

## Chapter 2: Decision making

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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 3: Communicating decisions](#).

Read [Chapter 4: Disputes](#).

## 2. Decision making

### 2.1 Introduction

Like the social security system as a whole, universal credit (UC) is, or at least should be, administered according to a 'decision-based system'.<sup>106</sup> Once a person has applied for UC, the Department for Work and Pensions (DWP) must make a formal and identifiable decision as to whether the claim resulted in an award of benefit or a refusal of the claim. Once an entitlement decision is made to award benefit or refuse the claim, that decision is final unless the DWP changes it by a revision (a correction of the decision with full retrospective effect) or a supersession (a replacement of the decision from a later date, most commonly because circumstances have changed), both of which require a new decision to be made. This decision-based system provides a level of certainty to claimants that if their award is altered, then there will be a new decision that can be identified and challenged if necessary.

This chapter considers the extent to which decision-making processes within UC comply with the rule of law principles of transparency, procedural fairness and lawfulness, from the initial decision on a claim to the ending of a UC award. Many processes for determining eligibility are now digital and, in some places, automated, including calculating awards and gathering employee's earnings information directly from HM Revenue and Customs. However, UC is only a partially digitalised system, and there continue to be many decision-making processes that are fully clerical and completed by DWP officials. Some decisions are taken by DWP officials called 'decision makers' who do not generally interact directly with claimants, but other decisions are taken by 'case managers' (responsible for the general administration of UC, including payments) and 'work coaches' (responsible for a claimant's activities to do with work and finding work), both of which are frontline roles.

This chapter is split into four sections: decisions on claims, calculating awards, changing awards and 'claim closure'. Section 2.2 explores two different reasons the DWP may refuse claims for UC and examples of failures to comply with rule of law principles when making these decisions. Section 2.3 starts with a brief overview of how a UC award is calculated, followed by examples of decision-making and calculation errors for different groups, including employees, people who have migrated from employment and support allowance, students, families with children, and carers. Section 2.4 considers decisions to change an award of UC and introduces the decision-making processes of supersession, suspension and termination. Section 2.5 explores the DWP's concept of 'claim closure' within UC and the multiple reasons why it is so problematic when considered from the perspective of rule of law principles.

### 2.2 DWP decisions on claims

#### *Conditions of entitlement*

In order to qualify for universal credit (UC), a claimant (or joint claimants) must satisfy a number of basic and financial conditions.<sup>107</sup> The basic conditions are that the claimant is over 18 and under pension age, not 'receiving education', is in Great Britain, and has accepted a claimant commitment (although there are exceptions to all of these).<sup>108</sup> The financial conditions are not having savings and capital above £16,000 and having an income below the threshold calculated for a household's particular circumstances.<sup>109</sup>

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<sup>106</sup> *SS v North East Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 5, available at [hbinfo.org/caselaw/2011-ukut-300-aac](http://hbinfo.org/caselaw/2011-ukut-300-aac)

<sup>107</sup> s3 Welfare Reform Act 2012

<sup>108</sup> s4 Welfare Reform Act 2012

<sup>109</sup> s5 Welfare Reform Act 2012

### *The decision about whether conditions of entitlement are met*

Once a claim for benefit has been made, the DWP has a legal duty to decide that claim.<sup>110</sup> A decision on a claim could be to refuse the claim (because one or more of the conditions of entitlement are not met) or to make an award. In the case of an award being made, the decision will also need to specify the date from which UC is awarded and the amount of entitlement.

In coming to a decision, the decision maker will need to make a finding about each individual condition of entitlement. The finding on each individual aspect in isolation is called a 'determination'. Determinations are the 'building blocks' of decisions, and they are not challengeable until they have been incorporated into a formal decision.<sup>111</sup>

### **2.2.1 Refused universal credit because of a failure to accept a claimant commitment**

#### **What the law says**

All of the basic conditions of entitlement for UC are to do with a person's circumstances (such as their age and education status) other than the requirement to have accepted a claimant commitment, which is a procedural requirement. The claimant commitment records what work-related requirements a claimant is expected to do in order to avoid being sanctioned (activities can vary between spending 35 hours per week looking for work and no work-related requirements, depending on individual circumstances) and other general responsibilities, such as reporting changes of circumstances and completing to-dos (pages requiring action).

A claimant must accept their claimant commitment electronically, in writing or by telephone, with the DWP specifying which method is required.<sup>112</sup> A claimant must also accept their claimant commitment within a specified period of time, with the length of time left to the discretion of the Secretary of State in the guidance, and with the option of an extension if the claimant asks for a review of their commitments.<sup>113</sup> If accepted in time, the claimant is then treated as though they accepted the claimant commitment on the first day of their claim.<sup>114</sup> There are a number of exceptions in which a claimant does not have to meet the basic condition of having accepted a claimant commitment, including if 'there are exceptional circumstances in which it would be unreasonable' to do so.<sup>115</sup> A work coach can update a claimant commitment as and when they see fit, and a claimant is only treated as having accepted their claimant commitment if they have accepted the most up-to-date version.<sup>116</sup> The contents of the claimant commitment cannot be challenged by revision or appeal; if a claimant wants to dispute the content of their claimant commitment, they must ask for an internal review, make a complaint or use the judicial review process.

#### **What the guidance says**

DWP guidance specifies that a claimant must accept an autogenerated claimant commitment 'within seven days' of receiving the electronic prompt in their UC account, and accept a tailored claimant commitment within seven

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<sup>110</sup> s8(1) Social Security Act 1998

<sup>111</sup> CIB/2338/2000, para 22

<sup>112</sup> Reg 15(4) The Universal Credit Regulations 2013 No.376 ('UC Regulations 2013'), with the Secretary of State required to specify which one will be accepted.

<sup>113</sup> Reg 15(3) UC Regulations 2013

<sup>114</sup> Reg 15(1) UC Regulations 2013

<sup>115</sup> Reg 16 UC Regulations 2013

<sup>116</sup> s14 Welfare Reform Act 2012. Guidance states the DWP should only treat a new claimant commitment as the 'most up-to-date version' once a claimant has been properly notified they must attend an interview, they have attended that interview, and the 'cooling off' period is over. See ADM Ch J1: 'The claimant commitment', para J1036, available at

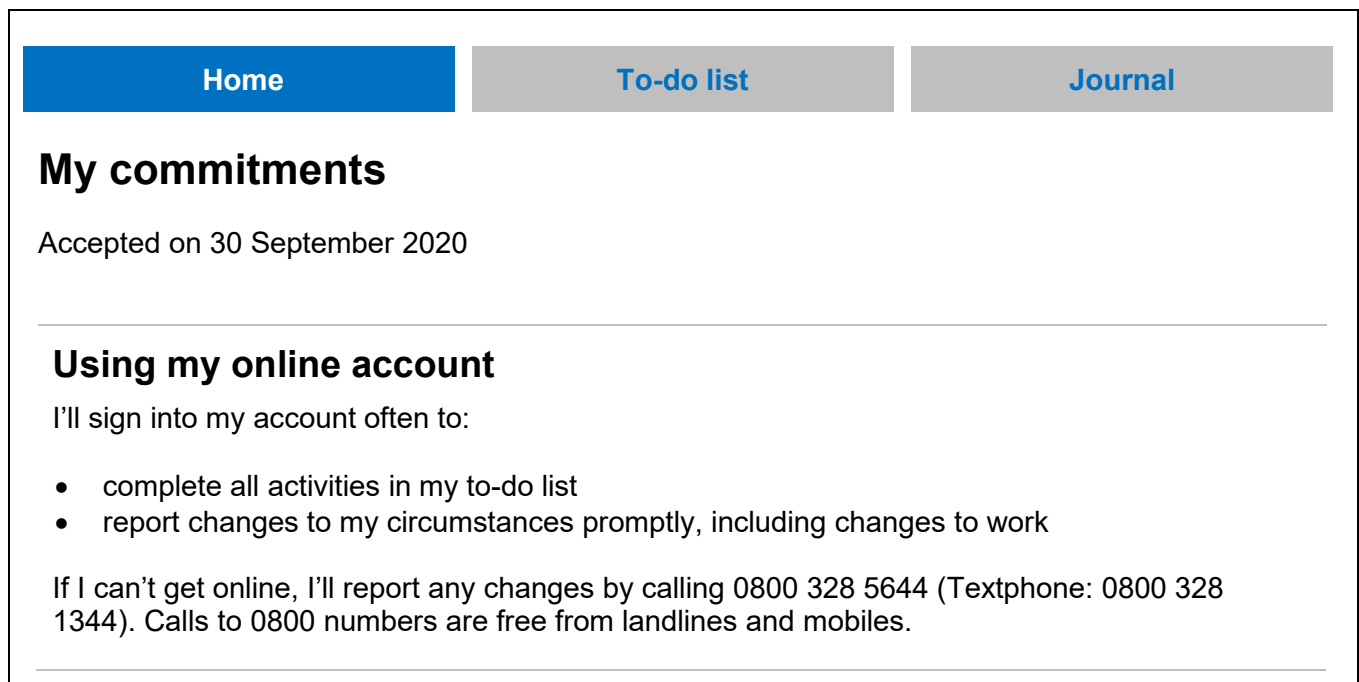
[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1109702/admj1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1109702/admj1.pdf).

days of an initial commitments meeting, which must be booked within one month of submitting a claim.<sup>117</sup> The guidance allows for the seven days to be extended if the claimant has complex needs (life events, personal circumstances, health issues or disabilities that could affect a claimant's ability to access and use UC services according to the DWP).<sup>118</sup>

### What the universal credit digital system looks like and how it works

Some claimants with no work-related activities (eg, those caring for a severely disabled person for 35 hours or more a week) are presented with an autogenerated version of the claimant commitment to agree as part of the claims process. Claimants who have work-related requirements will usually be invited to an initial commitments meeting where they are presented with a 'tailored' claimant commitment that should take into account their work background and individual circumstances.<sup>119</sup> In both cases, claimants are required to accept the claimant commitment by agreeing a to-do in their online account.<sup>120</sup>

Figure 2A: CPAG mock-up of an automated claimant commitment



**Home**    **To-do list**    **Journal**

## My commitments

Accepted on 30 September 2020

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### Using my online account

I'll sign into my account often to:

- complete all activities in my to-do list
- report changes to my circumstances promptly, including changes to work

If I can't get online, I'll report any changes by calling 0800 328 5644 (Textphone: 0800 328 1344). Calls to 0800 numbers are free from landlines and mobiles.

<sup>117</sup> Although evidence to the Work and Pensions Committee's report *Benefit Sanctions* (HC 995, 6 November 2018, para 89, available at [publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/95502.htm](https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/95502.htm)) suggests that tailored claimant commitments are often also 'generic.'

<sup>118</sup> *Claim Closure, internal operational guidance, v 19*, available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028\\_Claim\\_closure\\_V19.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf); *Complex Needs Overview*, UC internal operation guidance, v 18, available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039\\_Complex\\_needs\\_overview\\_V18.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039_Complex_needs_overview_V18.0.pdf); regs 15 and 16 UC Regulations 2013

<sup>119</sup> ADM Ch J1: 'The claimant commitment', paras J1010-11

<sup>120</sup> Reg 15(4) UC Regulations 2013. This is the method specified by the Secretary of State.

