

Chapter 4: Disputes

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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 3: Communicating decisions](#).

4. Disputes

4.1 Introduction

This chapter considers the process for challenging a decision under the universal credit (UC) system and the extent to which it adheres to the rule of law principles of transparency, procedural fairness and lawfulness. Claimants require transparency about the rules and procedures, and how the Department for Work and Pensions (DWP) has applied the rules and followed the procedures to make a decision. The DWP must also provide claimants with information on how to challenge decisions, and claimants must have access to fair and effective mechanisms to allow them to do so, which includes being able to make representations at each appropriate stage in the dispute process, timely access to decisions, and access to an independent tribunal.

Our research has found that the DWP has made a number of digital design choices with UC, which prevent claimants from understanding decisions that have been made in relation to their UC claim or award, and from accessing their right to challenge decisions. In some cases, digital design choices appear to obstruct claimants who attempt to raise disputes, such as the informal communication style of the journal and the lack of a specific function to flag a particular journal message as an application for a revision.

Section 4.1 begins with a summary of the legislation on disputes, followed by an exploration of failures to adhere to the rule of law principles of transparency, procedural fairness and lawfulness when claimants attempt to dispute decisions. Next, section 4.2 considers the process for challenging a claimant's UC award if the amount has changed due to earnings information gathered automatically from HM Revenue and Customs' real-time information system. Finally, section 4.3 explores the DWP's 'reverification' exercise of claims made during the initial months of the Covid-19 pandemic (when evidence checks were temporarily eased) as a case study for raising disputes and procedural unfairness caused by design features of UC.

4.2 Claimants challenging decisions

What the law says

Revisions and supersessions

If the DWP makes an error (of fact or law) when making a social security decision (eg, a child is missing from an award), it can change it with 'full retrospective effect' by a revision.²⁵⁵ Alternatively, if the DWP initially makes the correct decision at the time, but then it becomes wrong at a later date, it can replace it with a new decision via a supersession.²⁵⁶ (See [Chapter 2 – 'Decision making'](#) for more information on supersessions). Both claimants and the DWP can initiate supersessions and revisions. The DWP has the power to treat claimant requests for supersessions as requests for revisions and vice versa, with revisions always taking precedence over supersessions when both options would otherwise be available to a decision maker.²⁵⁷ This is important because a revised decision generally takes effect from the same date as the original decision it is revising: meaning it provides a way

²⁵⁵ s9 Social Security Act 1998; R(IB) 2/04, para 10, available at rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1

²⁵⁶ s10(1) Social Security Act 1998. In some cases when a revision is not possible, a decision which was incorrect at the time of the decision may only be changed by supersession.

²⁵⁷ If a decision can be both revised and superseded, then a supersession is only allowed if there are specific grounds which aren't possible under a revision: reg 32 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').

of fully correcting decisions which have been wrong from when they were made. This is compared to supersessions, which change decisions from a date which is later than the date the original decision took effect.

Revisions, mandatory reconsiderations and appeals

A request for a revision is the first stage in the dispute process.²⁵⁸ If a claimant is not satisfied with the outcome of their request for a revision, the next stage is to appeal the original decision (whether ‘as revised’ or, if the revision was refused altogether, in its original form) to the First-tier Tribunal. In most cases, the right of appeal to a First-tier Tribunal will not exist unless and until the DWP has first considered an application to revise. This has led to such applications for revision being termed as ‘mandatory reconsideration’ requests, with the resultant decisions communicated in ‘mandatory reconsideration notices’, which then act as proof that the requirement has been satisfied.²⁵⁹ Before 2013, it was possible to appeal directly to the tribunal without first going through the mandatory reconsideration stage.²⁶⁰

The grounds on which a decision may be revised are set out in legislation: there are two ‘types’ of revision – ‘any grounds’ revisions and ‘specific grounds’ revisions (also known as ‘any time’ revisions).²⁶¹

Types of revision – ‘any grounds’

An ‘any grounds’ revision allows the DWP to change a decision for any reason at the request of a claimant. A decision maker can come to a different decision based on the same evidence or by taking account of new information that may have since become available.²⁶² A claimant must request an any grounds revision within the time limit. The time limit is usually one month from the date of the decision under dispute, but a decision maker may extend the time limit by a maximum of 12 months beyond that, if the claimant explains in their application for a revision the ‘special circumstances’ which caused them to be late and the DWP considers it reasonable to grant the extension.²⁶³ If the DWP refuses to accept a late application for a revision, a claimant can still appeal the decision at the tribunal. In practice, a decision maker should accept most extension requests within 13 months of the decision as long as some reason is provided for the delay.

Types of revision – ‘specific grounds’/‘any time’

The DWP may carry out a ‘specific grounds’ or ‘any time’ revision in specific circumstances. The specified grounds for an any time revision include if there has been an official error or if there was a mistake or ignorance of facts.²⁶⁴ There is no time limit for requesting a specific grounds or any time revision.

Procedure

Nothing in the legislation specifies an exact procedure or method for requesting a revision. An application can be made verbally over the phone, by letter or electronically via the journal.²⁶⁵ Claimants are not required to understand the exact mechanics of decision making or to request a revision by its technical name, so the DWP

²⁵⁸ Revisions can be instigated by both claimants and the DWP, but DWP-initiated revisions are not part of the claimant dispute process.

²⁵⁹ Reg 7 Decisions and Appeals Regulations 2013

²⁶⁰ CPAG (and many others) raised objections to the introduction of mandatory reconsiderations before appeals in response to the DWP’s public consultation in 2012, available at cpag.org.uk/policy-and-campaigns/briefing/mandatory-consideration-revision-appeal-cpags-response-dwps-public

²⁶¹ Part 2 Decisions and Appeals Regulations 2013

²⁶² Reg 5 Decisions and Appeals Regulations 2013

²⁶³ Reg 6 Decisions and Appeals Regulations; longer delays require more ‘compelling’ special circumstances.

²⁶⁴ The specific grounds are listed in Part 2 Ch 2 Decisions and Appeals Regulations 2013.

²⁶⁵ Reg 20 Decisions and Appeals Regulations 2013 does not prescribe a specific method for an application for a revision.

should treat any indication that a claimant disputes a decision or wants it looked at again as an application for a revision.²⁶⁶

CTC/2662 and 3981/2005

paragraph 27 ‘...For as long as there have been Commissioners, we have insisted that claimants should not be prejudiced by their failure to understand the correct procedures. As the Commissioner wrote in R(I) 50/56:

“18. ... it must be remembered that claimants may well fail to appreciate the appropriate legal procedures by which their rights ought to be protected and it is essential that the determining authorities should not defeat a meritorious claim by a legal technicality.”

Time limits for responding to an application for revision request

Unlike a written statement of reasons for a decision, which the DWP must provide within 14 days of being requested where possible, nothing in the legislation or guidance specifies a time limit for the DWP to respond to a revision request.²⁶⁷ However, the silence of the legislation on when the duty must be fulfilled is likely to be construed as meaning that the DWP is under a duty to consider all applications to revise within a reasonable time.²⁶⁸ What is considered ‘reasonable’ depends on the individual facts of the case and the impact of any delay on the claimant.

Next, there will be an exploration of what happens in practice and some of the failures of the universal credit (UC) digital system to comply with the rule of law principles of transparency, procedural fairness and lawfulness.

4.2.1 Frozen journals and revisions

What happens in practice

When the DWP refuses a claim, or brings an award to an end, the UC journal is frozen so that the journal history is visible, but claimants cannot post any new messages. When CPAG asked the DWP to explain the rationale for freezing journals, the DWP stated that claimants are no longer assigned to a case manager so that if a claimant could add new journal messages, they would not be read and responded to.²⁶⁹

Claimants whose journals have been frozen receive a notice in their journal advising them that if they want to dispute the decision, they can call the freephone number, send a letter to the Freepost address or use the mandatory reconsideration template form on gov.uk.²⁷⁰

²⁶⁶ DWP Gatekeeper Memo 03.15.58, available at rightsnet.org.uk/forums/viewthread/10042; ADM Ch A3: ‘Revision’, para A3013, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092565/adma3.pdf

²⁶⁷ Reg 51 Decisions and Appeals Regulations 2013 specifies within 14 days or as soon as practicable afterwards.

²⁶⁸ *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin), available at meassociation.org.uk/wp-content/uploads/High-Court-Judgement-5-June-2015.pdf, holds that the duty to make initial decisions on claims under s8 Social Security Act 1998, also silent as to when it must be fulfilled, is a duty to make decisions within a reasonable time. There seems no reason why the same analysis would not apply to the duty to decide applications for revision under s9.

²⁶⁹ Email between DWP and CPAG, 09 September 2022, responding to a number of questions raised by CPAG.

²⁷⁰ gov.uk/government/publications/challenge-a-decision-made-by-the-department-for-work-and-pensions-dwp

Figure 4A: CPAG mock-up of statement of appeal rights on 'claim closure' decision

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**.

How to do this

The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.

If you want us to look at the decision again, you can use the mandatory reconsideration form on the GOV.UK website.

If a claimant chooses to use the mandatory reconsideration form on gov.uk, they are required to locate, print and post the form as they cannot submit the form electronically. Another option available to claimants, but not notified to them, is to make a new claim and request a revision in the new journal. However, if a claimant chooses that method, they lose access to any relevant information or evidence from their previous journal as it is overwritten by the new version (see [Chapter 3 – 'Communicating decisions'](#)).

Arguably, making a request via the journal would be the most accessible option for claimants when compared to the alternatives, which all involve some degree of administrative hurdle. Advisers interviewed as part of the research described how these hurdles affect claimants. (See [Chapter 2 – 'Decision making'](#) for information on the problem with the process of 'claim closure', which the advisers describe below.)

