



YOU REAP WHAT YOU CODE

Universal credit, digitalisation and the rule of law

Executive summary

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Introduction to the research / methodology

This research study examines the extent to which universal credit (UC) adheres to the rule of law principles of transparency, procedural fairness and lawfulness. Our analysis focuses on the claims, decision making, communication of decisions and disputes processes within UC. We investigated how the design and implementation of the UK's first digital-by-design benefit aligns with the social security legislation underpinning it.

We reviewed relevant cases (approximately 2,500 cases) from CPAG's Early Warning System, a bank of over 6,500 case studies from welfare rights advisers on the problems they are seeing in the social security system. We conducted 33 interviews with 28 UC claimants, and 14 interviews with 13 welfare rights advisers (some participants were interviewed twice). We also carried out significant amounts of desk-based research, including obtaining operational guidance, training materials and administrative data via freedom of information (FOI) requests (approximately 50).

What follows is a selection of the findings from our research report. [The full research report is available here.](#)

Key findings from the research

Claims

Information gathering through the digital claims process is inadequate

We have found that the UC digital claim process does not gather all the information needed to correctly calculate claimants' awards. The onus is placed on people in certain circumstances, including those with disabilities and experience of homelessness, to identify whether these specific circumstances apply to them and raise it with the Department for Work and Pensions (DWP) without any prompting. When the DWP knows the complex rules of entitlement and claimants do not, not asking for all the information required means claimants are not provided with a fair opportunity to establish their entitlement, and they risk losing out on their full entitlement as a result. This is a breach of the rule of law principle of procedural fairness.

Charlie (adviser) – February 2022

'We (are) 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.'

The architecture of the digital system does not permit certain features of the social security system to operate as intended

The legislation and guidance allow certain groups of people to be able to submit a UC claim up to a month in advance, in recognition that their specific circumstances require this for fairness. However, the DWP has designed a digital system that does not permit any UC claims to be accepted early (and there is no adequate 'work around' outside of the digital system). This means people in specific circumstances, specifically care leavers and prisoners expecting release, can miss out on entitlement if there is any delay in submitting their claims. It is a breach of the principle of procedural fairness and arguably unlawful to fail to provide a mechanism to access the procedural rights that have been granted by parliament through legislation, and by the Minister through guidance.

Will (adviser) – October 2021

*'(DWP) 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...'*

The design of the digital claim form causes delays in people claiming universal credit

The digital claims process does not allow a claim to be submitted until all the questions have been answered. There are restrictions on the ability to use placeholder answers for certain questions if a claimant cannot answer them (such as the provision of bank details), even though the law does not require answers to these questions in order to make a valid claim. People can miss out on entitlement if there is any delay beyond a day in submitting a claim, which is a breach of procedural fairness. Certain groups may particularly struggle to provide bank details, including those with recent immigration status or experience of homelessness.

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..... there should be something on there where, "If you haven't got a bank account, tick this box."'

Lack of research into delayed 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.¹ Over the same time period, approximately one-third of the 2.9 million registrations for UC failed to submit a claim at all.² The DWP does not publish empirical evidence into why people delay or fail to complete the claims process; therefore, it is impossible to rule out that certain groups may be disproportionately frustrated in their attempts to claim UC, and thus more likely to miss out on entitlement.

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...'

Decision making

Our research found that in UC, the reasons decisions are taken not in accordance with the law include digital design and implementation choices systematically producing the wrong decisions for claimants in certain

¹ FOI2022/14091, available [here](#)

² FOI2022/14091, available [here](#)

situations; the digital architecture not accurately reflecting the legislative decision-making framework; and certain digital design or implementation choices contributing to repeated errors in human decision making.

A failure to use the data available to accurately calculate awards

The DWP has failed to use the data it holds about claimants' entitlement to other benefits to ensure that the UC digital system automatically and accurately calculates UC awards. This means certain groups of claimants, including carers, miss out on their full entitlement to UC and face an administrative burden while they attempt to challenge incorrect decisions. Some claimants are required to repeatedly challenge their miscalculated award decisions because the manual work-around to the automated calculation only lasts for a single monthly assessment period. This is an example of the digital system systematically producing unlawful decisions for certain groups of claimants.

Rhys (adviser) – February 2022

'We have the same issues with carers, who get awarded carer's allowance. The carer's allowance gets deducted from their universal credit, but they don't get awarded the carer element, because they haven't told the DWP they're a carer. Well hold on a minute, you've told the DWP you're a carer because you've claimed carer's allowance. And universal credit know you have, because they're deducting it... So the idea that it's then up to the claimant to actually say, "I am a carer" is ludicrous, simply ludicrous.'

The digital architecture does not capture the legal decision-making framework

The DWP has built the UC system to use the concept of 'claim closure' to encapsulate five distinct legal decision-making mechanisms, which each place different duties and obligations on the DWP, and different rights and responsibilities on claimants in the legislation. This inaccurate terminology creates a lack of understanding for claimants as it disguises the legal basis for decisions, encourages DWP officials to make decisions without first identifying whether they have the power to do so in the legislation, which risks unlawful decisions, and creates a barrier to claimants challenging decisions. The DWP's reliance on the concept of 'claim closure' throughout the UC system design and decision-making guidance creates problems across the three rule of law principles of transparency, procedural fairness and lawfulness.

