or the DWP owes them now the decision has changed. The only information provided to claimants is the total amount of over- or underpayment for the entire period and a summary of the reason, which is rarely more than a couple of words or lines.

Figure 3M: CPAG mock-up of an overpayment decision letter

<p>Important: You've been paid more Universal Credit than you're entitled to You now need to pay this back</p> <hr/>	<p>27 November 2020</p>
<p>Dear</p> <p>On 03 June 2020 you were paid £3,255.20. You should have been paid £1,798.14. This is because of changes to your account for Housing; Children; Take-home pay; Other benefits; and Advances. Because of this change you have been overpaid £1,457.06 and now need to pay this money back.</p> <p>You are now in a minority of people who have received money they're not entitled to.</p> <p>If you already owe money to us, this overpayment will be added to it. We'll contact you if we need to review how much you're currently paying back.</p>	<p>Overpayment of Universal Credit</p> <p>You need to pay £1,457.06</p> <p>You were overpaid £1,447.06</p> <p>From 28 May 2020 to 27 November 2020.</p> <p>Call 0800 916 0647 to set up your repayment.</p>

Figure 3N: CPAG mock-up of an underpayment decision letter

<p>We owe you some money</p> <hr/>	<p>9 December 2022</p>
<p>Dear</p> <p>We've decided you're entitled to Universal Credit of £250.00 from 9 November 2022 to 8 December 2022. This is because of childcare. We've already paid you Universal Credit of £0.00 from 9 November 2022 to 8 December 2022.</p> <p>We owe you £250.00. This is the amount left after taking away the Universal Credit we've already paid you.</p> <p>We'll pay £250.00 into your bank account.</p> <p>You must tell us about changes</p>	<p>Use your journal to contact us if you have any questions.</p> <p>You can also call us on the number above. To speak to an agent in Welsh, please call: 0800 328 1744.</p> <p>We have many different ways we can communicate with you.</p>

This lack of transparency makes it difficult for claimants to check for any errors in the calculation, as described by the following claimants and advisers.

Yasmin (claimant) – November 2021

‘My issue was that I felt like they weren’t being transparent with me... I had to say to them: “I want a month-by-month breakdown of what you are saying I owe. You can’t be just telling me, ‘You owe us £2,000.’ And not telling me how.” ... It’s almost like you don’t have the right to know the inner workings, and that’s not right.’

Amelia (adviser) – October 2021

‘This is highly unsatisfactory... It is just a ball figure. “Between August ‘20 and June ‘21, you were paid £2,815... You should have been paid zero.” There is no calculation of how they have arrived at that figure... It is just ballpark figures and no context...’

Rowan (adviser) – February 2022

‘The decision letters tend to be very jumbled and... cut and paste. For example, there was one that I had where I’d got a [mandatory] reconsideration done and I’d got a load of extra money paid and then they got a letter that said... “We paid you zero, so we need to pay you this amount.” None of it added up, it was all just garbage, and really confusing...’

Early Warning System: lack of information in UC letter regarding arrears calculations – October 2022

‘The client was awarded limited capability for work-related activity [LCWRA] but the arrears payment seemed small, so I checked and it was £401 less than expected. I asked on the journal how they worked it out and showed my calculation. They initially failed to respond after a month and we had to chase. They eventually responded to say: “The issue was you previously had housing costs corrected and when your limited capability for work [LCW] underpayment [was] generated, the system did not recognise the correct[ed] housing costs. This caused the [amount for the] additional bedroom entitlement payment to be taken off the limited capability for work underpayment [arrears payment].”

If we hadn’t checked, he would have been underpaid. The UC letter shows what period the underpayment covers, but there is no transparency as to the exact calculation of the arrears. In this case, we didn’t know the “bedroom tax” was incorrectly applied and deducted from the arrears of LCWRA payment. I expect many people are underpaid. Not many would question or know its incorrect especially when there is no information about how it was calculated.’