Amelia (adviser) – October 2021

'Once the claim is closed [refused], you do not get an opportunity to put any message in the journal. Which means you have got to ring the DWP and hang onto the phone for such a long time, trying to understand why exactly your claim was closed and give your side of the case. So, I do not think that closure is a fair system to the claimants. It would be better... if someone warned them beforehand and said: "Okay, we do not think you are eligible for this reason and this reason. What do you have to say?" and give them a chance to write on the journal... Even if it is maybe a week or two weeks...'

*All names have been changed.

Henry (adviser) – October 2021

'[There] was a claim closure [refusal] case... in the middle of the pandemic where all libraries, advice centres were shut. The client was in a refuge, she didn't have access to a printer. Shared facilities weren't being used. She managed to get in touch with us through her support worker. We sent a pre-action letter to the DWP on various grounds – access to justice, discrimination, unlawfully refusing a claim – and then it got sorted out almost immediately. If they just allowed the journal to remain open for two months more, or something like that, then we wouldn't have had to go through all of that. We could have written something on the journal and sorted that out.'

Charlie (adviser) – February 2022

'A very large number of the appeals that I've done about UC are cases where someone's been refused benefit and, therefore, their claim has been closed, as they would put it. You no longer have the ability to interact with your journal, it is a read-only thing, but you can't add messages or anything like that. So, you're then quite limited in how you actually request an MR [mandatory reconsideration]. One option you have is to spend an hour on hold to the helpline and then try to persuade the person who picks the phone up to actually treat it as an MR. Then I've had cases where the helpline people have actively gone out of their way to dissuade me from going ahead with the MR, and then your other option is to send it off in the post and hope for the best.'

One interviewee described how they tried to apply for a revision by telephone, and the DWP arranged callbacks but failed to carry them out as agreed, adding additional stress and anxiety beyond that caused by the unexpected lack of benefit.

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..."'

The digital 'closure' and freezing of the journal means that the primary route claimants have been using to communicate with the DWP, and have presumably become accustomed to using, is suddenly unavailable when they are likely to want to query or challenge the refusal of their claim or decision to end their award. Claimants who have their claims refused or awards ended should have the same routes available to challenge those decisions as claimants challenging other types of decisions. The DWP's decision to immediately freeze journals after claims are refused and awards brought to an end is a significant procedural barrier for claimants wishing to make representations and dispute entitlement to UC.

4.2.2 Informal decision making and disputes**What happens in practice**

UC, and social security more broadly, is a decision-based system where decisions are final unless there are grounds to change them, in which case the DWP must make a new formal and identifiable decision with appeal

rights. However, there are a number of ways in which the UC digital system has been designed and implemented, and the way DWP officials interact with it, that can undermine this framework.

First, frontline case managers and work coaches appear able to change a UC award from the current assessment period onwards, but they cannot change the award from an earlier assessment period (an earlier effective date) without a referral to a decision maker. If a claimant uses the change of circumstances function to notify the DWP about a change of circumstances that occurred months previously that should result in an increase in their UC award, it is beneficial to that claimant that their case managers can immediately supersede the award from the current assessment period onwards rather than having to wait for a decision maker to take a decision about the earlier time period. However, our research indicates that one potential consequence of this split is that DWP officials view ‘updating circumstances’ or ‘making corrections’ as distinct and separate administrative processes from the formal revision or supersession decisions, which they regard solely the responsibility of a decision maker.

Chloe (claimant) – October 2022

At first, they assessed me and said that I was entitled to nothing. I queried that and said: “For reals? My income is £1,300 a month and I have two children to look after.” Then, as far as I was aware... it was reassessed, but I wasn’t informed how it was reassessed. They just said: “Somebody will look back into it.” I basically said: “I think you’ve done that wrong.” And they went: “We’ll look into it.” Which I’m not 100 per cent sure whether it was or was not a mandatory reconsideration because nobody used those words.’

Charlie (adviser) – February 2022

‘A lot of the decision making is just interactions with the case manager... it’s happening a lot in that very informal context, where it’s not really done properly...’

Rowan (adviser) – February 2022

‘I think that comes down to the fact that they have people called decision makers so, anyone who is not a decision maker, they don’t think they’re making decisions...’

Social security legislation does not distinguish between a decision made by a case manager and a decision taken by a decision maker: the caselaw is clear that in most cases, if a new decision takes effect from the date of the initial decision, it is a revision, and if it takes effect from a later date, it is a supersession.²⁷¹

Second, the DWP undermines the principle of the finality of decisions when officials need to override the automated UC calculations repeatedly and manually. Some unlawful decisions occur because the automated calculation does not accurately capture a claimant’s circumstances. In these situations, case managers must manually override the automated calculation. However, it appears that these manual overrides sometimes only last for a single assessment period, meaning DWP officials need to repeat the process each month to ensure a claimant receives the correct amount. Case managers are required to set reminders to make the manual change

²⁷¹ R(IB) 2/04, para 1B

each assessment period, but inevitably some reminders get missed, and claimants have to contact the DWP to ensure they are paid correctly.

Early Warning System: housing costs adjustment required repeatedly – March 2022

'My client is under 35 and is on the high rate daily living component of PIP [personal independence payment]. He lives with his partner who has no recourse to public funds. She cares for him. His housing costs were being paid incorrectly at the shared accommodation rate. We have managed to get this changed to the correct one-bedroom rate. He has been told via his journal that he will need to contact the UC helpline each month, 7 days before his payment is due, and ask for a "retro calculation" in order to get the correct award. Is this a common occurrence? Because of his disability he has to jump over hurdles in order to be paid what he is entitled to.'

Early Warning System: monthly manual adjustment required for housing element – April 2022

A couple in receipt of UC live in a two-bedroom privately rented property. One partner has a severe disability so needs an extra bedroom, which has been accepted by the DWP. However, every month the UC apparently has to be adjusted manually for the housing element to be included at the two-bedroom rate. It regularly does not happen and the client has to chase it. They are disputing these decisions by way of mandatory reconsideration and then the award is corrected. The couple are trying to get this resolved so that DWP pays the correct amount in the first place, and they don't have to try and resolve it themselves.

The transcript and journal extract below illustrates how one interviewee was required to contact the DWP every month for five months when a manual override to the UC calculation only lasted for one assessment period.

Victoria (claimant) – interview August 2021

'So even though my JSA stopped on the 5th of January because I started work on the 6th, and I had a letter to prove that, they kept deducting it... They said the JSA and UC are not linked together or there is a system error or whatever. But I really don't care... it's up to them to make sure it's right, not for me to calculate it every month. I should be able to just receive the money in my bank, pay my bills and that's it, but what I was doing was checking it every 28th, when the statement come through, and having to tell them: "You've done something wrong." And then hoping they'll fix it by the time I get paid. At least five [times] ... They said to me, because of the technical issue, they will have to do it manually. But even then I had to remind them to do it manually, because they still deducted it... I didn't want to leave it too long because it's another £300 that fixes my food shopping for a month...'

Victoria's (claimant) journal extracts

28.01.20 *Good morning, I have noticed that you said on my account that your record shows I am getting JSA – I have not been getting this since 6th January – please update your records as this is incorrect. Thank you, Victoria*

- 28.01.20** *If JSA [jobseeker's allowance] ended on 06/01/20. Your assessment period (AP) is between 28/12/19 – 27/01/20. This will take effect from the next assessment period. Many thanks, Ron*
- 28.02.20 *FAO Ron – can you please check my latest statement asap? There is a deduction of £316.77 for JSA that I have not got since the 6th Jan when I started work...*
- 05.03.20 *I request a mandatory reconsideration of the decision to deduct the JSA from my UC award, and request a full refund as my [JSA ended] on the 5th of January 2020... This was also confirmed to me in two letters and a telephone call from the DWP.*
- 09.03.20** *Hi Victoria – We have referred the details over to the technical department on 06/03/20 for checking. This is to remove the JSA. Once approved we will make the underpayment. This can take five working days to resolve. Many thanks, Ron*
- 12.03.20** *Victoria, I've just sent a payment of £316.77 for approval which should reach your account today and repay the money that was previously deducted because of JSA.*
- 28.03.20 *I request a mandatory reconsideration of the decision to deduct JSA from my UC... as my [JSA ended] on the 5th of Jan 2020...This was meant to be resolved already...*
- 03.04.20** *Hi – I have made an underpayment of £316.77 between AP 28/02/20 – 27/03/20 as JSA has been removed. Statement has been updated. Money will be in your bank by 8pm.*
- 28.04.20 *For the 3rd time I request a mandatory reconsideration of the decision to deduct the JSA from my UC award, and request a full refund...*
- 05.05.20** *Hi Victoria – I have made an underpayment of £316.77 between AP 28/02/20 – 27/03/20 as JSA has been removed... Many thanks, Ron*
- 06.05.20 *Good morning, this is to inform you that my welfare rights adviser has lodged a formal complaint about this matter on my behalf. Thank you, Victoria*
- 07.05.20** *Hi Victoria, I will need to make manual payments moving forward until the technical team have resolved the issue. Once resolved, I will update you via journal.*
- 28.05.20 *Hello, please correct the payment manually as there is a deduction of £316.77 for JSA...*
- 28.05.20** *Hi Victoria – I have made an underpayment of £316.77 as JSA is not in payment between AP 28/04/20 – 27/05/20.*
- 28.06.20 *Once again... please make a manual payment as there is a deduction on my statement for jobseeker's allowance – £316.77.*
- 29.06.20** *I have made an underpayment of £316.77 as JSA is not in payment.*

If a claimant's award decision is wrong and it is changed, that new decision should be final and should continue to have effect until some future change in circumstances occurs. The legislation does not allow for a recent decision

to be changed again, and to revert to the previous position, without any grounds for that reversion. The case managers are making the correct decisions on the basis of the law (either to revise the decision from the beginning of the award or supersede it from some later date), but because the decision is implemented via a manual workaround, the decision is rendered temporary by the digital system, and the correct decision in law is prevented.