Figure 2B: CPAG mock-up of a tailored claimant commitment which takes into account a claimant’s work history

<p><b>My commitments</b></p> <p>Accepted on 13 March 2022 by</p>	<p><b>Travel time</b></p> <p>I can travel up to 90 minutes to work.</p>	<p><b>Voluntary activities</b></p> <p>I have not discussed any voluntary activities.</p>
<p><b>Work I can do</b></p> <p><b>Jobs</b></p> <p>I’ll look for and take any work that I’m able to do including:</p> <ul style="list-style-type: none"> <li>• Nurse</li> </ul> <p>I’ll also apply for any jobs recommended by my work coach.</p>	<p><b>My availability</b></p> <p>I’m available for job interviews immediately. I’m available to start work immediately.</p>	<p><b>Hours per week</b></p> <p>I’ll spend 35 hours a week looking and preparing for work.</p>
<p><b>Wage</b></p> <p>I’ll look for work for the minimum wage or more.</p>	<p><b>Activities</b></p> <p><b>What I’ll do</b></p> <p>I’ve agreed with my work coach that I’ll:</p> <ul style="list-style-type: none"> <li>• I will book relevant training to be able to get back into my previous job as a Nurse.</li> <li>• I will register with local agencies and take up any relevant work.</li> <li>• I will apply directly through the NHS website for any available positions.</li> </ul>	<p><b>Meetings with my work coach</b></p> <p>I’ll attend and take part fully in all meetings with my work coach. I’ll tell my work coach immediately if I can’t do this.</p>
<p><b>Work hours</b></p> <p>I’ll look for full-time work.</p>		<p><b>Using my online account</b></p> <p>I’ll sign into my account often to:</p> <ul style="list-style-type: none"> <li>• complete all activities in my to-do list</li> <li>• report changes to my circumstances promptly, including changes to work</li> </ul> <p>If I cannot get online, I’ll report any changes by calling Universal Credit.</p>

**What happens in practice**

In 2022, 6 per cent of claims were refused because the claimant had not accepted a claimant commitment.<sup>121</sup> The following examples illustrate the multiple possible reasons a claimant may fail to agree their claimant commitment via the to-do, including digital literacy issues, one member of a couple not realising that both members had to accept a claimant commitment or the belief that the commitments had been agreed in person.

*Finley (adviser) – November 2021*

*‘That’s a massive issue, and some people might leave it a while to make the claims so they are hit financially... A typical one is they haven’t gone to the appointment... to do the claimant commitment... it could be someone where it’s obvious there is some issue that links to health safeguarding where the DWP should really make a concerted effort.’*

\*All names have been changed.

<sup>121</sup> FOI2023/36483, available from [whatdotheyknow.com/request/outcome\\_and\\_processing\\_of\\_uc\\_cla#incoming-2325381](https://whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381)

***Early Warning System: refused UC because carer doesn't accept claimant commitment after attending interview – May 2022***

*'The client was caring for his mother until she died. The carer's allowance ended so the client made a claim for UC with his partner who works. They attended the claimant commitments meeting and he was advised he would need to agree his claimant commitment on his journal. Then he lost his phone, so didn't get the message and didn't accept it in time. The claim for UC was refused.'*

***Early Warning System: refused UC because partner did not accept their claimant commitment – September 2022***

*'My client's UC claim was refused because one member of the couple didn't agree her claimant commitment. The husband agreed his but the wife did not realise she also had to agree one. English is not her first language. They have four dependent children.'*

***Early Warning System: refused UC when claimant couldn't access journal to accept claimant commitment – August 2022***

*'My client is a lone parent who works part time. Her UC award was brought to an end for not accepting a revised claimant commitment. She is computer illiterate and was previously supported by a family member to manage her UC journal until her family member could no longer help her. She called UC to explain she had a problem with her wifi, needed support to set up a new email address and could not access her journal. The claimant called the DWP twice and neither of the DWP officials she spoke to provided her with the option of agreeing her revised claimant commitment over the phone when she told them she could not access her UC account.'*

In the previous example, the claimant's award was brought to an end for a failure to accept a revised claimant commitment. Arguably the DWP should have offered the claimant an alternative method for accepting their claimant commitment or decided that it was unreasonable for them to accept it in the circumstances. In addition, there was clear evidence of complex needs, which according to guidance, should have prevented the award being ended.<sup>122</sup>

The requirement for all claimants to comply with a procedural condition to be entitled to their benefit, including those who are not required to complete any work-related activities to receive UC, is a new feature of the social security system under UC. Although there was a similar requirement for those claiming jobseeker's allowance to accept a jobseeker's agreement, claimants in receipt of employment and support allowance (ESA) or income support (both benefits where there was no expectation to work or look for work because of ill health, disability or caring responsibilities) were not required by law to comply with procedural requirements that affected their substantive entitlement to benefits.<sup>123</sup> Under UC, even claimants with no work-related requirements (eg, those whose health is too poor) are still required to agree to an autogenerated claimant commitment as part of the claims process, which states they must check their journal and update the DWP about any changes. The following

<sup>122</sup> [Claim Closure, internal operational guidance, v 19](#), available from [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028\\_Claim\\_closure\\_V19.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf)

<sup>123</sup> 'A lack of commitment?', *Welfare Rights Bulletin* 274, 2020, available from [askcpag.org.uk/?id=200514&fromsearch=true](https://askcpag.org.uk/?id=200514&fromsearch=true)

examples demonstrate the administrative hurdles and financial loss faced by claimants with ill health and disabilities, and their carers, due to the procedural requirement to accept a claimant commitment.

***Early Warning System: refused UC because client had not accepted commitments in journal – June 2020***

*'I have a client who is severely disabled with limited capability for work-related activity (LCWRA) and his wife is his carer. Their employment and support allowance (ESA) was suspended, so they claimed UC in December 2019. The claim was [refused] because the wife didn't accept her commitments in her journal. They both attended the commitments interview but they were not made aware that they both needed to accept the commitments electronically as well, especially considering neither of them has work-related requirements. The original journal now can't be accessed as they have now made a new claim.'*

***Stella (claimant) – October 2021***

*'We had to go back for a commitments meeting, although he had read the notes and the ESA assessment said my [adult] son wasn't fit to work, we still had to do the commitments... He said he would take out the "looking for work" because we did have a sick note to say my son was unfit for work. The DWP official sorting out the ESA said that I just had to put the ESA details in, and he would take the "looking for work" commitment out. But then he (DWP official dealing with UC application) went on with, "If you don't look at your journal, and if you don't do this," ... "We will put sanctions". It is not, "If you have any problems...," there was no friendly language.'*

***Early Warning System: learning difficulties and UC migration – December 2022***

*'A claimant with learning difficulties and mental health conditions is being migrated onto UC. There have been multiple issues. He was told there was no option for an extension to his deadline date. He was not paid transitional protection, which was only remedied when his adviser challenged the payment amount. He was told he couldn't have his claimant commitment printed out despite having a phone claim. Requests for reasonable communication adjustments have been ignored and the complex needs information was not flagged on his record. There have also been multiple issues with trying to speak to the DWP using "explicit consent".'*

When claimants are assessed as having limited capability for work (LCW) or LCWRA due to a new or worsening health condition or disability (see section 2.3.5 of this chapter for more information), they are presented with a new claimant commitment which has a reduced subset of requirements or no requirements in comparison to the earlier commitments they have already agreed. In the following example, a claimant had their award brought to an end for a failure to agree to the new claimant commitment he received after having been granted LCWRA.

***Early Warning System: elderly client with memory problems missed accepting commitments – August 2021***

*'My client is in his 60s, in receipt of UC in the LCWRA group with personal independence payment (PIP). He's had concentration and memory problems after he had a stroke in 2019. I have always needed to help him manage his UC claim as he struggles online. I've just come back from several weeks' annual leave to find not only that he's been very unwell with Covid since the end of July (he is now recovering) but that his UC [award has been brought to an end]. The reason is that he did not complete the "accept your commitments". This happened while he was ill and while I was away. There was a final warning on 6 August and it was [brought to an end] on 13 August. He had received his LCWRA decision on the 30 July with effect from March 2020, so the new commitments he would have been asked to agree would have been for him to have no work-related commitments.'*

Arguably, the claimant in the previous example had already agreed the subset of requirements in the new claimant commitment as part of their initial wider set of commitments which he had previously accepted. Given that the new claimant commitment, which the claimant is said to have failed to accept, is simply a document which contains a smaller subset of the conditions they have already agreed to in their existing commitment, it is not clear that such a claimant can be said to have failed to accept a commitment.

***Early Warning System: refused UC for failure to accept claimant commitment before seven-day deadline – July 2022***

*'My client is a survivor of domestic violence and has significant mental health problems inhibiting her ability to manage her UC claim. Despite transferring from ESA to UC, the DWP required her to complete a UC claimant commitment within six days. She did not realise that she was required to complete this, as she did not regularly check her UC journal due to her mental health, and her claim was refused. She requested a mandatory reconsideration but the DWP refused to change the decision. On appeal, the First-tier Tribunal judge held that:*

*"The instruction in her journal to accept her claimant commitment reads 'you will need to log into your account and accept your commitments ASAP. Failure to do this may result in your claim being closed'. This does not give sufficiently detailed instructions as to the time limit for accepting the commitment (see regulation 15(1) UC Regulations 2013). The claim was closed six days later, where the usual time for actioning such a request is seven days. [Ms X] suffered from mental ill health, she had no experience of the UC system and her English and computer skills are limited. In those circumstances, it was unreasonable to expect her to accept a claimant commitment."*

There are some troubling aspects regarding the DWP's approach in this case study. First, the claimant was not notified of the requirement to accept their claimant commitment 'within seven days' as is provided for by the guidance. Second, a decision was made that the claimant had failed to accept their commitments on the seventh day, when such a decision cannot lawfully be made until the eighth day. Third, there was clear evidence of complex needs, which demonstrated it would be unreasonable to expect the claimant to accept her claimant commitment.

These issues are concerning from a rule of law perspective. Although the claimant commitment requirement is set out in legislation, the evidence shows the DWP sometimes applies the law and guidance incorrectly in individual



circumstances – for example, by taking decisions prematurely when a claimant is still within a period provided to agree the commitment.

### 2.2.2 Refused universal credit for a failure to attend the initial evidence interview

#### What the law says

Once a valid claim has been made and accepted, regulation 37 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (‘Claims and Payment Regulations’) enables the DWP to request any ‘additional or confirmatory information or evidence’ to ensure ‘claimants are awarded the benefit to which they are shown to be entitled, and not awarded benefits to which they are not’.<sup>124</sup> Claimants are then under a duty to supply what is required, in the manner requested, within one month, or longer if considered reasonable. If a claimant fails to provide the information or evidence within the deadline (or extended deadline), the DWP is required to make a decision on entitlement based on all of the available information and evidence. The decision maker may decide to refuse the benefit, but only if the lack of evidence means the DWP cannot be satisfied that the claimant meets the entitlement conditions. The DWP does not have a free-standing right to refuse a claim for UC simply because a claimant fails to comply with their duty to provide information or evidence in accordance with regulation 37. The Upper Tribunal confirmed this with regard to information about self-employment and self-employed income.<sup>125</sup>

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

*paragraph 38 ‘What then of the official explanation given for the “case closure”? This was that “You didn’t book your appointment”. However, as Mr Spencer correctly argues, there is nothing in the 2013 Claims and Payments Regulations that makes attending an interview about self-employment a part of the process of claiming universal credit in the prescribed manner...’*

*paragraph 40 ‘...a claim for universal credit in the prescribed manner is made before the question of the claimant’s self-employment is fully explored. Any interview regarding self-employment that is felt to be necessary is then requested as part of the Secretary of State’s investigation of the claimant’s entitlement under a claim that has already been properly made. In effect, the request that the claimant arrange and attend an interview about self-employment is no more and no less than a demand for information or evidence under regulation 37(2) of the 2013 Claims and Payments Regulations.’*

#### What the universal credit digital system looks like and how it works

If a claimant fails to attend their initial evidence interview and the appointment is not rearranged, the work coach or case manager should complete the ‘Fail to attend initial interview’ internal agent to-do and select the type of appointment missed.<sup>126</sup> The work coach or case manager then creates a ‘Fail to attend’ claimant to-do with a due date set for one calendar month from the original missed appointment, which generates a template message to paste into the claimant’s journal. The system can notify the claimant by text or email of the new to-do, alert the agent when the claimant has completed the to-do, and set an internal reminder for one calendar month and one day after the claim was submitted.

<sup>124</sup> Appeals tribunal decision [CIS 51/07 and CIB 52/07](#), para 10

<sup>125</sup> *PP v SSWP (UC) [2020] UKUT 109 (AAC)*

<sup>126</sup> Mock-up of screenshot from UC112 AV version 35, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/UC112\\_AV\\_v35\\_FOI2021\\_75537.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf)

Figure 2C: CPAG mock-up of the 'Fail to attend initial interview' agent to-do<sup>127</sup>

## Description

You didn't attend your appointment at 10.30am on 31 July at your local Jobcentre. You need to contact us on 0800 328 5644 to book another one. If you do not attend your appointments, without what we believe is a good reason, your payment could be affected.