In the following example, the adviser asked for a more detailed explanation than the reasons provided in the decision notice, but DWP officials were unable to provide the information required.

Henry (adviser) – October 2021

'I have had cases where someone has been told, wrongfully, that they were overpaid housing costs and when I asked why, they said: "Oh because you were overpaid housing costs between this period." I said: "Okay, but why?" ... "Oh because you didn't tell us about your housing costs." That doesn't tell me anything... As far as I can see, the tenancy agreement started on this date, they were paid every month from that date, there is no error. We did a mandatory reconsideration and they took two months to process it... So it is extremely stressful. Firstly, the decision makes no sense, secondly they don't give any reason for the decision so it makes even less sense.'

If compared to legacy benefits, an over- or underpayment of housing benefit (HB) decision letter includes the total overpayment for the period in question, but it will also be accompanied by a breakdown of the personal allowances according to the family circumstances and the income and savings for each week's payment, as is required by the Housing Benefit Regulations 2006.²⁵¹ The DWP has more information available internally about how the overpayment has been calculated if they access the 'Review an overpayment or underpayment' internal agent to-do. Claimants also require a change in the award calculation broken down by assessment period.

Figure 30: CPAG mock-up of the information available to the DWP in the 'Review an overpayment or underpayment' to-do from a subject access request file

History

Review an overpayment or underpayment completed

Claimant contact details

Name

Email (preferred)

Name

Email

Completed on: **Tuesday 1 August 2021 at 12.30pm**
Created on: **Tuesday 1 August 2021 at 11.30am**

Details

Calculated value of **£12356.50 overpayment**
overpayment/underpayment

Calculated value **Yes**
accepted

Who should we **The claimant**
recover this from?

²⁵¹ Sch 9 para 15 Housing Benefit Regulations 2006 No.213 requires all notices of an overpayment to include: (a) the fact that there is a recoverable overpayment, (b) the reason, (c) the amount, (d) how it was calculated, (e) the benefit weeks the overpayment relates to, and if the overpayment is to be recovered by a deduction, the fact and amount of the deduction.

Calculation breakdown**Assessment period 30 March 2020 to 29 April 2020**

Element	Before recalculation	After recalculation
Standard allowance	£594.04	£0.00
Housing	£800.00	£0
Children	£277.08	£0
Carer	£160.20	£0.00
Take-home pay	£361.50	£225.40

The statement showed £1344.70 paid to claimant. This is now recalculated as -£125.00.

Assessment period 30 April 2020 to 29 May 2020

Element	Before recalculation	After recalculation
Standard allowance	£594.04	£0.00
Housing	£800.00	£0
Children	£281.25	£0
Carer	£162.92	£0.00
Take-home pay	£1512.50	£1373.90

The statement showed £200.60 paid to claimant. This is now recalculated as -£125.00.

Habitual residence test

In order to meet the qualifying conditions for UC, a person must be both present in Great Britain and ‘habitually resident’ (meaning the UK is your main home and you intend to keep living there), which includes having a ‘right to reside’ in the ‘common travel area’ – ie, the UK, Ireland, the Channel Islands and the Isle of Man.²⁵² It is possible for claimants to have multiple different rights of residence depending on their individual circumstances and those of their family members. Not all rights of residence satisfy the qualifying conditions for UC.

When the DWP notifies a claimant that they do not have a sufficient right to reside for UC entitlement, the decision notification lacks transparency about the right to reside requirements in the legislation and how they apply to the claimant’s specific circumstances. This makes it difficult for claimants to identify whether a decision maker has made a mistake in refusing their claim or ending their award, and inhibits them from making informed representations if they do not agree with the decision. Claimants receive a decision letter in the form of a PDF uploaded as a hyperlink on their journal. This decision letter states: *‘We have decided that you have failed the habitual residence test. This is because you have not demonstrated a right to reside that qualifies you for universal credit.’* The DWP then provides claimants with an index of the different residence rights and an explanation of how they generally make habitual residence test decisions. Claimants are not told what findings of fact have been

²⁵² s4(1) Welfare Reform Act 2012; there are limited exceptions where people can still be treated as present in Great Britain when temporarily abroad; reg 9 UC Regulations 2013.

made, what evidence has been used, and how the legal test has been applied to their specific circumstances. Claimants are advised that the DWP will ‘only look at the parts relevant to your circumstances’ but are not told which parts these are, so it is not possible to identify what, if anything, has not been considered that should have been, without contacting the DWP to request an explanation of the decision.