The DWP has built a digital-by-design benefit that seeks to implement what is required by social security legislation through the administrative processes that the system calls for. In many respects, this is not a new phenomenon in social security, as the DWP has long implemented complex legislation through guidance for frontline decision makers, which breaks down the rules set out in legislation into administrative processes to be followed in particular scenarios, which should lead to a lawful result. Now, with the implementation via the UC digital system, the administrative processes and the DWP officials interacting with the digital system are arguably further detached from the legislation and the important principles behind it. When DWP officials fail to understand that all of their actions and their interactions with the UC digital system to change awards must be considered within the formal decision-revision-supersession structure of the Social Security Act 1998, claimants miss out on the important protections of the rights-based system that parliament set out in that Act, such as the right to formal and identifiable decisions with appeal rights. The principle of transparency is not just relevant in interactions between citizens and the state; it is equally important that frontline administrators who operate a system on behalf of the state understand the outcomes of their actions in legal terms.

4.2.3 Gatekeeping revisions

What happens in practice

DWP officials regularly act as ‘gatekeepers’ (controlling access) to the revision process when communicating with claimants via the journal.

Early Warning System: previous claim not recognised after addition of child disability elements – January 2023

A couple claimed UC but were not paid any due to their earnings. Their children have since been awarded disability living allowance (DLA) and the addition of the child disability elements means that the family would have been entitled to some UC. They were told that their original UC claim had closed (it should not have been) and to submit a new claim, which they did, with a request for a mandatory reconsideration of the decision to refuse their previous claim. Their case worker has twice refused to refer this mandatory reconsideration request to a decision maker.

Frontline DWP officials can discourage claimants from pursuing challenges without a decision maker ever having the opportunity to reconsider the decision, and before claimants are advised of their right to continue their challenge to the independent First-tier Tribunal. In 2015, the DWP issued a *Gatekeeping Memo to Decision Makers*, drawing attention to the numerous ways in which DWP officials were frustrating the revision process and a ‘widespread misunderstanding of the disputes process’ across all benefits.²⁷² The memo acknowledged some DWP officials were advising claimants that their revisions or appeals would be unsuccessful, that the term ‘mandatory reconsideration’ was necessary for an application to be valid, and that a verbal and written explanation of a decision was required before the DWP could register an application for a revision. Our evidence

²⁷² DWP Gatekeeper Memo 03.15.38, available at rightsnet.org.uk/forums/viewthread/10042

shows, however, that UC claimants continue to face systemic gatekeeping of their right to challenge decisions, despite DWP efforts to improve the situation.

'The decision is correct'

One of the most common reasons for refusing to register a revision request is that frontline DWP officials believe a UC decision to be accurate, often seemingly based on a belief that the automated calculation is infallible. Even if the decision is correct, the claimant is still entitled to have the decision formally reconsidered by a decision maker and to receive a mandatory reconsideration decision notice explaining their procedural right of appeal and how to exercise it. In the following journal extract, Timothy repeatedly attempted to challenge the calculation of his housing costs over a couple of months. Despite the attempts of Timothy's work coach to resolve the issue, multiple agents from the service centre sent messages confirming the details of the calculation as correct without engaging with the reason for the challenge or referring it to a decision maker for a formal reconsideration.

Timothy's (claimant) journal extracts

- 26.01.21 *Hi Anthony – I am writing to query and challenge the calculation of my housing allowance... I am liable for £860 per month because I have the bigger bedroom.*
- 26.01.21 ***Hi Timothy – I will pass on your query to Anthony. What has happened here is because you have two people on the tenancy and the system does the calculation automatically to divide between two tenants. I am sure this can be rectified. Jenny***
- 29.01.21 ***Hi Timothy – As per your declaration there are two tenants in a three-bedroom property and therefore there is one spare bedroom. You are receiving £860 of £1,560 rent –50 per cent (minus extra bedroom deduction). James***
- 31.01.21 *Hello James – In response to your reply (29 Jan) I am requesting a mandatory reconsideration [MR] of my housing allowance. Your response indicates I am in a three-bed flat with a spare bedroom... but there are only two bedrooms...*
- 08.02.21 *Hello James – Could you please provide an update to my reply on 31 January 21 to your message?*
- 17.02.21 ***Hello Timothy – Your statement shows you pay £860 per month. You have three bedrooms. You said the rent is £1,560.00. There are two people. We have calculated rent at £780. You need to pay your landlord. Laura***
- 23.02.21 *Hi Laura – I am copying here the same message to James on 31 Jan to which I am still waiting for a reply.*
- 25.02.21 ***Hi Timothy – The information you declared for housing on your claim is: You pay £860 per month. You have three bedrooms. You said the rent for your property is £1,560.00. There are two people. We have calculated rent at £780. Hayley***
- 05.03.21 *Hello Hayley – Thanks for your response to my request for an MR on 25 February 2021. I am writing to request you send me a formal mandatory reconsideration note as I will be taking this to appeal. Could you please provide an update as to my reply on 31 Jan 2021?*

- 08.03.21** *Hi Timothy – I am just speaking about your case manager about this. I haven't forgotten. Jenny*
- 10.03.21** *Hi Timothy – I have just had a look back the history of your claim and I can see that on 26th January you said in a journal message to Alan that your rent is calculated at £860 because you have a slightly bigger room, is this amount still correct?... Hayley*
- 10.03.21** *Hi Hayley – Sorry I missed your call. Here is the information. I am liable for £860 per month for rent... You have a letter confirming this from the estate agent. I pay more than 50 per cent of the total rent because I have a bigger room... Please note that while I appreciate your attempts to resolve this, I repeat that this situation is causing me a lot of stress and anxiety. I politely point out that I have been corresponding with you about my housing element since January 2021 and have already provided the information you are now asking including a copy of my tenancy agreement. I wish to sort this out quickly and will take to appeal if necessary. Thank you.*
- 10.03.21** **Check your new joint tenancy costs. Updated details.**

Timothy was only convinced to continue with the dispute by his welfare rights adviser, which eventually resulted in an increase of his housing costs in line with his actual rent charge.

Timothy (claimant) and Amelia (adviser) – April 2021

Amelia: ... 'They first told him he was liable for the "bedroom tax", which is why they were not paying his full amount of rent. Which is rubbish because he doesn't have a spare bedroom as the tenancy is only for one room... Then they said that he's only eligible for 85 per cent of the rent. I don't know where 85 per cent came from... But this DWP official just said: "The calculation is right because you're only eligible for 85 per cent." Timothy was on the point of accepting it...'

Timothy: 'It goes to show that without Amelia's help, I would have just believed what they said about, "Oh, it's because of the bedroom tax." Or, "It's because I'm only entitled for the 85 per cent coverage." Well, it must be right because they say it.'

Our research has found claimants are sometimes forced to make multiple requests before an application for a revision is accepted. One adviser described how their colleagues sometimes required encouragement to persevere with the battle of getting applications for revisions accepted.

Charlie (adviser) – February 2022

There's a particular way that all the case managers seem to communicate, which is very much just a, "We are right, you're wrong." ... It's not communicated as being a decision. It's not communicated as something against which there is any discussion or right of review or appeal. It's just... "No, no, we've calculated your award correctly." Just, they say things like that all the time.

There was one case that I did... The client was saying that they were entitled to the carer's element in the UC to be backdated to the point at which the person they were caring for received PIP. The person who they were caring for also lived with them and had been generating the housing cost contribution. So... they got all of their housing cost contributions paid back to them, but what they didn't get is all of this backdated carer's element. So, I spent a very long time setting out, penny for penny, how this all worked... I was just getting responses back saying, "No, that's not how it works" ... how are you supposed to deal with that if someone won't even engage with you on the most basic points of how maths works?... You've just got to continue to push the point, forever and ever and ever until they give in... I spend a lot of time just telling my colleagues: "Look, you've just got to go back to them and say the exact same thing, in different words, until they agree with you."

What happened was, in that case particularly, but there's plenty of them that are all pretty much the same... they rang up the client directly to have a conversation with them about it. The client didn't speak any English and they didn't have an interpreter. They put a note on the journal saying: "I've rang you up and explained this, and consider the matter closed."

It is concerning that the repeated gatekeeping by DWP officials can even deter welfare rights advisers from pursuing a dispute, and perhaps unsurprising that claimants without welfare rights advice who may be less confident about their legal rights do not persevere with challenging a decision in situations when DWP officials tell them the UC system is right.

Rowan (adviser) – February 2022

'...For people who don't have me or someone like me, and there are not that many people doing this job around... 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.'

For claimants who do not persevere, the failure of the DWP to treat requests made via the journal as requests for revisions may produce further problems later. Such claimants could legitimately argue, even years later, that their request for a revision remains undetermined. That possibility should be of concern to the DWP.

'This is a policy issue'

An application for a revision, in substance, can contain a challenge to the factual conclusions reached by the DWP, a challenge against the application of the law to the agreed facts of the claimant, or (less commonly) a challenge to the lawfulness of the regulations themselves – for example, on the grounds of the regulations being discriminatory or outside the power of the primary legislation.²⁷³ The Early Warning System has received multiple

²⁷³ R(IB) 2/04, available at rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1

examples of DWP officials gatekeeping revision applications because ‘there is no right to challenge a policy issue’ when claimants try to challenge how the DWP has interpreted the law or the regulations themselves. By asserting that revisions are not possible against ‘policy decisions’, DWP officials appear to be saying that revisions are only possible where the nature of the dispute is a battle over the facts.

Early Warning System: one-bedroom rate not available to 26 year old – November 2020

A 26 year old recently moved into a one-bedroom property and has been awarded the shared accommodation rate for housing costs. The client, however, has previously lived in supported accommodation for more than three months. She has provided a letter from the housing project confirming this. The DWP has stated that she cannot get the one-bedroom rate until she reaches the age of 35. They did confirm a list of exemptions on her journal but did not include the one regarding over 25s who have lived in a homeless hostel for at least three months. The client has asked for a mandatory reconsideration, but the DWP replied saying that she cannot do this because ‘no decision has been made’ and that it is ‘government policy’ that those under 35 are only entitled to the shared accommodation rate.