### Date due

For example, 18 9 2012

Day	Month	Year	
<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 40px; height: 20px;" type="text"/>	<input style="width: 60px; height: 20px;" type="text"/>	select date

### Time due (optional)

Hours

Minutes

Notify claimant by text or email

Notify agent when claimant completes the to-do

Create to-do

If there is no rearranged appointment, the DWP official is advised they need to refuse the claim the day after the expiry of the 'Failure to attend appointment' to-do and upload a claim refusal letter (unless the claimant has complex needs).<sup>128</sup> The guidance uses the phrase 'claim termination' and describes the process as 'claim closure', but this is the incorrect terminology, which will be explored in section 2.5 of this chapter. The to-do confirms that case managers can make the refusal decision for a failure to attend an initial evidence interview without requiring a referral to a decision maker. The agent is advised to choose the 'failed to attend initial interview' option as the reason for the refusal.

<sup>127</sup> Mock-up of screenshot from UC112 AV version 35, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/UC112\\_AV\\_v35\\_FOI2021\\_75537.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf)

<sup>128</sup> *Claim Closure*, internal operational guidance, v 19, available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028\\_Claim\\_closure\\_V19.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf): 'If a claimant fails to book their IEI, their claim remains open for one calendar month from the date of their declaration... If no further contact is made the claim is closed one month from the date of their declaration.' See also UC112 AV v35, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/UC112\\_AV\\_v35\\_FOI2021\\_75537.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf), which states that 'closure action needs to be completed the day after the expiry of the "failure to attend appointment" to-do'.

Figure 2D: CPAG mock-up of the 'Which appointment did the claimant fail to attend?' agent to-do<sup>129</sup>

## Which appointment did the claimant fail to attend?

Initial Evidence Interview

Initial Evidence Interview and HRT

Initial Gateway

Initial HRT

**A decision maker decision is not required to close IEI, HRT or Gateway Interview**

- Closure action needs to be completed the day after the expiry of the 'Failure to attend appointment' to-do
- Complete and upload the 'Claim Termination Letter' to the claimant's journal
- To ensure the document is uploaded correctly it must be saved in this format: Nameoffile\_Firstname\_lastname
- Notify the claimant by ticking the 'Notify claimant by text or email' box
- On the agent home page, click 'close claim' and complete the claim closure process
- The closure date is the date of declaration
- The closure reason is 'failed to attend initial interview'

Done – complete the to-do

### What happens in practice

On average, 6 per cent of claims in 2022 were refused at the application stage for 'not being process compliant'.<sup>130</sup> These statistics are made up of those who failed to book and those who failed to attend an initial evidence interview. In response to the coronavirus pandemic, the DWP temporarily stopped requiring claimants to book and attend their initial evidence interview at the job centre in person. Instead, it implemented a 'Don't call us – we'll call you' policy. During March and April 2020, less than 1 per cent of claims were refused for failing to book an initial evidence interview, with only 1 per cent of claims refused for failing to book an interview and 2 per cent refused for failing to attend a booked phone appointment in the year between June 2020 and June 2021. By comparison, before the pandemic in 2019, approximately 9 per cent of claims for UC were refused due to a failure to book an initial evidence interview, while a further 2 per cent were refused for failing to attend a booked interview, which is more than one in 10 claims.<sup>131</sup>

It is unlawful for the DWP to refuse UC solely because of a failure to attend an initial evidence interview. If a claimant fails to attend the initial evidence interview, the DWP has the power to consider the evidence already available and decide whether it is sufficient to prove that the entitlement conditions are met. If, after a month has

<sup>129</sup> Screenshot from UC112 AV v35, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/UC112\\_AV\\_v35\\_FOI2021\\_75537.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC112_AV_v35_FOI2021_75537.pdf)

<sup>130</sup> FOI2023/36483, available from [www.whatdotheyknow.com/request/outcome\\_and\\_processing\\_of\\_uc\\_cla#incoming-2325381](https://www.whatdotheyknow.com/request/outcome_and_processing_of_uc_cla#incoming-2325381) – The DWP combines refusals for a failure to accept the claimant commitment and a failure to book or attend the initial evidence interview as 'not being process compliant' in its statistics, but we have separated them due to the different requirements of the legislation.

<sup>131</sup> FOI2020/00634, available at [cpag.org.uk/sites/default/files/files/policypost/FOI2020\\_00634\\_claim\\_closure\\_statistics.pdf](https://cpag.org.uk/sites/default/files/files/policypost/FOI2020_00634_claim_closure_statistics.pdf) and FOI2020/62600, available at [cpag.org.uk/sites/default/files/files/policypost/FOI2020\\_62600\\_closed\\_claim\\_statistics.pdf](https://cpag.org.uk/sites/default/files/files/policypost/FOI2020_62600_closed_claim_statistics.pdf)

passed, the evidence is found to be insufficient, a decision maker can refuse benefit for failing to meet one or more of the conditions of entitlement. Simply failing to attend the initial evidence appointment is not, on its own, grounds for refusing UC.

The combination of DWP training and guidance for frontline officials, and the design of the UC digital system, raises serious concerns when viewed through a rule of law lens. DWP officials are arguably being instructed to take unlawful action by a combination of the *Claim Closure* guidance and the option of choosing ‘failure to attend appointment’ as a possible reason for refusing a claim from a drop-down menu, when this is not a ground for refusing an award of UC by itself.<sup>132</sup> Instead, officials should make a decision on the basis of the available evidence. As a result, up to 11 per cent of cases (hundreds of thousands of claims) were refused in 2019, when potentially there would have been entitlement.<sup>133</sup> This demonstrates the scale of problems caused when the DWP designs procedures of adjudication via a digital system that are arguably incompatible with the law.

## 2.3 DWP calculation of awards

### 2.3.1 An overview of the universal credit calculation

#### *Universal credit awards*

Universal credit (UC) is a single, means-tested payment for a household that is paid in arrears at the end of each month. The amount of UC a claimant gets depends on their needs (their ‘maximum amount’) and how much income and capital they have (individually or jointly in the case of couples).

#### *The calculation*

If a claimant meets the entitlement conditions for UC and has no income or capital, they will receive an amount of UC equal to their maximum amount (minus any deductions or reductions – eg, benefit overpayment recovery and sanctions). If earnings or other income (including many other benefits) or savings are taken into account, then the UC award is calculated by reducing the maximum amount (see below).<sup>134</sup>

#### *The maximum amount*

A claimant is entitled to different elements depending on their specific circumstances, which are added together to make their ‘maximum amount’ of UC. All eligible claimants receive a standard allowance at either the single or couple rate, plus additional elements, including for children, housing, childcare and caring, if applicable. There is, for claimants who undergo ‘managed migration’, a ‘transitional element’ if legacy benefit claimants are entitled to less benefit when they migrate to UC than they previously were under legacy benefits (see [Chapter 1 – ‘Claims’](#) for more information). There is also a ‘transitional SDP element’ for some claimants who received the severe disability premium (SDP) in their legacy benefits.

#### *Income and savings*

Claimants with children or limited capability for work or work-related activity qualify for a ‘work allowance’ in their UC calculation.<sup>135</sup> A work allowance disregards a fixed amount of earnings before they are taken into account when calculating the UC award.<sup>136</sup> For those not eligible for a work allowance, or for net earnings above the work

<sup>132</sup> [Claim Closure, internal operational guidance, v 19](#), available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028\\_Claim\\_closure\\_V19.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf)

<sup>133</sup> FOI2020/00634, available at [cpag.org.uk/sites/default/files/files/policypost/FOI2020\\_00634\\_claim\\_closure\\_statistics.pdf](https://cpag.org.uk/sites/default/files/files/policypost/FOI2020_00634_claim_closure_statistics.pdf) and FOI2020/62600, available at [cpag.org.uk/sites/default/files/files/policypost/FOI2020\\_62600\\_closed\\_claim\\_statistics.pdf](https://cpag.org.uk/sites/default/files/files/policypost/FOI2020_62600_closed_claim_statistics.pdf)

<sup>134</sup> Part 6 UC Regulations 2013 states what should be taken into account as capital or income and what should be disregarded.

<sup>135</sup> Claimants can either be assessed as having limited capability for work (LCW) or limited capability for work-related activity (LCWRA) by a work capability assessment or they can be treated as having LCW or LCWRA based on their health conditions and circumstances.

<sup>136</sup> Claimants without the housing element have a higher work allowance of £631 compared to £379 for those who do.

allowance, there is a taper rate currently set at 55 per cent, so each pound of earned income reduces the maximum amount by 55p.<sup>137</sup> Unearned income, on the other hand, reduces UC pound for pound (eg, maternity allowance),<sup>138</sup> while some other benefit income is disregarded completely – eg, most disability benefits.<sup>139</sup> Claimants with capital over the lower limit of £6,000 are treated as having a monthly income of £4.35 a month for every £250 over £6,000.01 until they exceed the upper limit of £16,000, which means they no longer meet the financial conditions for UC.<sup>140</sup> If the amount calculated is reduced to zero after the income and capital is taken into account, then the claimant does not meet the financial conditions for UC.<sup>141</sup>

### *Assessment periods*

UC is calculated based on a claimant's circumstances during a monthly 'assessment period', which starts on the first day of entitlement and lasts for a calendar month.<sup>142</sup> The following assessment periods will usually start on the same day of the next calendar month.<sup>143</sup> If a claimant makes a new claim within six months of a previous award ending, they will keep the same assessment period dates.<sup>144</sup> UC uses a claimant's circumstances on the last day of the assessment period to calculate entitlement for the whole of that assessment period.<sup>145</sup>

### *2.3.2 Earnings information from HM Revenue and Customs' real-time information system*

#### *What the law says*

UC takes all net employed earnings (including holiday pay and statutory sick pay) into account in the assessment period they are paid to the claimant, regardless of the period the payment relates to, subject to very limited exceptions.<sup>146</sup> Every pound of earned income reduces the award calculation by 55p starting from the maximum amount, apart from those claimants entitled to a fixed amount of disregarded earnings in the form of the work allowance.<sup>147</sup>

Most employers report to HM Revenue and Customs (HMRC) each time they pay their employees via the real-time information (RTI) system. The regulations state that the figure provided by the RTI system should be used to calculate a claimant's earnings during an assessment period, unless the employer is unlikely to have reported earnings 'in a sufficiently accurate or timely manner', the amount reported to HMRC is incorrect, or if no information has been received from HMRC at all.<sup>148</sup> 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. See the following section for another exception for monthly earners who receive two wages in the same assessment period.

<sup>137</sup> Reg 22 UC Regulations 2013

<sup>138</sup> Reg 66 UC Regulations 2013

<sup>139</sup> 'Disability benefits' in this research refers to disability living allowance, child disability payment, personal independence payment, adult disability payment and attendance allowance.

<sup>140</sup> Reg 72 UC Regulations 2013

<sup>141</sup> s5 Welfare Reform Act 2012

<sup>142</sup> s7 Welfare Reform Act 2012; reg 21 UC Regulations 2013

<sup>143</sup> Unless an assessment period started at the very end of the month and a future month is shorter, in which case the assessment period will start on the last day of the month; reg 21(2) UC Regulations 2013.

<sup>144</sup> Reg 21(3C) UC Regulations 2013

<sup>145</sup> The assessment period in which the changes take effect from depends on whether the change is advantageous and when the DWP was notified.

<sup>146</sup> Regs 54 and 55 UC Regulations 2013. If a claimant receives two sets of monthly wages in one assessment period, it can be reallocated into the previous or following assessment period in accordance with reg 61(6) UC Regulations 2013 – see section 2.3.3 of this chapter.