Lucy (adviser) – August 2021

‘You must have seen the HRT [habitual residence test] failure letters that are just so unhelpful... in terms of explaining exactly what is wrong with that particular claimant... why they failed. Even though they list various categories, I just don’t think they’re very helpful at all.’

Incorrect habitual residence test decisions are consistently one of the most common complaints raised with the Early Warning System.²⁵³ Our evidence shows decision makers regularly fail to apply the law, often because there is an insufficient investigation of the facts and a lack of consideration of the multiple possible residence rights which may apply to a person based on their personal circumstances and those of their family members.

Early Warning System: worker status following temporary illness – January 2023

A French national with pre-settled status has been in the UK for two years and received UC as a worker when she became pregnant and then ill in early 2022. She had to stop working. This prompted a new habitual residence test and her UC award was brought to an end due to failing the habitual residence test. The DWP has only looked at her pre-settled status and not considered whether she has retained her worker status.

Early Warning System: pre-settled status with child in education – August 2021

‘I have a client who is in a refuge. Her UC was refused because she has pre-settled status but they didn’t ask her questions to identify if she had any other right to reside – which she does as the primary carer of a child in education and as the spouse of an EEA [European Economic Area] worker. The mandatory reconsideration hasn’t been responded to after six weeks.’

At its heart, procedural fairness requires that individuals must ‘know the case against them’. The reason for this is that only then can a person identify whether a mistake has been made and assert their right to challenge a decision. In the UC digital system, the DWP is not adequately transparent about the reasons for decisions, which makes it difficult for claimants to understand the case against them or to put forward their own case to challenge a decision. This is partially caused by the inadequate design of the template letters used by DWP officials. Specifically, the DWP should provide claimants with a breakdown of the maximum amount and the income and savings for each month’s payment, as is provided by HB decision letters, and an explanation of how the right to reside requirements in the legislation have been applied to the claimant’s specific circumstances, including about each potential right of residence in isolation rather than general statements.

²⁵³ For a thorough exploration of the issues raised here and more, see C O’Brien, *Unity in Adversity: EU citizenship, social justice and the cautionary tale of the UK*, Hart Publishing, 2017.

3.3 Communicating decisions conclusions

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

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness in the way decisions are communicated within universal credit (UC). These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. An online account with a record of all communication with the DWP and a history of decision making for one combined benefit is a significant development of UC, and one of the more apparent advantages of a digital-by-design benefit for claimants, which has the potential to increase transparency compared to legacy benefits. However, these potential benefits of an online account for increasing transparency have been undermined by a number of the DWP's digital design and implementation choices.

The DWP has designed a system that automatically overwrites payment statements when decisions change from an earlier period, overwrites journals when a new claim is submitted and produces inconsistent decision notifications, which are written in different formats and stored in different places across the UC account. At a more basic level, the DWP has designed templates for individual decision notifications that fail to provide adequate information about a claimant's appeal rights and the reasons for decisions. As a result, some UC claimants can have a worse record of decision making than those in receipt of legacy benefits.

These issues are not inevitabilities of digitalisation but avoidable and rectifiable design choices that prevent a claimant from having a meaningful understanding and record of the decisions taken about their UC claim or award. Many of the changes would be cost neutral or low cost to introduce. They would have a significant benefit for claimants and they would not interfere with the central architecture of the UC system. In some cases, the DWP has committed to making changes, but it has not committed to a timescale among competing priorities. In many cases, digital design issues remain many years after stakeholders first raised them with the DWP.