Early Warning System: mandatory reconsideration for maternity allowance refused – May 2021

‘I helped my client submit a mandatory reconsideration on her journal in relation to the way maternity allowance [MA] is treated when calculating UC using CPAG’s template. When I chased up the mandatory reconsideration the DWP official stated: “We have reviewed the information you have provided – we would not be able to raise a mandatory reconsideration on this as it is a policy decision set by government. You would need to raise this with your local MP.”’ [Note: on 18 October 2019, CPAG issued judicial review proceedings challenging the treatment of MA as unearned income (so it reduces UC pound for pound) as opposed to earned income like statutory maternity pay (SMP) (which is subject to the taper rate and the work allowance.) The High Court judgment found that the difference in treatment between women claiming SMP and MA was justified and dismissed the judicial review. Permission to appeal was refused by the Court of Appeal on 23 June 2021 – *Moore and Others v SSWP* [2020] EWHC 2827 (Admin). Before this judgment, claimants in receipt of MA were encouraged to request a mandatory reconsideration to ensure they could benefit from the judgment if the judicial review was successful.]²⁷⁴

Early Warning System: mandatory reconsideration for LCWRA refused – October 2020

One member of a couple was already in receipt of the limited capability for work-related activity (LCWRA) element when their partner was also awarded LCWRA. The DWP did not add another LCWRA element, so the claimant requested a mandatory reconsideration. The DWP stated they could not do a mandatory reconsideration as this was a policy issue that cannot be challenged. [Note: the UC regulations only allow for one LCWRA element to be included, but the claimant was still entitled to a mandatory reconsideration notice advising them the decision had not been revised and of their appeal rights.]

‘It is too late for a mandatory reconsideration’

A decision maker may accept an application for an any grounds revision up to 13 months after the initial decision is notified if the claimant explains in their application the ‘special circumstances’ which caused them to be late and

²⁷⁴ cpag.org.uk/welfare-rights/resources/test-case/maternity-allowance-and-universal-credit

the DWP considers it reasonable to grant the extension.²⁷⁵ In practice, the DWP should accept most extension requests as long as the claimant provides any reason for their lateness, and the DWP receives the application before the final 13-month deadline. DWP guidance on mandatory reconsiderations states: *'It would be an exceptional case that is not accepted late.'*²⁷⁶ However, the Early Warning System has received evidence of case managers and work coaches gatekeeping applications for mandatory reconsiderations received outside the initial one-month deadline, despite claimants providing reasons for their delayed applications. There are also additional examples of the gatekeeping of late applications for revisions later in this report (See section 4.4 on the reverification exercise.)

Early Warning System: 30-day limit for mandatory reconsideration – June 2020

A woman's UC claim was terminated in October 2019 as she was out of the country and could not look for work. The woman was supported to request a mandatory reconsideration on the grounds that she has limited capability for work (LCW) and was abroad for medical treatment. Reasons for lateness were provided, including not being informed of appeal rights, complex needs and previously being notified a mandatory reconsideration had already been requested.

The decision maker based at Belfast responded: 'A mandatory reconsideration can only be lodged within 30 days of a decision, the previous claim was closed in October 2019, and as this decision was made much more than 30 days ago the time to lodge a mandatory reconsideration has now passed.'

Early Warning System: two late mandatory reconsideration requests not accepted – May 2022

'I have two clients who requested mandatory reconsiderations via their journals only to be told they are out of time and can't be raised. One is only 21 days late and the other had requested on time but then was talked into withdrawing the MR by their work coach. We've then requested it be raised again three months later but they've both been refused.'

Early Warning System: mandatory reconsideration request not accepted – April 2023

'My client's UC award has stopped due to owning property with her ex-husband. She has been referred by local domestic abuse services and her ex husband is currently in prison. My client tried to request a mandatory reconsideration of the decision to stop her UC but the DWP said she was out of time as it has been more than a month since the decision. I was under the impression the deadline could be extended by another 12 months?'

After 13 months, an any time revision may still be possible if the circumstances of the case means that one of the specific grounds is satisfied – eg, on the grounds of 'official error'. The Early Warning System has also received evidence of the gatekeeping of any time or specific grounds revision requests for being out of time despite there being no time limit if one of the specific grounds is met.

²⁷⁵ Reg 6 Decisions and Appeals Regulations 2013

²⁷⁶ *Mandatory Reconsiderations*, guidance, accessed via FOI2022/05415, available at cpag.org.uk/sites/default/files/files/policypost/Mandatory_Reconsiderations_guidance_accessed_via_FOI2022_05415.pdf

Early Warning System: any time revision request not accepted – September 2022

'My clients are a couple on UC with children. She receives personal independence payment and he receives carer's allowance. In 2019 the family were moved into a bigger house by the council because they cannot share a bedroom due to my client's health conditions. The DWP failed to award the additional bedroom and they have been therefore been subject to the bedroom tax ever since. I submitted an any time revision on the grounds of official error and mistake or ignorance of facts as the claimants told the DWP about the reason for moving to a bigger house when they changed their housing costs and the DWP did not ask them any questions or to provide evidence about their entitlement to an additional bedroom. The DWP treated the any time revision request as an any grounds revision that was beyond 13 months and would not accept it. I submitted it a second time saying it was an any time revision rather than an any grounds revision, alongside a complaint, but they responded saying: 'Please see our original response letter.' The DWP has refused to even look at the substance of the argument to see if one of the grounds for an any time revision applies and has just rejected it on the basis that it is out of time.'

Early Warning System: any time revision treated as a change of circumstances – August 2022

'My client applied for UC in March 2020 and included her service charges. Her service charges were not included in her award calculation and she assumed they were not eligible for assistance. We asked for an any time revision on the grounds of official error. First the DWP treated our request as change of circumstances that had been reported late and therefore the service charges could only be added to her housing costs from the current assessment period. We put in another mandatory reconsideration arguing it was not a late reporting of a change in circumstances but an any time revision as the DWP made a mistake in the original processing of her claim. The DWP have now treated it as a mandatory reconsideration request but have said we are out of time and the client should have spotted it earlier.'

To overcome this type of gatekeeping, a claimant must know that they can ask for an any grounds revision up to 13 months after a decision has been taken, or an any time revision after 13 months if specific grounds apply. UC statements of appeal rights do not currently contain any information about the possibility of applying for a late revision or an any time revision. (See [Chapter 3 – 'Communicating decisions'](#) for more information). The DWP's decision notice when it refuses a claim or brings an award to an end explicitly states claimants 'need to ask' the DWP for a mandatory reconsideration within one month. This failure to properly inform claimants about their appeal rights means that some claimants may decide not to apply for a revision, on the understanding that they have missed the one-month deadline and therefore they are not allowed to do so, or they may fail to provide the reasons for applying beyond the initial one-month deadline, as is required by the regulations.

The informal communication style of the journal creates an environment that encourages case managers and work coaches to take actions that undermine the decision-based and rights-based system they are working within. DWP officials may not always understand the implications of their interactions with claimants for the rule of law principle of procedural fairness when there is no separation between using the journal for informal communication with claimants and the formal decision-making process which has particular legal significance. Furthermore, a lack of transparency about appeal rights, together with a lack of information about how decisions have been made, creates additional barriers from the outset (see [Chapter 3 – 'Communicating decisions'](#)). Claimants' procedural right to challenge decisions is under threat in this digital environment which demonstrates confusion about the legal decision-making processes available to both claimants and the officials responsible for administering the system.

4.2.4 Inability to track whether an application for a revision has been made or accepted

What happens in practice

There is no specific function built into the UC digital system to flag that a particular journal message is an application for a revision, which can encourage an informal approach to challenging decisions and leaves claimants vulnerable to gatekeeping (as explained above). Our evidence suggests that, in many cases, claimants and advisers are left uncertain as to whether the DWP has registered their application for a revision or made a referral to a decision maker.

Chloe (claimant) – October 2022

'I got the letter through my online journal, saying... "You owe £16,000." To which I immediately responded: "I've just seen this letter. I don't agree, in any way, shape or form." And I received a response: "Could you please explain, in the journal, in detail, why you believe this to be incorrect?" ...They use language that makes sure that you're not 100 per cent sure what you should do to get the aim you want. They obfuscate. So, he would say: "If you disagree with our decision, you must request a mandatory reconsideration within such and such a timeline." It isn't clear that you have to basically, repeat that, verbatim, in your next message.

I had to assume... Nobody said: "It has been accepted." Or whatever. I don't think it was until I made another request and said: "Oh, and by the way, what's going on with the decision maker?" ... And I received the reply to whatever I'd asked and: "If you have anything with regards to the mandatory reconsideration you have requested, please address it in a note to the decision maker, in your work journal." The first indication I got that somebody was doing something about it or that it was actually being done was me being told that if I want to interact with that process, I need to directly address things to the decision maker... I have done so, and received no response since then.'

Charlie (adviser) – February 2022

'You can scream and shout all you like about, "Oh, this is a mandatory reconsideration that needs to be dealt with as such," and you just don't get answers... Often, it's very unclear in some cases if you've even been successful in getting your MR dealt with. Sometimes, you're just throwing it into the ether and hoping for the best.'

Rhys (adviser) – February 2022

'People will use their journal to request a mandatory reconsideration. And then you've got no record of it being registered with a decision maker. That journal entry [enters] the bowels of the DWP and you've got no way of knowing that you've made a mandatory reconsideration.'

Rowan (adviser) – February 2022

‘Quite often, things are just ignored or they refuse to do a mandatory reconsideration and they say: “Oh, yes, well we’re looking at it.” ... They could do with having some actual proper process where you can request a mandatory reconsideration so there’s no doubt about it, rather than it just being something you do on the journal.’

One adviser on Rightsnet raised a particular challenge for a previous UC claimant who had made an application for a mandatory reconsideration but no longer had access to their journal.