<sup>147</sup> Reg 22 UC Regulations 2013

<sup>148</sup> Reg 61 UC Regulations 2013

### What the universal credit digital system looks like and how it works

Employed earnings information is automatically captured from HMRC's RTI system. Every day the DWP provides HMRC with a list of national insurance numbers (NINOs) of people in employment receiving UC, and HMRC provides the DWP with a copy of the income data held on the RTI system for those individuals.<sup>149</sup> The DWP then adds additional information, such as other benefits in payment, and it becomes the DWP's real-time earnings (RTE) database.

#### *DWP description of universal credit calculation in response to a freedom of information request from Human Rights Watch<sup>150</sup>*

*'DWP's real time earnings (RTE) system receives earnings information for UC claimants from HMRC's real-time information (RTI) at regular intervals. Just after the end of a claimant's assessment period (AP), the UC system automatically asks the RTE system for the claimant's earnings over the dates of the previous AP. RTE then looks up the relevant information in its database, cleans up common problems in the data (eg, removes duplicate reports) and calculates the earnings for that period. RTE returns a summary of earnings in the AP, broken down by employer, to UC. Having received the earnings, and other inputs (eg, claimant-submitted information, information on other benefits received from DWP's Customer Information System (CIS)), UC calculates the claimant's award. At a high level, this involves:*

- adding up the positive elements (eg, standard allowance, child element, housing element);*
- adding together all earnings from various sources, minus any work allowance*
- reducing award by amount of earnings after the taper rate is applied (ie, currently £1 in earnings reduces award by 63p) [now 55p];*
- applying other adjustments (benefit cap where applicable, capital, other benefits, other income, overlapping benefits);*
- applying reductions (fraud penalties, sanctions);*
- applying deductions (advance repayments, third-party debts, benefit overpayments);*
- once the award is calculated, the amount is automatically sent to DWP's Central Payments System (CPS) for payment on the claimant's standard UC payment date.'*

### What happens in practice

Our research has found that the earnings information gathered from the RTI system does not always match what and when claimants were actually paid. For example, the Early Warning System has received evidence of earnings being taken into account for UC on a later date than they were paid and received. In some cases, the earnings were paid and received before the claimant had submitted a claim for UC, but UC calculated the wages as if they were paid during the first assessment period, therefore wiping out entitlement.

#### *Early Warning System: redundancy payment included as income – August 2021*

*'My client was made redundant and received final payment of four thousand plus on 28 June 2021 including earnings, payment in lieu and holiday pay. He then claimed UC on 30 June 2021. At the end of the first assessment period he had nil entitlement as the DWP had taken into account the earnings received on 28 June before he claimed UC.'*

<sup>149</sup> medConfidential, *The Data Flows of Universal Credit*, Annex 1, available at [medconfidential.org/2020/universal-credit](https://medconfidential.org/2020/universal-credit)

<sup>150</sup> FOI2020/12465, available at [whatdotheyknow.com/request/information\\_sharing\\_between\\_dwp](https://whatdotheyknow.com/request/information_sharing_between_dwp)

***Early Warning System: final wages reported late by HMRC – August 2022***

*'I had a client who claimed UC after losing their job. His final wages were paid into his account two weeks before they were reported as having been paid on the RTI, which took them into the next assessment period, thus wiping out entitlement. The client has reported the actual date of payment and shown a bank statement to prove it, but the DWP is waiting for info from HMRC.'*

One possible explanation for UC taking into account wages paid and received before the claimant ever claimed UC is that the employers input a later date on their RTI submission than the payment date or delay processing payslips. Alternatively, the two interviewees below described a situation where wages were received as normal, but the RTI feed did not identify them at the time of payment, creating overpayments of UC.

***Yasmin (claimant) – November 2021***

*'I alerted [the DWP] to the fact that one of my wages hadn't shown up... I sent them a copy of the payslip. DWP said I'd been paid £300 too much or whatever, which would be deducted monthly... I was like, "Okay". I didn't know anything about this RTI business. That wasn't even mentioned to me at that point. As far as I was concerned it was a one-off...*

*[Then]... they just dropped four months earnings in my August [assessment period] ... their words are: "Dropped into their system." They immediately turned around and said: "It's either HMRC or your employer. It's got absolutely nothing to do with us..." I spoke to my payroll department who went through the last few months and what they had declared to HMRC... I also spoke to HMRC who said: "Yes, this is what we can see has been declared from your employer for this month. It's not the amount universal credit are saying." I loved my payroll department because they sent over all the receipts from where they had declared to HMRC my wages... so the proof is there.'*

***Henry (adviser) – October 2021***

*'There is one issue that we have seen at the moment... the employer pays during the assessment period but it is not being reported to HMRC, or, it is not clear, it is not being processed by HMRC until the next assessment period. So what is happening is every month the client is getting paid for universal credit, then the RTI comes through and they have got an overpayment. So every month the overpayment is increasing by £200.'*

Finally, other claimants have had their awards calculated to take into account 'phantom payments' that are not so easily explained. Two of our interviewees described how the UC digital system miscalculated their awards during their first and second assessment periods by taking into account apparent earnings from previous employers they had never received at any time. As a result, both claimants had to wait two months before they started receiving any income from UC after finishing their previous employment, and neither could understand how the error had occurred.

**Sarah (claimant) – January 2021**

*'The second claim I didn't get any universal credit. They said I wasn't eligible. And it happened for two months that they said I wasn't eligible because I'd had such a huge payment, fictional payment. So then it took quite a long time... I called them and then it was easier via the journal... A few of them looked into it. I had to send in my bank statements and everything... that they eventually realised they'd just made a mistake, but yeah no one seemed to know how it had happened... They gave me two months at once.'*

**Harriet (claimant) – January 2021**

*'The 6th October was when I thought I would get the first payment. Unbeknownst to me, that wasn't going to happen because I had received my holiday allowance from my work... Then the same thing happened the following month... They said that I'd received an income of £2,555... Which I hadn't received... They said: "Well we can see that that's what you've received or you've paid tax on." Then I rang my old finance officer and was just like: "Am I still on the books somehow...?" She was like: "No, no, nothing." ... It was a really bizarre number because it was an amount I'd never been paid before. It was a really specific number, that amount had never gone into my bank account from my work pre or post tax so I don't know where this number had come from.'*

**Rhys (adviser) – February 2022**

*'I mean, sometimes it's inexplicable. People get random amounts, which they don't understand. And Revenue and Customs say: "Look at your personal tax account." The employer says: "Oh yes, not sure what we've done there." ... Often it's either on HMRC or the employer's side who have provided the wrong information. The employer has provided it wrong to HMRC, HMRC have provided it wrong to the DWP... I've seen it where the employer has reported their annual pay to date as their monthly pay... it goes through on the feed as this person has earned £12,723 this month. It's like, how? It might be the DWP's fault in how long they respond to new information.'*

**Liam (adviser) – March 2022**

*'You get some other anomalies, don't you? Like, you get gas bills for half a million and things like that. So I can't really explain it. But usually it is human error. Usually it is a human that has put a... dot in the wrong space or... put the date where the money should be, or something like that.'*

Automated earnings information sharing between HMRC and the DWP is considered one of the biggest advantages of UC as a digital-by-design benefit.<sup>151</sup> From the DWP's perspective, automation allows for hyper means testing, which in theory, avoids the inevitable overpayments and underpayments that are built into the annual income reporting structure of HMRC's tax credits system while hypothetically incentivising claimants to increase their earnings due to the visibility of the effect of the additional income on the amount of UC.<sup>152</sup> From a

<sup>151</sup> Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at [digitalwelfare.report/contents](https://digitalwelfare.report/contents).

<sup>152</sup> Some research has found that the hyper-means-test can actually disincentivise work for some: 'For second earners, who were more likely to be women, the taper was often viewed in a negative light, seeming to penalise rather than reward work and additional hours. Because



claimant perspective, there should be a reduction in the administrative burden of keeping benefit departments up to date with any changes in earnings and a reduction in overpayments, underpayments and lost income caused by any delays in reporting or updating income information when compared to the reporting requirements of housing benefit, for example. However, the automated sharing of reported income information does not prevent errors from occurring, and as a result, claimants can receive miscalculated UC awards.

Lord Freud, one of the original architects of UC, is critical of the RTI/RTE system, which relies on employers reporting wages information as *'there would inevitably be discrepancies between the reports from employers and what some employees actually received in their bank accounts – which we dubbed LMI, or 'Late, Missing and Incorrect.'*<sup>153</sup> Freud's preferred method of calculating earnings for UC, using live salary information from the Vocalink payment system, would have enabled employers to make gross wage payments with accurate tax deductions and benefits calculated before the employee received the net payment. From a rule of law perspective, RTI/RTE errors are an example of UC system implementation producing wrong decisions in an opaque context. It is difficult for claimants to identify the cause of these errors, which can occur due to employers inputting the wrong income information or data errors from either HMRC's RTI system or the DWP's information from the RTE system. Claimants then face a lack of transparency about the dispute process and delays and hardship while these errors are investigated (which is explored in [Chapter 4 – 'Disputes'](#)).

### 2.3.3 Interaction of monthly pay cycles and assessment periods

#### What the law says

The general rule is that UC treats earnings as if they have been paid on the date the RTI system reports them as paid.<sup>154</sup> This causes a problem for claimants whose regular monthly payday falls close to the start and end of their assessment periods, as they can receive two wages in one assessment period followed by an assessment period with no earnings. This can happen if someone receives an early payment of wages due to a weekend or bank holiday or if claimants receive their wages on regular but variable 'banking day' pay dates, such as the 'last Friday of the month'. This causes fluctuations and, for many, a reduction in income due to the loss of the work allowance in the assessment period when there are no earnings to disregard.

Four working single mothers challenged the rigidity of the monthly assessment periods for claimants who were paid monthly. Between them, the claimants fell into rent arrears, defaulted on council tax, incurred bank overdraft charges, borrowed money and became reliant on food banks to make ends meet. One of the mothers had to decline a promotion, while another felt compelled to give up her job to look for alternative employment where there was no clash between her pay date and UC assessment period. The Court of Appeal in *R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778 held that when a monthly paid claimant received a 'double payment' of wages in the same assessment period, rules meaning that both payments had to be taken into account in the one assessment period were so irrational as to be unlawful, therefore breaching the rule of law principle of lawfulness. It was left for the Secretary of State to decide on a remedy.

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women were more likely to be the payee for universal credit, it was often women's income that fell when their partner's earnings rose. Knowing that the universal credit payment received by their partner would be reduced or might cease altogether if they earned more could also disincentivise additional hours among first earners. The difficulty of predicting drops in the payment, and the fear of a reduced amount in future months, also discouraged couples from working more hours, taking on extra shifts or accepting offers of overtime.' From R Griffiths, M Wood, F Bennett and J Millar, *Couples Navigating Work, Care and Universal Credit*, Institute for Policy Research, 2022, p9, available at [researchportal.bath.ac.uk/en/publications/couples-navigating-work-care-and-universal-credit](https://researchportal.bath.ac.uk/en/publications/couples-navigating-work-care-and-universal-credit)

<sup>153</sup> D Freud, *Clashing Agendas: inside the welfare trap*, Nine Elms Books, 2021, pp178-9; see also [ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit](https://ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit)

<sup>154</sup> Reg 61 UC Regulations 2013

The DWP introduced amending regulations, which gave the DWP the power to treat one of two monthly wage payments received in the same assessment period as earnings in respect of a different assessment period.<sup>155</sup> The DWP decided only to reallocate payments for claimants who were paid monthly rather than for any other pay cycles. The reallocation of one set of monthly wages from one assessment period to another was initially done manually by DWP officials, relying on claimants identifying and notifying the DWP when they needed the adjustment. This was despite a lack of transparency which meant the DWP did not provide claimants with information about the possibility of reallocation. However, in August 2021, the DWP introduced a partially automated fix to identify and reallocate double payments.<sup>156</sup> Correspondence between CPAG and the DWP confirmed the UC system automatically identifies the possibility of two sets of monthly wages within one assessment period and creates a to-do which requires action by the case manager.<sup>157</sup> DWP records show they had initially planned to fully automate the reallocation of the second set of wages but found that *'in 25 per cent of cases this was not straightforward and would lead to confusion for agents and claimants in understanding which earnings were attributed to which AP, particularly as the rules would be contained in RTE and not visible to users.'*<sup>158</sup>

The solution implemented by the DWP appears to have rectified the problem for the majority of affected claimants. However, The Early Warning System continues to receive occasional cases suggesting this partially automated fix does not reliably result in the reallocation of all double monthly payments received during the same assessment period.