Charlie (adviser) – February 2022

'(Claim closure) is used... as a loincloth for an unlawful process. Sometimes, the DWP will just say, "Oh, in circumstances X, we closed the claim...", when nobody actually knows what that means... I think that a degree of procedural discipline would go a long way in improving decision making because the DWP will then have to ask themselves, "What is it we're actually doing and what effect does that have on the award, and where is our actual legal power to do it derived?", which are questions that really, you should expect civil servants to ask themselves... Whereas with claim closure, that doesn't really happen because they just say: "Oh, under circumstance X, we closed the claim." Well, what does that mean?'

Digital processes contribute to repeated errors in human decision making

The DWP has designed a single agent-facing 'to-do' (page requiring action) called 'late reporting of a change' to be used in two situations, which are treated differently in the legislation. Our research suggests this design and implementation choice may contribute to DWP decision makers applying the wrong legislation and incorrectly

treating some changes in circumstances as reported late, with families with disabled children and carers missing out on their full legal entitlement as a result.

CPAG's Early Warning System: DLA and change reported outside assessment period – August 2021

'My client's family were losing £800 a month because of the benefit cap. One of their children was awarded DLA [disability living allowance] from March 2021 and the benefit cap was removed. They requested the disabled child element be added from the beginning of the assessment period from which the DLA award was made. UC ignored it and have asked her to provide reasons why she reported it late. We again wrote to UC to explain that the usual rule about late reported changes does not apply if a family member becomes entitled to another relevant benefit (such as DLA). They have ignored this and keep telling the client that she needs to explain why it is late. It does feel like case managers don't understand the law. This case is not unusual – almost every relevant benefit change that I have come across, this is happening.'

Communicating decisions

Historically, the DWP has notified claimants of decisions affecting entitlement via letters through the post. This communication method is vulnerable to delays and lost or missing information, and can require claimants to wait in telephone queues for different government departments to investigate the status of their different benefits. An online account which gives claimants access to up-to-date records and a history of decision making for one combined benefit has the potential to increase adherence to the rule of law principle of transparency. However, this research has found a number of design and implementation choices which prevent this potential from being realised.

Missing claimant-facing audit trail of decisions

When a change is made to a claimant's UC award, their UC payment statement (which provides a breakdown of how the award has been calculated and details of how to challenge the calculation) is overwritten. The amended payment statement replaces the original, rather than making both the original and amended decisions available for comparison. Overwritten payment statements make it difficult for claimants to work out what has changed and presents a false narrative of the payments made. Similarly, if a claimant makes a new claim following the refusal of a claim or the end of an award, the claimant loses access to their previous UC journal when a new one is created, meaning they cannot access any decisions or journal messages that may be relevant to any dispute.

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... 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.'

Inadequate reasons for decisions

Payment statements and the accompanying guidance do not contain adequate information about how awards have been calculated, including the different possible elements, exceptions or exemptions that might apply to a

claimant if the UC digital system does not recognise them as applicable to the individual. This means that certain groups of claimants, including people with disabilities and those who have been in homeless accommodation, may unknowingly miss out on their full legal entitlement.

CPAG's 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....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 it's incorrect, especially when there is no information about how it was calculated.'

Inaccurate information about appeal rights

The notifications provided to claimants about their appeal rights do not accurately reflect the legislation. For example, they do not tell claimants about the possibility of applying for a mandatory reconsideration more than a month after a decision if they provide a reason for the delay. 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 mandatory reconsideration within the one-month period.

CPAG's Early Warning System: receiving UC during Covid – October 2022

'A few weeks ago, I received a letter that said I had been overpaid £4,000, which I was totally shocked about... I rang UC and spoke to a lady who said she was going to put it through as an urgent case and get someone to ring me back, which they never did. I logged on to my journal and saw a few messages explaining to me about the so called "overpayment" ... I could not reply to any of these messages on my journal as they said my claim was closed. I rang and they said I needed to fill in a reconsideration letter which on my journal stated that this form had to be filled in by October, which at this point had already passed, so there seemed nothing I was able to do at this point.'

All of these examples highlight deficiencies in transparency, and in some situations give rise to procedural unfairness, particularly in relation to decisions that require a mandatory reconsideration or appeal to be corrected.

Disputes

A fair and effective dispute process is fundamental if UC is to comply with rule of law principles.