Rightsnet thread [17971](#): awaiting confirmation of mandatory reconsideration registration – January 2022

‘We submitted a mandatory reconsideration and all I’m wanting is confirmation that it’s been registered and “actioned”. I’m not chasing a decision – it’s just to confirm it’s in a (ridiculous) queue awaiting consideration by a decision maker. As my client has chosen not to reclaim, there’s no journal and no allocated case manager. The DWP agents on the helpline have said they can’t see anything as there’s no claim and only case managers can see the postal system. The partnership manager advised similarly. In this scenario, it is very difficult to confirm something is being done.’

Given the importance that parliament has placed, through the Social Security Act 1998, on benefits being administered according to a system of decisions which attract rights of challenge, the failure of the digital UC system to reflect that legal reality is concerning. Providing a clear route within the digital system to formally request a revision would seem to be a straightforward step that should have been implemented at the design stage.

4.2.5 Delays in receiving mandatory reconsideration notices**What happens in practice**

Between November 2021 and October 2022, the DWP registered an average of 20,102 applications for revisions (mandatory reconsiderations) each month. During this time, it processed 10 per cent of applications within two days, 7 per cent within three to nine days, 10 per cent within 10–24 days, 22 per cent within 25–49 days, 26 per cent within 50–99 days, 16 per cent within 100–149 days and 9 per cent taking 150 days or more. In the year ending October 2022, the DWP took five months or more to make a decision in nearly one out of every 10 applications for a revision.²⁷⁷ The median time for responding to an application for a revision request was 51 calendar days, as of October 2022.²⁷⁸ However, it must be acknowledged that any such statistics will not include the multitude of repeated revision requests that were not pursued due to gatekeeping or the lack of a specific function for flagging a particular journal message as a request for a mandatory reconsideration, as has already been explored.

The stated purpose for introducing the mandatory reconsideration stage was, according to the consultation paper, to *‘deliver timely, proportionate and effective justice for claimants, [and] make the process for disputing a decision*

²⁷⁷ FOI 2022/101477, available at whatdotheyknow.com/request/mandatory_reconsideration_status?nocache=incoming-2214279#incoming-2214279

²⁷⁸ House of Commons, Written Answer UIN 901930, 31 October 2022, available at questions-statements.parliament.uk/written-questions/detail/2022-10-31/901930.

*fairer and more efficient.*²⁷⁹ Unreasonable delays undermine the stated purpose of introducing mandatory reconsiderations by causing further delays for claimants trying to resolve problems with their benefits. What is 'unreasonable' depends on the facts of the case and the circumstances of the claimant, but it must always be recognised that when the DWP refuses a claim or ends an award, it is more financially significant for UC claimants due to the combined payment for individuals, housing and other circumstances in comparison to legacy benefits.

Early Warning System: mandatory reconsideration of sanction – December 2022

A single parent with health issues was sanctioned. She immediately submitted a mandatory reconsideration request. She added a note to her journal to chase it up four weeks later. Eight weeks later she had still not received a response. The sanction is £320 a month and causing major harm for her and her child.

Many of the advisers interviewed described unacceptable waiting times for receiving outcomes of revisions. This issue is exacerbated by the inability to track whether or not a revision has been registered and referred to a decision maker, and the informality of the journal, which encourages the gatekeeping of revision requests, as already discussed.

Liam (adviser) – March 2022

'There is no time limit on a mandatory consideration. I can remember when I was... a work coach which ended at the beginning of the pandemic... I was having a chat with one of my colleagues, he said... At the moment the queue for mandatory MRs is over six months but there is no time limit. So they could be six months... he said, the longest he can remember waiting for an answer was over 14 months, and this was pre-pandemic...'

Zoe (adviser) – December 2021

'The length of time waiting for [mandatory reconsideration] decisions... is really unacceptable... [It's] a very good outcome if you get a response or a decision after three months... We have had six months or longer...'

Elena (adviser) November 2021

'[A mandatory reconsideration] takes too long. Way, way too long. They don't get decisions when they should get decisions.'

DWP, *Mandatory Reconsideration of Revision Before Appeal*, 2012, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220473/mandatory-consideration-consultation.pdf

Natalia (adviser) – November 2021

'It's taking a long, long time. It's quite heartening in a way, that people do seem to know what to do if they don't agree. But then they'll say: "Well, I've put a note on my journal saying I wanted to ask for a mandatory reconsideration of this months ago and nothing has happened." ... if you speak to the DWP they'll say: "It has been passed to a decision maker. I'll send another email but there's nothing else you can do." As advisors, there's nothing we can really do about that.'

One claimant described the disparity between the time claimants have to raise a challenge and the lack of a time limit for the DWP to respond and make a decision.

Chloe (claimant) – October 2022

'I know that I have a month to request the mandatory reconsideration. From what I can gather, they have no similar timelines for them to actually do anything about them... 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 will be in touch with you once a decision has been reached." That's the last I heard about it and that was on 30 May... I still haven't heard. Not even a request for information... Nobody has asked me anything. Nobody's requested anything. Nobody's done anything.'

In order for the UC system to comply with rule of law principles, claimants must be able to secure their rights in front of an independent adjudicator.²⁸⁰ It is not enough that claimants have free access to the independent First-tier Tribunal in order to challenge a decision; claimants are entitled to timely decision making at the initial outcome and mandatory reconsideration stages to allow meaningful access to the tribunal without unreasonable delays. Unreasonable delays are an example of procedural unfairness and, therefore, a failure to comply with rule of law principles.

4.3 Real-time information disputes

What the law says

The majority of employed claimants have their earnings reported automatically to universal credit (UC) via HM Revenue and Customs' (HMRC) real-time information (RTI) system, following submissions to HMRC made by their employers.²⁸¹ Regulations state that the DWP must use the figure provided by the RTI feed to calculate a claimant's earned income during a monthly assessment period. There are exceptions where the DWP thinks the employer is unlikely to have reported earnings 'in a sufficiently accurate or timely manner', the amount reported to HMRC by the employer is incorrect, or no information has been received from HMRC at all.²⁸² If one of these exceptions applies, then the DWP must decide the amount of earned income received during the assessment period using such evidence as is appropriate – eg, wage slips and bank statements. (There is one further exception when two sets of monthly earnings are received in the same assessment period, which is explored in [Chapter 2 – 'Decision making'](#): section 2.3.3.)

²⁸⁰ T Bingham, *The Rule of Law*, Allen Lane, 2010, p85

²⁸¹ medConfidential, *The Data Flows of Universal Credit*, Annex 1, available at medconfidential.org/2020/universal-credit

²⁸² Reg 61 Universal Credit Regulations 2013 No.376

The legislation provides that changes to a UC award solely due to income fluctuations from the RTI feed can be made without a new formal decision being needed.²⁸³ The lack of a new decision means a claimant does not have automatic appeal rights if they want to challenge the change to their award. However, that does not mean it is not possible to challenge decisions based on changes in income, there is just an additional step to go through. The legislation provides that if a claimant wants to dispute the figure provided by the RTI feed, then the DWP must alert them that they are entitled to receive a new appealable decision, and that the DWP should provide this new (appealable) decision within 14 days.

What the universal credit system looks like and how it works

If a claimant wants to challenge a change in their UC award due to fluctuations in the income data from the RTI feed, they must first obtain a formal decision by requesting an 'RTI dispute' from the RTI support team.²⁸⁴ The UC agent should complete a 'Refer an RTI dispute' to-do, which, once completed, should 'support agents to understand what has happened, resolve earnings disputes and understand if a dispute needs to be raised to the RTI team for investigation'.²⁸⁵ The tool will also 'tell the agent if they need to complete and send the Real Time Information Dispute Support Tool/ Proforma'. The RTI support team then reviews the pro forma and decides whether the amount of earnings can be changed. If the RTI support team is unable to make a decision on the available information, the next step is to contact HMRC so that it can contact the claimant's employer.

4.3.1 Information provision about the real-time information dispute process

What happens in practice

Each payment decision notifying a claimant how much UC they will receive for the assessment period that just ended explains that if a claimant disagrees with that decision, they can ask for a mandatory reconsideration (a revision). It does not explain that if it is the amount of income calculated by the RTI feed that the claimant disagrees with, then they do not have the right to ask for a revision until they have first asked for and received an appealable decision via the RTI dispute process.

However, each payment notice for an employed person may contain more than one change: it could notify a change in the amount of earned income that has been taken into account (not a decision), but it could also notify that another element of UC (eg, a child element) has been added from that assessment period (a supersession decision). This presents a confusing picture for claimants. If a claimant challenges the calculation of earned income, the DWP must inform the claimant they may request a decision that can be challenged by revision, which should be received within 14 days by initiating the RTI dispute process. If a claimant challenges the DWP's failure to add their new baby to the award, the DWP can immediately revise this decision.

Claimants should not be expected to understand the complexities of the legislation governing the process of obtaining an appealable decision regarding changes in their earned income. However, if claimants are required to engage with a different dispute process when challenging income information from the RTI, then arguably the DWP has a duty to clearly explain this process to claimants in decision notices. Currently, it is not made clear to claimants that there is a requirement for an RTI dispute to be carried out before they can request a mandatory reconsideration. Evidence collected as part of this research suggests that the first time claimants are made aware

²⁸³ s159D Social Security Administration Act 1992 and reg 41 Decisions and Appeals Regulations 2013. Although the UC legislation does not consider the amount of earned income gathered via the RTI feed to be a decision with appeal rights, we would argue it should be considered a wholly automated decision, which has a meaningful effect on claimants from a public law perspective and when considering a wider understanding of the term 'automated decision making'.