#### ***Early Warning System: two wage payments received in one assessment period – January 2023***

*A working parent of two children is paid her wages calendar monthly. In December 2022, due to early pay in the Christmas period, she received two of her wage payments in one assessment period. She submitted a journal entry but received no response until January when she was informed that an RTI dispute had been raised – for which there is no timescale and she was simply to await the outcome. She offered to upload her wage slips but has received no response. The two sets of wages wiped out her UC entitlement for that assessment period, she has no money at all, and is concerned about meeting her family's basic needs.*

#### ***Early Warning System: request to correct UC assessment period – May 2022***

*'Our client's normal pay date is the first of each month and his UC assessment period runs from the second of the month to the first of the following month. As such, if his employer notifies HMRC or pays client a day or more late, this is always going to be a problem unless the DWP sorts it out. I asked my client to include the following note in his UC journal on 23rd March and he tells me he did so on that date and has not had any response. He wrote: "I still have not had a response to my request to move my November salary back to the correct UC assessment period so that each assessment period has only one salary payment within it. I have taken advice from Citizens Advice and they have informed me that since August 2021 this adjustment should be happening automatically and I should not need to request that you make the adjustment."*

<sup>155</sup> Reg 61(6) UC Regulations 2013 (introduced by The Universal Credit (Earned Income) Amendment Regulations 2020 No.1138)

<sup>156</sup> See CPAG's test case page for more information: [cpag.org.uk/welfare-rights/legal-test-cases/universal-credit-assessment-period-inflexibility](https://cpag.org.uk/welfare-rights/legal-test-cases/universal-credit-assessment-period-inflexibility)

<sup>157</sup> Email from DWP to CPAG, 25 August 2022

<sup>158</sup> [data.parliament.uk/DepositedPapers/Files/DEP2022-0810/D-UCPB\\_27.10.20-3-Next\\_Phase\\_Product\\_Development.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0810/D-UCPB_27.10.20-3-Next_Phase_Product_Development.pdf), p13

***Early Warning System: application of R (Johnson and ors) v SSWP – March 2022***

*The client is a lone parent on UC who gets paid monthly at the end of the month and gets double payments from time to time in her assessment period. The Court of Appeal judgment in R (Johnson and ors) v SSWP [2020] EWCA Civ 778 is not being applied, and she loses UC in following months. She should automatically have the second wages attributed to the next assessment period.*

When one case was raised internally with the DWP, its investigation found the to-do was not created automatically because the claimant had received two sets of monthly wages within one assessment period more than once; therefore, the system did not recognise it was ‘unusual’. The case manager should have created the manual workaround but failed to do so in this individual case.<sup>159</sup> However, it must be acknowledged that duplicate monthly payments in a single assessment period are ‘entirely predictable’ based on a claimant’s assessment period and pay dates ‘because we know for the foreseeable future when the last day of the month will fall on a weekend or on a bank holiday’.<sup>160</sup>

In one particular case, the claimant has received two monthly wages in one assessment period, completely wiping out entitlement to any UC, on four separate occasions, and has faced considerable difficulty in getting one of the wages reallocated to a different assessment period.

***Early Warning System: multiple failures to reallocate a second monthly payment to a different assessment period – May 2023***

*‘The DWP first failed to reallocate one of my client’s two monthly wages received in the same assessment period back in spring 2022. Since then, she has had to raise this issue with the DWP on a further three or four occasions. She is very concerned about the responses she has repeatedly received on these occasions, which she describes as being a like coming up against a “closed door” and “like firefighting”. Most recently she was paid slightly early because of a bank holiday and her UC was calculated as £0 for that month. She explained how she stayed up late the night before her UC payment statement was due, in anticipation of the problem occurring again. She sent a journal message to first raise the issue, then followed this up with a phone call two days later to check the journal message was being dealt with. Initially she was told by the DWP there was nothing that could be done. This was later corrected and informed her case had been referred to the invalidation team. She has since chased the issue up multiple times but her case manager has informed her it is not possible to say when the issue will be resolved.’*

Under its original conception, the rigidity of the monthly assessment period design and its treatment of two sets of monthly wages received in the same assessment period was considered so irrational as to be unlawful. Some individuals can still face this unlawful treatment of wages because the design and implementation of the solution to reallocate wages does not reliably catch everybody who receives two monthly wages in a single assessment period. Our evidence shows that these individuals face a considerable administrative burden and lack of transparency about the process and timescales involved in resolving the matter.

<sup>159</sup> Email from DWP to CPAG, 25 August 2022

<sup>160</sup> *R (Johnson and others) v Secretary of State for Work and Pensions* [2020] EWCA Civ 778, para 81, available at [cpag.org.uk/sites/default/files/files/C1.2019.0593-2020-EWCA-Civ-778-R-Johnson-and-others-v-SSWP-FINAL-for-HAND-DOWN.pdf](https://cpag.org.uk/sites/default/files/files/C1.2019.0593-2020-EWCA-Civ-778-R-Johnson-and-others-v-SSWP-FINAL-for-HAND-DOWN.pdf)

### 2.3.4 Student income

#### What the law says

Regulations prescribe how UC should treat student income for those specific groups of claimants entitled to receive UC while ‘receiving education’ – eg, those responsible for a child and those ‘without parental support’.<sup>161</sup> If a claimant gets certain grants but does not receive a student loan, the grant is taken into account as income after deductions are made, including for tuition fees, childcare costs and extra costs for disability, books and travel.<sup>162</sup> Alternatively, for claimants in receipt of both a grant and a loan, most grants are disregarded, while the student loan is taken into account as income after fixed deductions in each assessment period.<sup>163</sup> The student income is divided between each assessment period in which a claimant is ‘undertaking a course’, other than the assessment period in which the ‘long vacation’ starts and those assessment periods which fall fully within that vacation.<sup>164</sup>

#### How the universal credit system looks and how it works

When a claimant reports they are a student, the system automatically generates a to-do to check eligibility and calculate student finance. Work coaches and case managers manually calculate student finance by completing the ‘Calculate student income’ to-do, or they make a referral to a decision maker.<sup>165</sup>

#### What happens in practice

One of the aspects of the UC award calculation that routinely results in unlawful decisions is the calculation of student income. Despite claimants providing all of the information required of them about their student grants and loans, they are regularly subject to calculation errors by the DWP, and presented with large overpayments, which are always recoverable, even when the result of an ‘official error’ by the DWP. The cases from the Early Warning System below demonstrate the impact of these calculation errors and recovery policy for claimants.

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<sup>161</sup> Regs 8, 12, 14 and 68-71 UC Regulations 2013

<sup>162</sup> Reg 70 UC Regulations 2013

<sup>163</sup> Reg 69 UC Regulations 2013

<sup>164</sup> Regs 13 and 68 UC Regulations 2013

<sup>165</sup> DWP, *Spotlight on: student income*, accessed via FOI2023/32900, available at [whatdotheyknow.com/request/spotlights](https://whatdotheyknow.com/request/spotlights). When asked via FOI which parts of the UC calculation were still done manually, the DWP did not include calculating student income in its response (FOI 2022/58809, available at [whatdotheyknow.com/request/training\\_materials\\_for\\_universal#comment-108008](https://whatdotheyknow.com/request/training_materials_for_universal#comment-108008)).

***Early Warning System: incorrect calculations of student finance – October 2022***

*'I am getting in touch with two more examples of confusion and error being caused by incorrect calculations of student finance for students who are entitled to UC. These errors have had catastrophic consequences. I first raised this issue in October 2021, and suggested that, apart from there being a major training need for UC staff, the UC breakdown should show how the deduction for student finance is calculated so that claimants can more easily correct DWP errors. This matter is urgent.*

*The first student has £1,200 student finance deducted each month from her UC. The DWP is taking into account the special support element which should be disregarded, they have divided the annual student income figure by 12 assessment periods instead of 11, and they haven't applied the £110 disregards each month either. She has been underpaid by £545 per month.*

*The second student has also had the special support element taken into account when it should be disregarded and the annual student finance divided by eight assessment periods when it should be nine.*

*These are not isolated incidents, but represent a systemic failure to ensure DWP staff are calculating student finance deductions correctly. We have also come across some students who have been incorrectly given a nil entitlement and this is affecting their right to the cost of living payment. In other cases, the NHS students payment of £5,000 is being taken into account.'*

***Early Warning System: overpayment due to incorrect calculation of student income – December 2021***

*'I have had several cases in the last year relating to overpaid UC as a result of them not calculating student income correctly. All were down to official error. This particular case is a full-time student and UC calculated her student income incorrectly in 2020/21, resulting in overpayment of £10,000. She had provided all her income details and twice she wrote on her journal asking them were they sure the amount of UC was correct and they stated it was. In 2021/22 academic year, they once again made the same mistakes and she now owes a further £900. There are no grounds even on official error to argue that recovery should not take place. The client is stressed and can't believe it can happen even when it's not their fault. The deductions are putting household finances under pressure.'*

***Early Warning System: overpayment due to incorrect calculation of student income – February 2021***

*'The client is a lone parent with a young child. She is studying for a nursing degree and receives £13,642 in her maintenance loan and £7,000 in her bursary. She notified the DWP of the new income in her journal and had a phone appointment. The case manager stated the work coach would be checking the figures to calculate how the student income would affect her UC, but the client wasn't convinced the work coach had the information they needed so asked for an update and offered to provide any further information. After she was paid, the adviser asked if the payment was definitely correct and was advised: "Thank you for letting us know about your income. As students' loans and grants are treated as unearned income and therefore untaxed your award should be correct and without overpayment." She now has an overpayment of £4,552.26 caused by the student income being calculated incorrectly. It is solely a DWP error but the DWP has the power to recover it anyway and it rarely waives recovery of the overpayment.'*

***Early Warning System: overpayment as a result of DWP delay in calculating student income and expenses – February 2021***

*'My client is a lone parent of a daughter with serious health problems. My client was a student and submitted her student loan and expenses as requested but the DWP didn't do anything with the information for over two years and now she has an overpayment of £6,000.'*

Two interviewees described a particular problem with the calculation of PhD stipends. One had been asked to repay their entire UC award, while the other was waiting to find out if their award is accurate or if the DWP would recover it as an overpayment. This uncertainty prevents claimants from planning their lives securely, while both described their inability to find out what the correct rules were.

***Martha (claimant) – October 2022***

*'They count a third or 30 per cent of a PhD stipend as other income..but there are people who either got told none of it counts and it's all disregarded or people who got told that all of it counts, which then makes them ineligible because they earn too much money... That seems to have been happening for a long time, I've since discovered, just depending on who you dealt with and who you spoke to and which person assessed your claim... so they now owe the DWP thousands of pounds because they reclaim money that they have overpaid you even if they were the ones who made a mistake and you provided them all the information they asked for.'*

*I know this has happened to other people who are in my position, who have just been approached at random, without warning by the DWP to say: "We've reassessed your claim and there was a mistake." So I'm now waiting to see if that happens to me or not, because no one seems to know if it was actually a mistake or if the thinking it was a mistake is the mistake, because people are still being told with new claims, these three different things are happening, depending on who they're talking to.'*

**Chloe (claimant) – October 2022**

*‘I received a stipend from a university... for a government-funded PhD... So, the government was technically... paying me my money. But they had no way to understand that, at the other end of the government... I provided lots of evidence that, although I was a student, I was locked into a government contract whereby I was expected to work on my PhD for 37.5 hours a week. And, according to the university’s rules, I was not allowed to seek alternative employment for more than six hours a week, elsewhere. It just wasn’t going through PAYE, and it’s not considered [earned income] and I’m also a student, which doesn’t help.*

*They came back with this number and said: “You’re entitled to x amount.” And I responded: ... “Can you explain to me how this number has been come to?” They said: “No. That’s none of your business. We don’t explain how decisions have been come to.” They wouldn’t tell me how they’d arrived at that number. Apparently, I wasn’t to question...*

*A man rang me and said: “Over the course of the pandemic, we’ve accidentally overpaid thousands of people far too much. So, I’m going to be looking into your claim because we’ve probably done the same thing with you.” I was like: “Fabulous. I look forward to be shafted.” And that is what they did. It took three months of worry, for them to turn around and say that I owe them £16,000, which is all of the money they’ve ever paid me... I’ve requested mandatory reconsideration, four months ago now, five months ago, coming on for and I’ve heard nothing.*

*I had been informed, by other people that were receiving benefits, in similar circumstances, that they do this 70/30 split thing, which apparently, they shouldn’t do. I’ve been part of a group chat where I had to reply: “By the way, apparently they shouldn’t do that with stipends. So, if anybody else’s universal credit claim is being handled in this way, beware... according to some rules that aren’t written anywhere.”*

There is a lack of transparency with claimants about the substantive rules for calculating student income and how the rules have been applied in individual cases. For example, there is insufficient detail about student income in the monthly payment statement, which is presented as a single lump sum combined with any ‘other income’ a claimant might have, such as pension payments.