Unreliable and ineffective process for challenging decisions

In UC, the legislation requires claimants to request a mandatory reconsideration before they can appeal to the independent tribunal. The DWP has not built a specific function for a claimant to lodge a mandatory reconsideration. Instead, claimants most commonly request a mandatory reconsideration by writing a note in

their online journal (or they call the UC helpline.) Our research suggests that the informal communication style of the journal can encourage DWP officials to act as ‘gatekeepers’ to the mandatory reconsideration process. One of the common reasons for gatekeeping is simply because the DWP official believes the decision to be correct. As a result, claimants can be dissuaded from pursuing a challenge before a decision maker has ever had the opportunity to formally reconsider the decision – a fact that the DWP themselves acknowledged as far back as 2015 when they published a memo on gatekeeping.³ Our research has found that the lack of separation between using the journal for informal communication (such as rearranging appointments) and for the formal mandatory reconsideration process, which has particular legal significance, is unreliable and a breach of the rule of law principle of procedural fairness.

Rowan (adviser) – February 2022

‘...For people who don’t have me or someone like me (a welfare right adviser)... because a lot of people, if they’re told the DWP have looked at it and you say to them, “Oh, well, are you sure that’s right?” and they go, “Yes, we’re sure that’s right,” they’ll take that. That’s it... especially if you’ve got mental health problems... or learning difficulties or anything else that makes it harder for you to challenge it, you’re just not going to challenge it.’

Furthermore, the DWP’s decision to freeze a claimant’s journal when their claim is refused or their award is ended (what the DWP would describe as ‘claim closure’), means that the primary route claimants have been using to communicate with the DWP is suddenly unavailable when they are likely to want to query or raise a dispute about the decision. This is a further example of a lack of procedural fairness.

Timothy (claimant) – April 2021

‘I wrote in my journal: “I am making a fresh claim for universal credit. I am also challenging the previous decision. I would also like to take this opportunity to state my disappointment that even though I was promised a phone call, I have not received any phone call over the last three days. Also my account was closed. This meant I could not communicate via the journal with you. This has put me in a position of depending on you for phone calls that did not materialise. This has added undue stress and anxiety to my already difficult circumstances...”’

Conclusion

The central finding from this research is that **the rule of law has been subtly undermined by the digitalisation of the UK’s main working-age benefit**. Many of the rule of law breaches raised in this research are likely to be unintended consequences of digital design and implementation choices and none are an inevitability of digitalisation. If the rule of law had been considered at each stage of the design and implementation of UC, these problems for claimants may have been avoided. In particular, the DWP would have prioritised the design and implementation of a fair and effective process for claimants to challenge decisions.

We are particularly concerned that **claimants who are entitled to additional elements, exemptions or exceptions from the standard rules in the legislation for their particular circumstances** (for example claimants with health conditions or disabilities, carers and care leavers) **are more likely to be affected by the issues raised in this**

³ rightsnet.org.uk/index.php/forums/viewthread/10042

research. This is because the UC system does not reliably capture these aspects of the award calculation, and claimants are missing out on entitlement as a result.

Our research found that **there is a lack of transparency about the design of the UC system**, including the level of automation used within the system, how the system has been designed and implemented, and the process by which features of the system can be added or changed. Trying to unearth information about how the UC digital system works at an operational level and how the problems identified in the research occur has been challenging. This lack of transparency is also problematic when trying to hold the DWP to account regarding changes to the digital system that would address some of the issues claimants are experiencing.

Our research findings demonstrate that **the pace of change is too slow**, with some issues still unresolved years after first being raised with the DWP. In other examples, the DWP can assert that changes to the digital system would be too costly or damaging because of the restrictions of the digital architecture, and without increased transparency about the UC digital system, it is very difficult for external stakeholders to challenge this.

Finally, our research found evidence that choices about **digital design, implementation and costs are leading policy decisions**. There are examples of this happening both in the initial design of universal credit, and in the DWP's approach to making changes to the system. This is concerning when we think about the democratic processes that underpin the development of our laws and policies, but do not exist in the digital world.

Digitalisation presents opportunities to improve public services, and UC is no exception. Our research found that **there are many potential benefits of digitalisation for UC claimants; however, these have not been fully realised**. There are also opportunities to improve compliance with the rule of law, rather than reducing it. This can still be achieved with some relatively low-cost changes to the UC digital system.

Top ten recommendations

1. The UC digital claim process should be updated to ask all relevant questions and fully investigate claimant circumstances and entitlement.
2. The appeals notice in UC should be amended to accurately reflect claimants' appeal rights.
3. The payment statement should be updated to provide further information to claimants about how their award has been calculated.
4. At a minimum, the DWP should delay freezing journals for at least one month after closure to allow claimants time to apply for a mandatory reconsideration (the first step in the appeals process in UC).
5. The DWP should introduce a 'request a mandatory reconsideration' function on the UC journal, to help claimants exercise their appeal rights.
6. Payment statements should not be overwritten. Original and amended statements should be made available for comparison.
7. The DWP should amend the digital claim form to allow for advance claims.
8. The DWP should take action to remove the concept of claim closure from systems, processes and guidance to ensure language is accurate and reflects the legal framework.
9. The DWP should conduct a review of the information provided to claimants in decision letters, with the aim of providing more adequate explanations for decisions.
10. The DWP should make the source code for the UC digital system publicly available.

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.

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