²⁸⁴ Reg 41 Decisions and Appeals Regulations 2013

²⁸⁵ 'Process of disputed earnings' training materials, slide 6, accessed via FOI2021/51176, available at cpag.org.uk/sites/default/files/files/policypost/Process_of_disputed_earnings_FOI2021_51176.pdf

of the RTI dispute process is when they spot an error in their decision notice, follow the instructions in their decision letter to request a mandatory reconsideration, and find their requests unexpectedly refused, as in the cases below.

Early Warning System: told to do an RTI dispute rather than mandatory reconsideration – May 2020

A woman had two lots of earnings taken into account for one assessment period and requested a mandatory reconsideration but her case manager called her and said she can't ask for a mandatory reconsideration – she needs to do an RTI dispute instead.

Ben (claimant) – August 2021

'Basically, I said to [my work coach]: "What I want to do is the mandatory reconsideration of your decision..." She said: "Well, I'm not a decision maker, so I can't change this. But what we'll do is a technical investigation." ... So I was trying to explain to her: "Here's the bank statement. I didn't get paid in that month." [She said:] "We've got to do a technical investigation." I said: "Well, that's fine, if you need to do that, but I'm here and I'm asking you to do a mandatory reconsideration." I maybe pushed that three or four times, where she kept saying: "Technical investigation." I said: "Well, yes, but I want a mandatory reconsideration." ... She was on my account, and I said: "Can you just lodge one?" "No, we cannot do that." ... I said: "Well, it does say, on your decision letter, that that's my option." ... But what she was doing was saying: "You absolutely cannot do mandatory reconsideration until we've done this." Because I remember asking her: "How long is that going to take?" "I don't know. It will take as long as it will take." Suddenly, the attitude had changed.

... She put her hand out like this, and she said: "You need to leave now, Mr..." ... So really, the shutters came up at that point... When I got out I sat in the car and logged into my journal, and put my own mandatory reconsideration in... It wasn't anything particularly cumbersome that I was asking. I was saying: "You can do your technical investigation, if that's the way you've got to do it, but I would like this done." "No." ...'

Syeda F (Covid Realities participant) – April 2021

'I have been on UC for some time now. I am a lone parent and in work. I do know my rights. I have personal experience of my local job centre refusing to allow me to challenge a decision by way of mandatory reconsideration because they said they needed to do a technical investigation first. This was purely down to HMRC reporting incorrectly when I had been paid in to my bank account. This massively affected my UC payment. I knew I was right to challenge the decision but the job centre refused. I went on to win my appeal. Clearly the job centre were acting just on what the HMRC computers were reporting but I showed them my physical evidence through a bank statement. They refused to act on it.'

Due to the lack of transparency about the procedural requirements, claimants can experience the RTI dispute process as another form of gatekeeping to the revision process, as explored above. To confuse matters further, from the evidence we have seen, the DWP communicates what should be the new decision with appeal rights after the RTI process as a message typed in the journal without any notice of appeal rights. After finding out about the RTI dispute process from DWP staff, some claimants then face a further lack of information about the procedures and timescales involved in an RTI dispute.

In the following Early Warning System case, the claimant was unclear about how the dispute process worked, how long it would take, and how they could provide evidence that contradicted the RTI feed's information.

Early Warning System: helpline unable to provide information – November 2022

The client is a lone parent with a child under two, struggling to balance work (zero-hours contract) and childcare. They received no UC one assessment period due to an error in the RTI system. They challenged the decision/error via their journal and call(s) to the helpline. DWP helpline staff were only able to explain that a dispute had been raised and that a case manager would look into the matter and contact her in due course.

She offered to provide copies of wage slips and bank statements (or whatever evidence she might be asked for) but has not been provided with a journal link to allow such evidence to be uploaded. She called the HMRC helpline who confirmed that the earnings do not match the figure used for the UC decision. Her employer has suggested that a reset of the wages system may have sent a cumulative pay figure into RTI system but was not able to trace the particular event.

The client is frustrated at the lack of any information as to a possible timeframe for resolution of the apparent RTI/payment calculation error, and the lack of opportunity to provide evidence to show that an error must have occurred.

We made a freedom of information (FOI) request for the average processing times of RTI disputes, but it was refused as the DWP does 'not collate the processing times for RTI disputes and the only way to obtain this information would be to look at every referral.'²⁸⁶

The lack of transparency with claimants about the existence of the legal requirement to ask for an appealable decision before they can request a mandatory reconsideration, and the procedures and timescales involved, results in claimants experiencing the RTI dispute process as a delay and obstruction to their procedural right to challenge a decision. The lack of statistics available for processing times is a further example of the lack of transparency with the RTI dispute process.

Finally, it is important to recognise that, although the UC legislation does not consider a change in a UC award caused by a change in the amount of earned income gathered via the RTI feed to be a 'decision', in that it is explicitly discounted from the decision-revision-supersession decision-making framework of the Social Security Act 1998, and it does not have appeal rights, we would argue that it should be considered a wholly automated decision in a wider public law sense. This is because there has been a meaningful change in the claimant's UC award without any human intervention. If correct, that means such decisions should attract the protections of section 14 of the Data Protection Act 2018 and Article 22 of the UK General Data Protection Regulation (UK GDPR), and the requirement for claimants to be notified in writing if a decision has been taken solely based on automated processing. It is by no means clear that this is what happens in practice.²⁸⁷

²⁸⁶ FOI2021/51174, available at cpag.org.uk/sites/default/files/files/policypost/FOI2021_51174_RT dispute_processing_times.pdf

²⁸⁷ s14(4)(a) Data Protection Act 2018; see ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling for more information.

4.4 The reverification of claims made at the start of the Covid-19 pandemic

One example where large numbers of claimants were required to begin the dispute process because of arguably unlawful decision making by the DWP was during the DWP's 'reverification' of claims made during the initial months of the Covid-19 pandemic.

What the universal credit system looks like and how it works

'Trust and protect'

In response to the vastly increased number of claims and the public health restrictions resulting from the Covid-19 pandemic, the DWP made operational changes (or 'easements') to how it administered universal credit (UC) claims and awards. The approximately 200 'easements', known as the 'trust and protect' regime, included making identity and information verification checks over the phone rather than face to face, and suspending cross-checks with child benefit records.²⁸⁸ These welcome steps ensured millions of people claiming UC for the first time between March and June 2020 could apply for UC and receive payments more easily. The DWP states that officials informed claimants who applied during this period that they may be subject to checks at a later date.²⁸⁹ In 2021, the DWP created a 'repair team', of around 1,400 staff to 'reverify' awards – to check for fraud and error that may have occurred during the period when the usual checks were suspended.

The reverification process

As part of this reverification process, the DWP asked claimants to provide evidence which, in some cases, included photos of themselves next to their photographic ID and in front of their open front door. According to the DWP, a repair team agent would inform claimants a minimum of three times via their journal that the DWP needed to speak to them about their claim and arrange a call for a specific time, with each contact notified by text or email.²⁹⁰ The DWP states that non-digital claimants without the use of a journal were primarily contacted by telephone but the investigating agent also had the option of sending letters in the post.

Figure 4B: CPAG mock-up of an example of an information request posted in a claimant's journal as part of the reverification exercise

You should not ignore this message. If you do not answer but have not asked us to rearrange it may result in your payment of Universal Credit (UC) being suspended, your claim being closed and any overpayment of Universal Credit (UC) being recovered from you.

I have booked an appointment to call you 09.30am on 17/06/2021.

You can see this appointment in your to-do list. This is in order to verify the information you gave us when you started your claim. This is part of wider work on claims created at the start of the pandemic.

²⁸⁸ DWP, *Annual Report and Accounts 2021 to 2022*, p52, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091361/annual-report-accounts-2021-22-web-ready.pdf; questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 9 September 2021; UC07GEN: *capital*, v36.0, accessed via FOI2021/75537, available at

cpag.org.uk/sites/default/files/files/policypost/UC07GEN_Capital_v36.0_FOI2021_75537.pdf; and Public Accounts Committee, *The Department for Work and Pensions' Accounts 2020-21: fraud and error in the benefits system* (oral evidence), 9 September 2021, Q23

²⁸⁹ rightsnet.org.uk/forums/viewreply/84181

²⁹⁰ Questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 9 September 2021

Between January and September 2021, the DWP contacted most of the 900,000 claimants considered as ‘potentially high risk’ of fraud and error who were still receiving UC by January 2021, out of the two million claims made while the ‘trust and protect’ easements were in place.²⁹¹ The DWP reported the exercise ‘*found incorrectness in approximately 12 per cent of cases, generating savings of circa £500 million*’.²⁹² While the DWP had previously stated that it would not review the awards deemed to be ‘at risk’ that had already ended by January 2021, it has since committed to keeping this cohort ‘under advisement’, on the basis of the potential for recovery outweighing the costs of the action.²⁹³ In May 2022, the DWP announced it was ‘building on’ the retrospective action it took against the ‘trust and protect’ cases to create a ‘*new, dedicated 2,000 strong team to deliver targeted case reviews of existing universal credit claims*’.²⁹⁴ The DWP envisages targeted case reviews of over 2 million cases over the next five years.