Figure 2E: CPAG mock-up of the ‘other income’ section on a payment statement

<b>What we take off (deductions)</b>	
<b>Other income</b>	- £565.00
We take money off your payment for other income that you have. For example, pensions and educational grants.	

Instead, the DWP should provide claimants with a breakdown of each grant or loan, any deductions, and the assessment periods between which the loan or grants have been divided. Students often receive multiple forms of loan and grant payments, some of which are fully or partially disregarded, and the payments are divided across a

certain number of assessment periods based on the academic year dates.<sup>166</sup> Without this level of detail, claimants are unable to recognise whether errors have been made in their award calculation.

One adviser described the types of errors made by the DWP and the difficulties claimants have when attempting to understand their student finance calculation.

***Rhys (adviser) – March 2022***

*‘The calculation, working out the number of assessment periods the course covers... It’s a difficult one for claimants to understand, that... your student finance begins to be taken into account from the start of the universal credit assessment period in which your course starts... even if you’ve not received it... Which people find very hard to figure out, they say: “Surely it should only count from the date I get it or from the date my course starts,” and it doesn’t... It doesn’t count in the assessment period in which the course ends. And DWP are always, oddly enough, very good at allocating the income to the beginning, but at the end... They carry it on until the assessment period after the course has ended, rather than the assessment period in which the course ends. So, there are issues around calculation of student income in assessment periods.*

*Big issues around the treatment of student finance itself, which bits are disregarded and which bits are not... And DWP then don’t give an explanation on the journal of what is being deducted... it will say income, which could be from other benefits... On the wages it tells you, doesn’t it?... “We count this, we disregard this, we take 55 per cent of the rest, and it comes to this figure.” You don’t get anything like that. So people can’t check... Even if they know how it should be calculated, they can’t actually know if that’s what the DWP has done.’*

One claimant described how it took multiple messages on her journal to establish why her student income had been calculated the way it had. She could not understand it from the information provided on the payment statement.

***Georgia (claimant) – January 2022***

*‘They have got this fact that I get £1,076 education per month, and I don’t understand what that is because I don’t... So my loan for 12 months, it works out about £780 a month... I have gone back to them, saying, “Where have you got this figure £1,070 from?” because it doesn’t take a mathematician to work out the fact that £9,000 divided by 12 is not £1,000 a month.’*

***Follow-up interview with Georgia – February 2022***

*‘They came back to me on the 27th saying: “I’ve checked the calculations and they are correct. All student loans income is taken into consideration for your universal credit payment as per the universal credit policy.” I just went back saying: “Why does it state I receive that amount?” Then again – that was the 28th. I kept saying: “Can you respond to my questions?” They’re just too quick to just say: “Well this is it.”*

*I was going back and forth with them... Then someone did come back and said they worked a figure out... I suppose they work it over eight months because that’s when you’re studying for... They seem to have taken these figures and not really explained them...’*

<sup>166</sup> Regs 68–71 UC Regulations 2013



This area of decision making in UC fails to uphold the rule of law principles of transparency and lawfulness. DWP officials regularly fail to apply the law correctly when calculating student income. The lack of transparency exacerbates this issue by preventing claimants from identifying and challenging errors and overpayments. As a result, claimants rely entirely on the DWP to make the correct calculation at the outset, quickly identify errors to prevent large overpayments, and not to recover overpayments caused by official error. Instead, evidence suggests the DWP is miscalculating awards, failing to identify mistakes, and recovering overpayments which claimants were not responsible for. Failing to provide claimants with adequate information to question or scrutinise their UC award is a breach of the rule of law principle of transparency.

### 2.3.5 The migration of employment and support allowance claimants onto universal credit

#### What the law says

Income-related employment and support allowance (ESA) is the earnings-replacement legacy benefit for people with limited capability for work due to ill health or disability. After an initial phase, ESA claimants are determined as having limited capability for work (LCW) and placed in the work-related activity group, or limited capability for work-related activity (LCWRA) and placed in the support group, or they are determined as being fit for work and their award is brought to an end.<sup>167</sup> Claimants can either be assessed as having LCW or LCWRA by a work capability assessment (WCA – a points-based system that scores the extent to which a claimant can carry out certain activities (eg, standing and sitting or coping with change) or they can be treated as having LCW or LCWRA based on their health conditions and circumstances.

Claimants in the work-related activity group or support group for ESA, when they claim UC, are treated as having the equivalent LCW or LCWRA for UC.<sup>168</sup> The DWP should include LCW or LCWRA elements in a claimant's UC award from the start of the first assessment period.<sup>169</sup> By comparison, claimants found to have LCWRA for the first time while already receiving UC are not usually entitled to the LCWRA element in their award until they have first served the three-month 'relevant period' (waiting period).<sup>170</sup> Claimants are not required to have a further WCA solely because they have changed benefit from ESA to UC.<sup>171</sup>

#### What happens in practice

Two different features of the UC system do not support previous ESA recipients in understanding and accessing their legal entitlements. First, the UC claim form asks all claimants who state they have health conditions or disabilities that restrict their ability to work or look for work to provide a fit note. The digital claim form also warns: *'If we have not been told about an up-to-date fit note, we will assume that you are able to work.'* This is incorrect as claimants who the DWP has already assessed or treated as having LCW or LCWRA for ESA do not need to provide a fit note or complete the WCA process again, and they will not be expected to work. Our evidence suggests that the warning to submit a fit note and the assumption of the ability to work causes confusion and distress for previous ESA claimants. They are left wondering what the DWP will expect of them in terms of looking for work when their income depends on this process. Advisers described this as a barrier their clients regularly came across. Some may delay completing, or fail to complete, the application form due to this lack of transparency about the legal requirements.

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<sup>167</sup> Other claimants are treated as having limited capability for work or work-related activity due to their particular health condition or disability.

<sup>168</sup> Reg 19 Universal Credit (Transitional Provisions) Regulations 2014 No.1230 ('Transitional Provisions Regulations 2014'). This also includes previous ESA claimants with national insurance credits.

<sup>169</sup> New claimants have been unable to receive the limited capability for work element (LCW) in UC or the work-related activity component of ESA since April 2017, although there are some exceptions.

<sup>170</sup> Reg 28 UC Regulations 2013; the LCW element has been scrapped for new claimants since April 2017.

<sup>171</sup> Reg 41 UC Regulations 2013

**Lucy (adviser) – August 2021**

*“Do you have a fit note?” ... I think that’s really difficult for people... they’re on ESA already in one of the groups... they’ve already been assessed. They don’t need a fit note, so I think there [could] be... a note on there about the fact that they understand that some people might be unwell but don’t have a fit note, because they’ve already been assessed... Rather than just “You’ll need to get one.”*

**Zoe (adviser) – December 2021**

*‘People who are on ESA... they are moving onto universal credit, wrongly they are initially told to hand in the fit notes. That shouldn’t happen.’*

**Elena (adviser) – November 2021**

*‘If they are already claiming ESA they shouldn’t have to send a doctor’s note, because they should just go onto limited capability for work, but they don’t. They quite often get asked for doctor’s notes again, which sends these people into a tizz, because they don’t want to do that. Or they have been told that they don’t ever have to get a sick note again.’*

One interviewee also described a lack of transparency regarding how UC and ESA were linked together during the claims process.

**Sandy (claimant’s friend) – November 2022**

*‘It’s really unclear how it’s gonna link up to ESA. How they’re going to join the dots? because it never asks you for a national insurance number... are you gonna be treated like someone who for the first time is applying for sickness benefits? Are you gonna have to go through the whole process of being reassessed again? Which is really, really stressful.’*

DWP officials sometimes reinforce this incorrect information during the claims process by providing additional incorrect information. One of the interview participants was an appointee for their 17-year-old foster child, who the DWP had assessed as having LCW under ESA. A DWP official incorrectly advised them they would need to complete the WCA process again for UC.

**Stella (claimant) – October 2021**

*‘We did [the commitments interview] on Tuesday and the gentleman there said: “You now have to have another health questionnaire and medical.” I said: “But ESA say he is not fit to work.” “But you now have to verify it on our system.” ... I said: “Do we really?” He went: “Yes... this is universal credit. You will get sanctions.” I’m thinking the language is plainly quite aggressive, sanctions and money stopped. I’m thinking, “Oh, we haven’t had a penny yet,” so being told we are having to stop the benefit before we even get anything...’*

Our research found numerous examples of the DWP failing to add the LCW or LCWRA elements to claimants' awards from the first assessment period, as the legislation requires. The testimonial below shows how one interviewee received an unlawful decision missing the LCWRA element when they 'naturally migrated' (before the formal managed migration process begins – see [Chapter 1 – 'Claims'](#)) from ESA to UC and faced a lengthy loss of income while the DWP ignored his requests for a revision and delayed fixing the error.

***Kier (claimant) – October 2021***

*'I should have support group brought over to universal credit limited capability for work and work-related activity... I had to start handing in sick notes. I think it took about, it was either six or eight weeks... in the end, they managed to get all the information off employment [and] support allowance, and it was brought over to universal credit... I was about £340 worse off [during that time, not overall as it was resolved] ... I had to put it on my journal about 20 times before it was acknowledged, and the universal credit team sent through a form to the ESA team to get the LCRWA brought over.'*

Similarly, CPAG's Early Warning System has received evidence of the LCWRA element missing from the first assessment period, failures to add the element even at the revision stage, incorrectly applying the three-month relevant period of no entitlement and DWP officials misadvising claimants about the substantive rules of entitlement.

***Early Warning System: ESA, LCWRA and three-month waiting period – January 2023***

*'An ESA claimant was placed in support group in November 2022 before claiming UC. She asked for the LCWRA element to be included in her UC award from the first assessment period but the DWP is insisting she must serve the three-month waiting period and then complete a new work capability assessment.'*

***Early Warning System: LCWRA not included in UC for client in ESA support group – December 2020***

*'The client was in receipt of contributory ESA with support group for years until she claimed UC in spring 2020. The LCWRA element was not included in her UC award despite her being entitled and she was advised she was not entitled to it until she did a work capability assessment for UC. The mandatory reconsideration was unsuccessful but she didn't appeal it. She has since received and returned the UC50 form and has a telephone appointment in couple of weeks so has started the WCA process again.'*

***Early Warning System: client in ESA support group not paid UC till fourth assessment period – August 2021***

*'Our client was in receipt of ESA support group directly before she made a claim for UC. They have only paid her from the fourth assessment period rather than from the beginning of the claim even though she is protected from the relevant period by the transitional provisions.'*

The DWP confirmed in May 2021 that there is no automated process for identifying previous WCA decisions made under the ESA Regulations, and DWP officials must carry out a clerical process.