They are also evidence that it is not just the effects of artificial intelligence, or even automated decision making, which should be considered when investigating the effects of digitalisation on claimants and their rights. Simple design choices when implementing a digital-by-design benefit can significantly affect the extent to which a system complies with rule of law principles, and the extent to which it can result in negative consequences for claimants.

Prioritisation of simplicity over completeness and lawfulness

The DWP appears to prioritise simplicity over legality, which is not a choice available to it if the system is to comply with the rule of law. Currently, the DWP does not provide adequate information on a claimant's appeal rights when they notify appealable decisions. The information required by the legislation may be longer than the current statement of appeal rights for UC, but that is because all of the detail is necessary for claimants to understand and access their appeal rights.

The DWP also appears to prioritise simplicity at the expense of completeness, and as a result, claimants are not provided with enough information to understand the reasons for decisions. For example, there is a lack of transparency with claimants in either the payment statement or the *Help Understanding Your Statement* guidance about all the different possible elements, deductions or exemptions that might be applied to an award if the system does not recognise them as applicable to the specific claimant – making it very difficult for claimants to recognise if their award is incorrect. There are other examples across the UC digital system. The lack of detail in the overpayment and underpayment decision notifications (see section 3.2.6), the inadequacy of the habitual residence test determinations (see section 3.2.6), the information on student finance displayed on the payment

statement (see [Chapter 2 – ‘Decision making’](#): section 2.3.4), and the failure to notify claimants about the process for challenging real-time information (RTI) errors (see [Chapter 4 – ‘Disputes’](#): section 4.3) all indicate that the DWP has prioritised simplicity and accessibility over completeness in places.

That is not to say that simplicity is not also a requirement. The DWP should ensure that decision notifications are simple, comply with the law and include adequate reasons for decisions. If this is not possible in one statement of appeal rights or a single decision letter, then the DWP should provide short- and long-form versions as standard.

3.4 Communicating decisions recommendations

Quick fix

- DWP *Digital Design* should amend the payment statement and increase the detail in the payment statement guidance to provide information to claimants about all the possible elements, exemptions and exceptions that exist in the legislation. Ideally, there would be the easy-to-read summary, as is currently available, as well as an expanded complete version with all the non-relevant elements greyed out.
- The statement of appeal rights should be part of the payment statement rather than available as an expansion after clicking the ‘If you think we’ve made a mistake’ button.
- DWP *Digital Design/Communications* should amend the statement of appeal rights in line with previous recommendations from CPAG so that it complies with legal requirements and gives claimants adequate information about their appeal rights, paying particular attention to the right to apply for a revision beyond one month.²⁵⁴
- DWP *Digital Design/Communications* should review the quality of information provided in decision notifications, and amend the information provided accordingly, to ensure that adequate information to identify what it was specifically about the conditions of entitlement in the legislation or the procedures followed that led to a particular outcome decision and the evidence used.

Medium-term fix

- DWP *Digital Design* should redesign the UC account so that all appealable decisions are stored in the same place, to assist claimants locating these decisions.
- DWP *Digital Design* should redesign the journal so it is possible to filter by time period and type of communication – eg, decisions or determinations versus messages to do with work search.
- DWP *Digital Design* should prioritise a redesign of the payment statements in the UC account so that previous decisions are archived rather than overwritten, and it is more obvious to claimants when a decision has been changed by revision or supersession at a later date.
- DWP *Digital Design* should redesign the UC account so that previous decisions and communications in the journal are visible or retrievable when a claimant makes a new claim for UC.

²⁵⁴ Child Poverty Action Group, *Computer Says ‘No!’ Access to justice and digitalisation in universal credit – Stage one: information provision*, 2019, available at cpag.org.uk/policy-and-campaigns/computer-says-no-access-justice-and-digitalisation-universal-credit

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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.