What the law says

Regulations give the DWP power to request evidence and information from a claimant with a current award to check whether it is correct or should be revised or superseded.²⁹⁵

Suspensions and terminations

If a claimant provides unsatisfactory evidence or fails to respond to the information request, then the decision-making mechanism available to the DWP is suspension and termination.²⁹⁶ The DWP has discretionary powers to suspend a person’s award for failing to provide information within 14 days if the DWP clearly notified the claimant of exactly what evidence was required, the deadline for providing it, the possibility of extending the deadline if more time is required to provide the evidence, and the option of satisfying the DWP that the evidence doesn’t exist or can’t be obtained.²⁹⁷ If more than a month has passed since the DWP suspended the benefit, it can terminate the award of UC from the date of suspension. Suspension and termination powers should not result in an overpayment because the previously paid award remains unchanged up until the date of suspension and subsequent termination.²⁹⁸

Revisions

The retrospective exercise took place many months after the entitlement decisions were taken and therefore outside the one-month time limit for the DWP to initiate any grounds revisions of those decisions (as there are no provisions in the legislation for a DWP decision maker to instigate a late any grounds revision with good reason for the delay beyond one month as is available to claimants).²⁹⁹ Therefore, the only grounds available to the DWP to revise the entitlement decisions was if the original decisions were the result of an ‘official error’ or if the

²⁹¹ Peter Schofield’s letter to the Chair of the Public Accounts Committee, 13 May 2021, available at committees.parliament.uk/publications/5942/documents/67567/default

²⁹² DWP, *Annual Report and Accounts 2021 to 2022*, p68, available at gov.uk/government/publications/dwp-annual-report-and-accounts-2021-to-2022/dwp-annual-report-and-accounts-2021-to-2022

²⁹³ Work and Pensions Committee, *The Department for Work and Pensions’ Accounts 2020-21* (oral evidence), 24 November 2021, Q48-54, available at committees.parliament.uk/event/6250/formal-meeting-oral-evidence-session

²⁹⁴ DWP policy paper, *Fighting Fraud in the Welfare System*, May 2022, para 33, available at gov.uk/government/publications/fighting-fraud-in-the-welfare-system/fighting-fraud-in-the-welfare-system--2

²⁹⁵ Reg 38 Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 No.380 (‘Claims and Payments Regulations 2013’)

²⁹⁶ A termination is a form of supersession.

²⁹⁷ Reg 45 Decisions and Appeals Regulations 2013. Alternatively, UC can be suspended under reg 44. *AA v Leicester CC* [2009] UKUT 86 (AAC), paras 54-56, available at casemine.com/judgement/uk/5a8ff78660d03e7f57eae361; *VW v Hackney LB (HB)* [2014] UKUT 277 (AAC), para 5, available at casemine.com/judgement/uk/5b46f2182c94e0775e7f222f; and *SS v NE Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 21, available at hbinfo.org/caselaw/2011-ukut-300-aac

²⁹⁸ A termination is only effective from the date of suspension unless there are alternative grounds for a revision or a supersession from an earlier date: reg 47(2) Decisions and Appeals Regulations 2013 and CH/2995/2006.

²⁹⁹ Reg 5 Decisions and Appeals Regulation 2013

original decision was made ‘in ignorance of, or based on a mistake as to, some material fact’.³⁰⁰ Importantly, for the second ground to be met, the DWP must be mistaken or ignorant as to a primary material fact established by evidence and not simply have made a new conclusion based on a secondary or inferred fact.³⁰¹ For example, if, in the course of its investigations, the DWP finds that a claimant was actually in possession of over £16,000 in capital and, therefore, they did not meet the financial conditions for UC when the entitlement decision was made, this would be a mistake as to a primary material fact and a decision maker would have the power to revise the entitlement decision and remove entitlement. By comparison, if the DWP infers that a claimant was not entitled to UC because they failed to respond to a request for evidence or the evidence they supplied was unsatisfactory, arguably this is not a ground to revise the entitlement decision, as it is only a new conclusion or assumption based on a secondary or inferred fact.

4.4.1 Entitlement decisions revised to remove entitlement without grounds

What happens in practice

This research shows that the retrospective reverification team routinely revised entitlement decisions to remove entitlement for the entirety of claimants’ awards, resulting in significant overpayments in some cases, when claimants failed to respond to evidence requests.³⁰²

Early Warning System: DWP recovers whole UC award paid during Covid – June 2021

‘The client made a claim for UC in April 2020. DWP easements due to coronavirus meant he was not asked for ID until May this year [2021]. The client did not respond to requests and now his award has been terminated from 17 May 2021. On 25 June, the client received a decision seeking to recover £9,000 which is the whole of the payments he received from April 2020. They are doing a mandatory reconsideration of the decision. He has the ID available.’

Rightsnet thread [17067 #34](#): insufficient ID results in overpayment – September 2021

‘I’ve just picked up one of these cases. A passport was provided when the UC claim was started in March 2020. The claimant was recently asked to supply further ID. He didn’t read the letter properly and only supplied one piece of ID (driving licence) instead of two. Now he’s got a “decision” that his entire UC award (£12,000) is an overpayment – “You have failed to supply the evidence on time.”’

There was a lack of transparency from the DWP regarding the legislative basis for the retrospective verification exercise while it was taking place. The welfare rights sector spent a few months attempting to clarify what legislative powers the DWP understood itself to be using before the DWP confirmed it was revising entitlement decisions on the ground of ‘ignorance of, or based on a mistake as to, some material fact’.³⁰³ In response to a

³⁰⁰ Reg 9 Decisions and Appeals Regulations 2013

³⁰¹ ADM Ch A4: ‘Supersession, suspension and termination’, para A4464: ‘A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence’, available at assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1065518/adma4.pdf. See, among other cases, *MS v SSWP (DLA and PIP)* [2021] UKUT 41 (AAC), paras 34-35, available at gov.uk/administrative-appeals-tribunal-decisions/ms-v-secretary-of-state-for-work-and-pensions-dla-and-pip-2021-ukut-41-aac.

³⁰² See also CPAG’s other work on this issue, including a briefing available at cpag.org.uk/policy-and-campaigns/briefing/demands-repay-impact-and-legality-dwp-reverification-uc-claims.

³⁰³ Reg 9 Decisions and Appeals Regulations 2013; whatdotheyknow.com/request/further_information_about_reveri#incoming-1818901;rightsnet.org.uk/forums/viewreply/83503

question from Rightsnet, the DWP stated in October 2021: *'If there is a failure to reply and entitlement terminates, the decision maker has to decide from what date UC should not have been paid. Normally that would be the date from which payment was suspended, but where the issue goes to entitlement in circumstances which cast doubt on the entire award, then they would be looking to revise the decision effective from the date of claim.'*³⁰⁴ However, 'doubt' is insufficient to revise an entitlement decision as there needs to be a mistake or ignorance as to a primary fact rather than a new conclusion concerning an inferred fact. When investigating identity, this would mean a finding of fact that a claimant was not who they had said they were when they claimed UC. Transparency was not helped by the department's use of the legally meaningless term 'claim closure', which further disguised the decision-making mechanism used (as is explored in [Chapter 2 – 'Decision making'](#)).

Once an award is in place, it is the DWP's responsibility to demonstrate that a claimant is no longer entitled to that benefit, either because they no longer meet, or never met, the eligibility requirements or because they have failed to comply with an administrative process within given time limits. This research suggests that the DWP revised awards unlawfully without grounds, based on inferences about reasons for non-engagement or unsatisfactory responses to evidence requests. In the previous examples, the claimants involved could all provide evidence that they were who they said they were. In some cases, the DWP already had other evidence verifying the claimant's identity and circumstances available, such as awards of different benefits on the DWP's customer information system (CIS) database, which could have assisted them in the UC reverification process.³⁰⁵

Early Warning System: man with LCWRA has entire UC award recovered as an overpayment for failure to upload evidence of ID – May 2022

'My client's claim started in May 2020 and was closed in December 2021. A subject access request shows there was a call in December to say ID verification was completed. A few days later a 'to-do' was sent to upload ID evidence, which my client did not respond to. A month later the claim was closed and an overpayment recovery letter was issued for £8,000, which is the entire award. My client cannot read and write very well and has been in the employment and support allowance (ESA) support group as well as having limited capability for work-related activity (LCWRA) for UC. He said his son helped with the claim, and he didn't really know how to access it. He also thinks he changed a phone number around December, possibly shortly after the ID call in December.'

If the DWP had justifiable doubts about the claimant's identities, the correct legal response would have been to suspend UC while it investigated and then terminate the awards from the date of suspension if the claimant did not respond within the set time limits once reasonable efforts were made.³⁰⁶ Arguably, in many cases, the DWP did not have the power to revise entitlement decisions and raise overpayments because it had not demonstrated a mistake about the identity of the claimant.³⁰⁷ In its *Annual Report and Accounts 2021 to 2022*, the department was explicit about its perspective on those who failed to engage with the sampling exercise for investigating levels of fraud and error in the benefit caseload.

³⁰⁴ rightsnet.org.uk/forums/viewreply/84181

³⁰⁵ assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110332/customer-information-system-the-data-held-about-you.pdf

³⁰⁶ Regs 44, 45 and 47 Decisions and Appeals Regulations 2013

³⁰⁷ There are additional concerns about the legality of the DWP's approach to reverifying awards which had already been brought to an end. This is because reg 38 Claims and Payments Regulations 2013 only allows the DWP to request evidence from current claimants rather than previous claimants. There is an added complication concerning the status of an award that was brought to an end as the result of the level of income and treated as automatically reclaiming for the following five assessment periods in accordance with reg 32A Claims and Payments Regulations 2013.

DWP Annual Report and Accounts 2021 to 2022

'31. Most of the recent rise in universal credit overpayments in 2021–22 compared with 2020–21 is due to a significant increase in cases selected for review where there was a "failure to provide evidence/fully engage in the process"... The Department assumes that such claims are fraudulent, because if the individual had a legitimate claim, they would be highly likely to need the money and therefore motivated to engage with the process. The Department also believes that the rise in these cases may be driven by people who started claiming universal credit early in the pandemic and have since seen their circumstances improve, but who have not notified the Department. Although these may be reasonable assumptions, the Department does not fully know the reasons for non-engagement and has limited ability to assess the nature of fraud and error in these cases.'

During the retrospective reverification exercise, DWP officials appear to have been systemically making unlawful decisions to revise entitlement decisions and recover the entirety of awards paid since the pandemic. This has had a profound impact on many current and previous UC claimants.

Early Warning System: receiving UC during Covid – June 2022

'I started receiving UC in March/April 2020 because of Covid-19. They sent me the money that same day, two hours after my call. I remember asking several times: "Do I have to give this money back if I cannot get a job soon?" They repeatedly said "no". During several months I followed instructions and to-do lists. I was recommended to move to a big city, and so I did. I was recommended to change my CV, and so I did. I applied to jobs I had no real skill set to do, just to widen the possibilities.