*Universal Credit: natural migration: Government response to the Committee's Twenty-Seventh Report of Session 2017–19 (HC 228, 28 May 2021)*<sup>172</sup>

**Recommendation 16:**

*'We recommend that the Department explore ways to make the carry-over of WCA decisions from legacy benefits to UC a more automated process, to reduce the risk of human error. If this is not possible, the Department should provide the Committee with quarterly reports on the number of cases where this is not happening on time so that we can continue to monitor the issue. (paragraph 107)*

*The Government does not accept this recommendation. Whilst we have not automated a solution, we have invested in and made significant improvements to the clerical processes. These improvements mean that, on average, we apply the ESA WCA to UC award in the vast majority of cases within the first assessment period.'*

Finally, there is a lack of information in the UC payment statement about all of the different possible elements, exceptions or exemptions that might apply to a claimant if the UC digital system does not recognise them as applicable to the specific individual, which makes it difficult for claimants to identify whether their award calculation is missing a particular element, exemption or exception (see [Chapter 3 – 'Communicating decisions'](#) for more information).

The DWP has failed to introduce an automated solution which uses the information it already holds about ESA awards to ensure LCW and LCWRA elements are reliably added to UC awards when claimants migrate to UC from ESA. Data sharing to reduce administrative burdens for claimants and improve the accuracy of awards is one of the expected benefits of digitalisation for claimants. In this case, the benefits have not been realised. At the same time, the DWP does not ask claimants for details about previous ESA awards, which would alert them to its significance and allow them to supply the required information. Instead, the claims process instructs claimants that they will need to provide a fit note, or they will be assumed to be able to work, which is incorrect for claimants already treated or assessed as having LCW or LCWRA. This makes it particularly hard for claimants to identify that they have received an unlawful decision and are being significantly underpaid if they are missing the LCWRA element in their first assessment period. The situation is not helped by a lack of transparency and poor-quality information provided to claimants in the payment statement, and, in some cases, gatekeeping of the mandatory reconsideration process when claimants try to challenge decisions (see [Chapter 4 – 'Disputes'](#) for more information).

### 2.3.6 Missing child element for all children when one child is unverified

#### What the law says

In order for a child element to be included in the maximum amount, the claimant must be responsible for a child or young person who 'normally lives with them,' and the child must be under 16 or be a 'qualifying young person' who is under 20 and in non-advanced education.<sup>173</sup>

<sup>172</sup> Available at [publications.parliament.uk/pa/cm5802/cmselect/cmworpen/228/228.pdf](https://publications.parliament.uk/pa/cm5802/cmselect/cmworpen/228/228.pdf)

<sup>173</sup> Regs 4, 5 and 24 UC Regulations 2013. To be classed as a 'qualifying young person', they must have not reached the 1 September following their 16th birthday, or have not reached the 1 September following their 19th birthday and be studying or accepted on a course of approved training or non-advanced education at school, college or other approved premises for an average of more than 12 hours a week.

Since 6 April 2017, there has been a ‘two-child rule’ preventing additional elements being paid for a third or subsequent children born after this date unless an exception is met, such as for a child who is adopted or conceived due to ‘non-consensual conception’.<sup>174</sup>

The child element is increased by the ‘disabled child addition’ at either the higher or lower rate if the child is entitled to certain disability benefits at different rates or is certified as severely sight impaired or blind.<sup>175</sup> The disabled child addition is still paid for a child even if there is no child element for them because of the two-child limit.

### How the universal credit system works and what it looks like

The DWP has access to HMRC’s Child Benefit Service to verify that a child exists, their residency status and whether the claimant has responsibility for the child.<sup>176</sup> Although the DWP may use the receipt of child benefit as evidence of responsibility for a child, the legislation does not require a child benefit award.<sup>177</sup>

### What happens in practice

This research has found multiple examples of families who have not been able to provide evidence for one of their children and have subsequently not been paid any child element for their other children, who they have successfully verified. In more than one case, there was a delay in verifying an older child’s education status, which was outside the claimant’s control.

#### ***Early Warning System: lack of evidence of one child’s education causes refusal of child element and no additional bedrooms for all children – November 2022***

*‘The client’s three children aged 10, 14 and 19 joined her in the UK in June 2022 and have pre-settled status. The client has cancer and claimed UC in April, declaring her children via a change of circumstances in June. She wasn’t able to provide evidence of her eldest’s education because he hadn’t been accepted into college yet and it wasn’t possible to do so until the new school year. The verification for all of the children failed because of the lack of evidence for one of her children. Since June her UC award has only included the single person allowance, limited capability for work-related activity and housing costs restricted to a single person according to local housing allowance (LHA). There is no child element for any of the children and no additional bedrooms allowed for them in the LHA size criteria.’*

<sup>174</sup> s10(1A) Welfare Reform Act 2012 and regs 24A and 24B and Sch 12 UC Regulations 2013

<sup>175</sup> Reg 24 UC Regulations 2013

<sup>176</sup> *Additional Amount for Children*, operational guidance, available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/001\\_Additional\\_amount\\_for\\_children\\_V24.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/001_Additional_amount_for_children_V24.0.pdf)

<sup>177</sup> *MC v Secretary of State for Work and Pensions (UC)* [2018] UKUT 44 (AAC), reported as [2018] AACR 21, available at [gov.uk/administrative-appeals-tribunal-decisions/mc-v-secretary-of-state-for-work-and-pensions-uc-2018-ukut-44-aac](https://gov.uk/administrative-appeals-tribunal-decisions/mc-v-secretary-of-state-for-work-and-pensions-uc-2018-ukut-44-aac)

***Early Warning System: missed message regarding one child impacts on payments for all children – August 2022***

*‘The claimant has four children, for one of whom she receives DLA [disability living allowance]. The claimant had recorded this child as being on low-rate care, when she was in fact on mid-rate care. This is irrelevant for her UC as she would get the lower disabled child element in either case. DWP asked her to correct it but she missed the message because English is not her first language. As a result, she wasn’t paid the child element (or disabled child addition) for any of the children (all born pre-April 2017) for three consecutive assessment periods. She also had no work allowance applied and her housing element was reduced as she was deemed to be under-occupying with no children in the household. She missed out on around £1,500 per month, was in extreme hardship and got into massive debt. We have since been able to resolve the issue.’*

When CPAG raised this issue with the DWP, it confirmed that *‘the system only allows an agent to verify the declaration as a whole. It doesn’t allow one child to be verified while others within the same declaration remain outstanding.’* The DWP also confirmed that this was a *‘design issue rather than a policy or legal decision’* and *‘the issue would need to be prioritised by the design team’*.<sup>178</sup> This issue can occur at the beginning of an award when first declaring the household members or if a claimant adds multiple children later on, using the change of circumstances function in the UC account.

In the example below, the DWP advised the claimant to add both children again via the change of circumstances function once the evidence was available for one of them; therefore, the DWP did not pay the child element for the verified child.

***Early Warning System: two children removed from claim due to wait for evidence of one child’s education – August 2022***

*‘My client with two children claimed UC in late June, but when the first payment came through it was extremely low. This was because there was no child element, there was no work allowance disregarding some of my client’s earnings and the “bedroom tax” was applied when there is no spare room. My client was asked on their journal to supply evidence of the 17 year old’s education. They had supplied information about his upcoming course starting in September but were awaiting evidence of the previous year’s course because it was the school holidays. As they did not supply the evidence in the allotted timeframe, the DWP took both children off the claim and were told they would have to make a new change of circumstances when the education evidence was available. There was no doubt they were entitled to the child element for the 12 year old.’*

The DWP states that claimants should add only their verifiable children initially using the to-do and then add any unverifiable children separately once the evidence is available to verify them. This workaround allows the claimant to receive the child element for their verified children without delay. However, this requires DWP officials to be aware of, and claimants to be notified of, this workaround. Our evidence from the Early Warning System suggests this is not reliably happening.

There is an additional risk that claimants will not receive arrears of UC if they use the change of circumstances function to verify the child(ren) later, as directed by the DWP. The risk is that the DWP will treat the change of circumstances as if it has been notified late and only add the child element from the assessment period in which

<sup>178</sup> Email from DWP Operational Stakeholders to CPAG, 7 February 2023

the claimant provides the evidence rather than from the earlier assessment period when they first tried to verify the child(ren).<sup>179</sup> There is evidence in section 2.4.1 that the DWP can make mistakes when deciding what date to make changes to awards from, and it is likely that claimants without advisers might not identify whether the DWP has made an error, due to the complexity of the legislation.

The DWP has designed a system that cannot verify individual children independently, resulting in families missing out on their legal entitlement to the child element for all of their children if there is a problem with evidencing one child. As a result of a digital implementation choice, claimants can receive decisions that are not taken in accordance with the law. The impact of these decisions is claimants face severe hardship: not only because of a missing child element but also because of a related potential reduction in the housing element and loss of the work allowance.

### 2.3.7 Missing carer element despite carer's allowance

#### What the law says

In order to have the carer element included in their maximum amount, a claimant must meet two conditions: first, they must provide 'regular and substantial care' for a person; second, that person must be considered 'severely disabled' due to receiving certain rates of disability benefits. If a claimant meets those conditions, they may be entitled to the non-means-tested benefit carer's allowance (CA). However, claimants do not have to be in receipt of CA to receive the carer element. Specifically, the legislation allows individuals with earnings above the threshold for CA to still receive the carer element in UC. Although, an award of CA is sufficient evidence to confirm that a claimant does meet the conditions necessary for the carer element of UC.<sup>180</sup>

#### What happens in practice

As the interview extracts below describe, some claimants have CA included as income, reducing the UC award pound for pound, without the award calculation including the carer element. It appears this issue most affects claimants who become eligible for CA once they are already in receipt of UC.

#### *Zoe (adviser) – December 2021*

*'People get carer's allowance, the computer knows that they are receiving carer's allowance, it's deducted from their entitlement but it's not adding carer element because they did not go through "report a change". And that is unlawful because this is not what the regulations say, so that happens every time. I had nine months until a mandatory reconsideration was successful for one claimant.'*

<sup>179</sup> If the children were in the household from the beginning of the award, then the DWP should instead revise the entitlement decision to add the child element from the beginning of the award. If the children joined the household after the UC award had started, then the DWP should add the child element via a supersession from the assessment period in which they first notified the DWP of the change of circumstances (or earlier, if good reason for the delay) rather than the assessment period in which they were able to provide the evidence (see section 2.4 of this chapter for an explanation of supersessions).

<sup>180</sup> Reg 29(1) UC Regulations 2013. Reg 30 states the carer element can be paid to someone without an award of carer's allowance. 'Severely disabled' means they are in receipt of a relevant disability benefit.

***Early Warning System: missing carer and disabled child element – August 2022***

*'My clients have a five year old who receives mid-rate disability living allowance. Wife receives carer's allowance. This is deducted pound for pound from their UC. They have not been told they can add carer element and disabled child element to their UC. They have been struggling financially and came to see us when we saw they were not getting these elements. We also noted a letter stating they had an overpayment due to the carer's allowance with deductions being made for this.'*

***Rhys (adviser) – February 2022***

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

***Early Warning System: multiple cases of a missing carer element – November 2022***

*'A problem that I have been seeing a worrying lot of over the past couple of months is the number of people on carer's allowance and UC where the carer's allowance is being deducted from the UC but there is no carer element on the UC.'*

It is reasonable for claimants to expect that if UC is taking their CA into account as income and reducing the award accordingly, then UC will also automatically take the CA into account for all other aspects of their UC calculation. Relying on claimants to identify when the carer element is missing from their award means that the error will often be missed, and those carers will not benefit from the additional financial support they are entitled to. In addition, there is a lack of information in the UC payment statement about all of the different possible elements, exceptions or exemptions that might apply to a claimant if the UC digital system does not recognise them as applicable to the specific individual, which makes it difficult for claimants to identify if their award calculation is missing an additional element, exemption or exception (see [Chapter 3 – 'Communicating decisions'](#) for more information). This is another example of claimants failing to benefit from the capacity for using the data available to reduce reporting requirements and improve accuracy.

This issue has been raised repeatedly with the DWP. In June 2022, the then Minister for Disabled People, Chloe Smith, stated that the department is *'aware of the concerns'* and has been *'exploring the extent to which we might be able to automate our systems for a while'* as the system does not currently automatically recognise when claimants become carers after their UC award has been made.<sup>181</sup> The then Minister stated: *'There is no quick solution, and even if it were feasible to make system-related improvements, these would have to be prioritised alongside other required changes.'* The DWP consulted with stakeholders on this issue in October 2022 after carrying out user research on the underpayment of carer elements in UC.