During this process, I was never ever (not a single time) asked to show myself personally to a job centre. In fact, I was warned not to do so because of Covid restrictions. I received a letter stating that "you were not entitled to the amount of money you received from universal credit". The reason? "We could not confirm your identity." The whole thing boils down to two phone calls I missed within a period of 12 days, which I had good reasons for.

I wrote in the journal, but it was too late, apparently. I knew this was wrong so I asked Citizens Advice what to do. We sent them a detailed mandatory reconsideration request. After about six months I get a reply: "We decided not to change your decision." There is not much substance other than that one line. Now I only have a month to prepare everything and defend myself on an appeal. I have read that I am not the only person in this situation. I am scared, I am angry, and I am sad.'

The DWP requested evidence primarily through journals or by telephone. For many reasons, many claimants did not receive these requests – for example, because they had moved into full-time paid work and were no longer receiving UC, so they had no reason to check their UC journal anymore. Some claimants first heard about a problem with their benefit when they received a physical letter through the post from DWP debt management, notifying them about the intention to recover the entirety of their UC award as an overpayment. By the time the DWP sent these overpayment recovery letters, claimants were inevitably beyond the initial one-month deadline for an any grounds revision of the decision that had resulted in the overpayment, but within the 13-month time limit for a late revision request, while there is no time limit if the DWP had made an official error or mistake about a material fact. In the example below, the lack of information in the decision notice about the deadlines to challenge the decision discouraged the claimant from applying for a revision, despite not finding out about the decision until after the deadline had passed.

Early Warning System: Entire award paid during Covid recovered as an overpayment – January 2022

'I was previously receiving UC when I was made redundant due to the pandemic. I received it for about six months until I got a new job... I sent a message on my journal letting them know that I would no longer need benefits and to take me off the system. I had no reply... I received a message in my journal three days later that said I had been overpaid as they couldn't verify all of my details. I replied asking why, as I provided all of my details when I signed up. The "overpayment" was not explained in the first message... I thought they were mistaken as my UC had stopped when I started work. The reply said: "We need to verify your details as you have had an overpayment," with no further explanation. I was not receiving any benefits, so I thought nothing more of the message as I hadn't been overpaid.

After I started my new job, I didn't see the need to be logging on to my journal as I had told them to remove me from the system. 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. Then two weeks later I received another letter saying that this matter had now gone to the debt collectors, and they had written to my employer to take money out of my wages each week.

I tried to sort this out by ringing the numbers on the letter, to only get through to an automated message saying we can't talk about an overpayment. So, I yet again rang UC who said they would again put it through to my case manager as an urgent call and they would ring me back on Thursday between 8 and 6pm... I did not receive a call.

If the first message I had received had clearly stated what details they needed... explained why and what I needed to do, then I would have done it... unfortunately, the first two messages I received explained nothing... I should have received a letter explaining to me exactly what I needed to do if I was not responding to my journal messages after telling them to close it... I am still very happy to do whatever is needed to verify all of my details to them so this matter can be resolved. I should not have to pay back money I was entitled to after losing my job due to the pandemic.'

Internal DWP guidance given to the reverification or repair team did not direct agents reviewing awards to consider other evidence or information already held on file by the DWP when concluding whether there had been a material mistake of fact.³⁰⁸ Instead, it appears that a failure to respond to requests for information led to a presumption by reviewers that the fact of the claimant's identity had been shown to be false. This appears to have led to repeated unlawful revisions of entitlement decisions without grounds to do so.

In addition, there are several ways in which the reverification process was procedurally unfair and exacerbated by some of the design features of UC that have already been discussed in this report, including frozen journals (see [Chapter 2 – 'Decision making'](#)), inadequate information about appeal rights, the lack of reasons in decision letters (see [Chapter 3 – 'Communicating decisions'](#)), and the language of 'claim closure' (see [Chapter 2 – 'Decision](#)

³⁰⁸ FOI2023/26077, available at cpag.org.uk/sites/default/files/files/policypost/FOI2023_26077_reverification_instructions.pdf

[making](#)'). Claimants caught up in the reverification exercise also faced gatekeeping of late revisions, despite having very good reasons for requiring and requesting an extension, as was explored in section 4.2.3 of this chapter.

Rightsnet thread [17067 #32](#): overpayment demand despite no longer receiving UC – September 2021

'A man stopped claiming UC in January 2021 as he got paid work. In April he got a text to say, "You have a message on your journal," so he logged in and was asked to send a photo of himself, holding his passport. Not unreasonably, as he was no longer claiming UC, and it being frankly quite an odd request, he did not reply. He actually thought it might be a scam. He then got an overpayment demand just shy of £6k. He then put an MR [mandatory reconsideration] in himself with all of the info requested and proof of rent as well, which was refused as they would not accept it saying he did not provide it within one month. He then approached us and we highlighted that he can provide info late, helped him provide the info, appealed, and the decision has since been revised and the appeal lapsed.'

Finally, the reverification exercise breached the important principle of the finality of decisions, which is there to give claimants certainty when planning their lives that once benefits are awarded, they cannot be arbitrarily recovered without legal justification.

4.5 Disputes 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 universal credit (UC) dispute process. These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. The DWP has designed a digital system that has not prioritised a fair and effective dispute process, which is fundamental if UC is to comply with rule of law principles. Specifically, the DWP has not designed a specific function for a claimant to request a mandatory reconsideration. Instead, claimants most commonly request a mandatory reconsideration by writing a note in their online journal. The lack of separation between using the online journal for informal communication and the formal process of challenging decisions is unreliable and vulnerable to gatekeeping. As a result, frontline DWP officials can dissuade claimants from pursuing a challenge before a decision maker has ever had the opportunity to formally reconsider the decision. Our research has found claimants are sometimes forced to make multiple requests before an application for a mandatory reconsideration is registered and referred to a decision maker, and there is no specific function to acknowledge that this process has taken place. In other circumstances, claimants are left confused if they receive a message in their journal that appears to be a response to a mandatory reconsideration request, but it has been communicated informally without a mandatory reconsideration notice including a notice of appeal rights. It is very concerning that UC has been designed in a way that fails to reflect the importance of the statutory appeals process as was decided by parliament.

The freezing of the journal undermines the communication advantages for claimants

Many claimants described the positive development of the UC journal for easier communication, record keeping and the ability to query decisions. However, the communication benefits of the journal for claimants are removed by the DWP's decision to freeze a claimant's journal if their claim is refused or their award is terminated. At the time when claimants are most likely to want to challenge a decision, when they have no entitlement to means-tested support, the primary route of communication to the DWP is blocked. Although there are other methods for requesting a revision, such as by telephone, all of the alternatives are an administrative barrier by comparison to

requesting a mandatory reconsideration via the journal. The DWP's decision to freeze journals is a major procedural barrier to claimants making representations and disputing entitlement.

The reverification exercise as a case study and a warning

The DWP's reverification of claims made during the initial stages of the pandemic encapsulates a lot of the issues which are covered in this research project. As is predictable when the DWP fails to uphold rule of law principles of transparency, procedural fairness and lawfulness, the consequences for claimants were severe.

Arguably, it was a large-scale exercise of DWP officials acting beyond their powers in the legislation, based on inferences about reasons for non-engagement or unsatisfactory responses to evidence requests. There are several ways in which the reverification process was procedurally unfair and exacerbated by some of the design features of UC, including frozen journals, inadequate information about appeal rights, the inadequate reasons for decisions in decision letters (See [Chapter 3 – 'Communicating decisions'](#)) and the use of the legally meaningless language of 'claim closure' rather than correctly identifying the type of decision-making mechanism used according to the Social Security Act 1998 (See [Chapter 2 – 'Decision making'](#)). Some claimants caught up in the reverification exercise also faced the gatekeeping of late mandatory reconsiderations, despite having very good reasons for requiring and requesting an extension.

In May 2022, the DWP announced it was envisaging targeted case reviews of over two million cases over the next five years, which highlights the urgency of acting on the recommendations in this research. There is increasing attention, rightly, on the potential risks of using machine learning and automated decision making to identify cases suspected of fraud and error. This research highlights that it is just as important to pay close attention to what happens next: evidence gathering, decision making and dispute processes once a claimant has been identified as warranting investigation.

4.6 Disputes recommendations

Quick fix

- DWP *Digital Design/Communications* must improve the information provision to claimants on payment statements about the real-time information (RTI) dispute process and its relationship with the mandatory reconsideration process.

Medium-term fix

- DWP *Digital Design* should delay the freezing of a claimant's journal for at least one month (the time period for an in time any grounds revision) after decisions to refuse a claim or end an award to allow claimants to have the time to start the appeals process via their journal.
- DWP *Research* should undertake research into RTI dispute processing times. This research should be made public.
- DWP *Digital Design* should introduce a 'request mandatory reconsideration' function across all appealable decisions which ensures all requests are treated as such. The DWP should monitor such requests and publish statistics – eg, volume of requests, types of issues, processing times etc.
- The DWP *training team* should improve training on:
 - the social security legislation that underpins all decision making eg, decisions, revisions and supersessions;
 - the gatekeeping of revision applications, including updating the gatekeeping memo from 2015.
- The DWP is planning to complete targeted case reviews of over two million cases over the next five years. It is crucial to ensure this process is lawful and procedurally fair.

- The DWP should ensure they act lawfully and only revise decisions and raise overpayments when there are grounds to do so, which will require additional training and legally accurate guidance.
- The DWP must contact claimants in a variety of ways, including physical letters, when requesting information and if awards are suspended and claimants do not respond to journal messages. Text messages should include more information about the reason for contact.

Long-term reform

- DWP should introduce time limits for making revision decisions, as has been introduced in Scotland.
- The DWP should increase the number of decision makers to reduce decision-making times on applications for revisions (mandatory reconsiderations).

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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.