<sup>181</sup> Ministerial correspondence from Chloe Smith MP to CPAG on 29 June 2022, ref: MC2022/47062



Similar to the issue affecting previous ESA claimants, this example demonstrates how some of the benefits of digitalisation are not being shared with claimants.<sup>182</sup> From a rule of law perspective, carers are systematically receiving unlawful decisions due to a failure of the DWP to use the information already available within the department to accurately calculate awards.

## 2.4 DWP Changing of awards

### 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 correct it with 'full retrospective effect' by a revision.<sup>183</sup> (See [Chapter 4 – 'Disputes'](#) for more information on revisions). Alternatively, if the DWP made the correct decision at the time, but the decision becomes wrong at a later date (eg, because of a change in circumstances), the DWP can replace it with a new decision via a supersession.<sup>184</sup> 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.<sup>185</sup> 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 of fully correcting decisions which have been wrong since they were first made. This is compared to supersessions, which change decisions from a date later than the original decision took effect (see below).

The DWP cannot supersede a decision for any reason or at any time: the circumstances must fall within a permitted 'ground' for supersession. The most common ground for a supersession is that there has been, or there is expected to be, a change of circumstances since the last decision was made.<sup>186</sup> Once a ground has been identified, it is necessary to determine the appropriate 'effective date' (the date from which the decision should be changed).

### 2.4.1 Supersessions because a new award of benefit takes effect from the wrong date

#### What the law says

The regulations prescribe the various possible dates a decision should be changed from when there has been a supersession on the ground of a change in circumstances. The effective date can depend on a number of factors, including whether the claimant or the DWP initiates the supersession, the reason for the change, whether the change is advantageous to the claimant (eg, resulting in a higher award of universal credit (UC)), if the claimant notifies the DWP of the change within the assessment period it happened, and whether the claimant has a good reason for notifying the DWP of the change late.<sup>187</sup>

<sup>182</sup> Richard Pope argues in *Universal Credit: digital welfare* that the benefits of digitisation have not been shared equally with claimants, available at [digitalwelfare.report/contents](http://digitalwelfare.report/contents).

<sup>183</sup> Under 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](http://rightsnet.org.uk/?ACT=39&fid=8&aid=760_foj4PPD1xdrvoVuWFPBo&board_id=1)

<sup>184</sup> 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.

<sup>185</sup> If a decision can be both revised and superseded, then a supersession is only allowed if there are specific grounds which are not 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').

<sup>186</sup> Reg 23 Decisions and Appeals Regulations 2013

<sup>187</sup> Reg 36 and Sch 1 Decisions and Appeals Regulations 2013

The general rule is that the supersession should take effect from the first day of the assessment period in which the change occurs.<sup>188</sup> However, if the change means the claimant will be entitled to more UC (an advantageous change), then the claimant must notify the DWP of the advantageous change before the end of the assessment period in which the change occurs so that they can receive the increase in their UC award from the earliest opportunity. Otherwise, the supersession will only take effect from the beginning of the later assessment period in which the claimant notifies the DWP, and the claimant will miss out on the increase in their UC up until that point.

There are two main exceptions to the general rule.<sup>189</sup> First, if the claimant provides a good reason for their delay in notifying the DWP of a change (and they report it within 13 months), the DWP should still supersede the award from the assessment period of the change, rather than when the claimant alerted the DWP.<sup>190</sup> Second, if the change is caused by the claimant or their family member receiving a new award or altered rate of a relevant benefit (eg, disability and carers' benefits), then the supersession should always take effect from the assessment period in which the entitlement to disability and carers' benefits first arose or changed, regardless of when the claimant notifies the DWP.<sup>191</sup>

In some circumstances, there may be more than one ground on which the award could be superseded. Identifying the correct combination of ground and effective date in these situations is crucial as it may determine whether a claimant has been overpaid or underpaid and by how much. The Upper Tribunal held that when multiple grounds are available and the change is advantageous, the claimant should be able to rely upon the most beneficial ground.<sup>192</sup> Alternatively, when a decision is not advantageous to the claimant, the Secretary of State for Work and Pensions (SSWP) can choose the most beneficial ground to them or choose a more administratively straightforward ground with a less beneficial effective date if they so choose.

### What happens in practice

Where a UC claimant or their family member becomes entitled to a new or altered rate of a relevant benefit (including carer's allowance (CA) and disability benefits) so that it alters the amount of their UC (eg, by adding the carer element), the supersession should take effect from the beginning of the assessment period in which the disability or carers' benefit entitlement starts. It does not matter when the claimant notifies the DWP about the relevant benefit.<sup>193</sup> The rule exists because it can take a long time to get decisions on disability benefits, especially when claimants have to go through the lengthy appeals process to secure their entitlement, so awards often start from a date many months before the DWP or appeal tribunal finally makes the decision. This prevents claimants from losing out on benefit simply due to delays in DWP decision making or incorrect decisions. However, the Early Warning System regularly receives evidence of the DWP acting unlawfully in these circumstances and only adding the carer element and disabled child addition from the beginning of the assessment period in which the claimant notifies the DWP about the new benefit rather than when the new benefit entitlement arose.

In the following case study, the DWP asked a claimant why they were late in reporting their child's new disability benefit, despite it being impossible to notify any earlier than the date the DWP notified the claimant of the disability benefit award decision.

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<sup>188</sup> Sch 1 para 20 Decisions and Appeals Regulations 2013

<sup>189</sup> Sch 1 para 21 Decisions and Appeals Regulations 2013

<sup>190</sup> Reg 36 Decisions and Appeals Regulations 2013

<sup>191</sup> Sch 1 para 31 Decisions and Appeals Regulations 2013

<sup>192</sup> *DS v SSWP (PIP)* [2016] UKUT 538 (AAC), reported as [2017] AACR 19

<sup>193</sup> Sch 1 para 31 Decisions and Appeals Regulations 2013

***Early Warning System: DLA and change reported outside assessment period – August 2021***

*‘My client and their partner have five children and were losing £800 a month because of the benefit cap. One of their children was awarded DLA [disability living allowance] mid-rate care and high-rate mobility from March 2021 and the benefit cap was removed. They reported the DLA award and with our help requested the disabled child element be added from the beginning of the assessment period from which the award was made. UC ignored it and have asked her to provide reasons why she reported late – “outside the AP [assessment period] in which the change occurred”. We again wrote to UC (via the journal) to explain that the usual rule about the effective date for a supersession on the grounds of a change of circumstances if the change is reported late does not apply if a family member becomes entitled to another relevant benefit (such as DLA). They have ignored this and keep telling the client that she needs to explain why it is late. It does feel like case managers don’t understand the law. This case is not unusual – almost every relevant benefit change that I have come across, this is happening.’*

***Early Warning System: missing carer element – February 2023***

*‘A carer’s UC award started in December 2020. In January 2021 she started receiving CA which was taken into account as income for UC. However, the carer element was not added at the same time. In January 2023, her work coach identified the missing carer element and added it from that assessment period, but they are refusing to add it from January 2021 when she first became entitled.’*

***Early Warning System: further information on ‘special circumstances’ for disabled child element – October 2021***

*DLA was awarded for client’s child, but UC is now requiring further information on ‘special circumstances’ to add the disabled child element from an earlier date. The adviser has identified the qualifying benefit rule and thinks the element should be effective from the date of the child DLA, so they are confused by the DWP’s response.*

***Early Warning System: DWP refuse to add carer element from date of disability benefit – April 2022***

*‘I have a client who has been part of a joint UC claim since October 2018. Her partner has just been awarded personal independence payment (PIP) effective from November 2018. The DWP has now given the carer element from the current assessment period but a note on their journal says it will refuse to consider backdating it to when the PIP award started as it is outside of the 13-month deadline for late notification of a change in circumstances.’*

A number of stakeholders have raised with the DWP how claimants with disabilities and caring responsibilities were repeatedly missing out on their entitlement to the carer and disabled child elements due to supersessions taking effect from the incorrect date.<sup>194</sup> The DWP responded: *‘There are no underlying technical issues which*

<sup>194</sup> Questions and answers from DWP Operational Stakeholders Engagement Forum Conference Call, 6 July 2021

would cause incorrect backdating and guidance is available to support colleagues through this process.’ We investigated this assertion below.

In order for a UC award to be superseded to add the carer element from an earlier assessment period, the case manager must make a referral to a decision maker, which may not always happen reliably. It appears that case managers can change a UC award for the current assessment period themselves if the claimant reports a change of circumstances, but a decision maker is required to carry out a supersession that takes effect from an earlier assessment period (an earlier effective date). When a case manager does identify that a referral is necessary, they use a to-do titled ‘Refer to a decision maker (late reporting of a change)’.<sup>195</sup> There is no specific internal agent ‘to-do’ for dealing with a new or altered award of a relevant benefit (such as child DLA or CA) as a distinct process from referring other late reported changes to a decision maker. The DWP has confirmed that an agent would use the “other reason” option and the free text box to explain the reason for the referral to the decision maker in the to-do.<sup>196</sup> The name and use of the ‘Make a decision (late reporting of a change)’ to-do when considering a new or altered rate of a relevant benefit may partially explain why decision makers wrongly treat these notifications as advantageous changes that have been reported late.

The rules on effective dates are complex and context-specific, with the variation in effective dates adding up to significant amounts of money. However, there is no transparency as to the rules when claimants notify the DWP about a change in circumstances or when they receive supersession decisions. For example, a claimant reporting a new award of CA might say the change happened from the day they started receiving money, not understanding that the change happened from the date the CA was awarded. Claimants do not have enough information to identify whether the correct effective date has been applied in their case or whether they should raise a dispute.

Decision makers regularly fail to apply the law correctly when considering the rules on effective dates for supersessions because of a new award or altered rate of a carer or disability benefit. The use of the ‘Refer to a decision maker (late reporting of a change)’ to-do by case managers and the use of the equivalent ‘Make a decision’ to-do by decision makers, is likely to produce unlawful decisions because the to-dos incorrectly suggest that the only reason a supersession should take effect from an earlier date is if there is a good reason to accept a late report. In addition, there is a lack of transparency about the effective date rules and inadequate details provided to claimants when they notify of changes or are notified of supersession decisions. As a result, claimants are unable to recognise whether they have had their application for a supersession decided according to the correct legislation, or whether they are missing out on their full entitlement, which can amount to thousands of pounds over multiple years.

### 2.4.2 Inability to accept future circumstances

#### What happens in practice

The regulations allow the DWP to supersede a decision when a change of circumstances is expected to occur in the future; however, the UC system cannot accept future dates, as illustrated by the following interview extract.

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<sup>195</sup> [whatdotheyknow.com/request/850660/response/2016615/attach/html/5/To%20do%20list%20as%20of%2006.04.22.pdf.html](https://whatdotheyknow.com/request/850660/response/2016615/attach/html/5/To%20do%20list%20as%20of%2006.04.22.pdf.html)

<sup>196</sup> Email from DWP to CPAG, 4 April 2023.

***Harriet (claimant) – June 2021***

*'I have just received a job contract but I won't be starting for a week or so until 16 June 2021. I went on the change of circumstances function to say I would have a job from that date but it won't let me add any dates that are in the future. I won't actually receive my first pay cheque until the end of July so I am not sure whether I should tell them on the first day of my job or the day before I am expecting my first pay cheque?'*

The inability to process future changes in circumstances causes particular administrative difficulties for claimants and social housing providers when social rents increase every April. Although social landlords have access to the rent increase information for all of their tenants, the claimants themselves are required to update their details using the change of circumstances function, prompted by a to-do from the DWP. The DWP then supersedes UC awards to account for the change.

Figure 2F: CPAG mock-up of extract from 'FAQ for landlords' on the *Understanding Universal Credit* website

***Understandinguniversalcredit.gov.uk******[Universal Credit Social Rented Sector \(SRS\) Rent Change April 2022 – FAQ for landlords](#)***

***Q: When can claimants report a change to their rent?***

***A: All changes need to be made once they have happened (i.e. after the rent has changed in April). We would be grateful if you can remind your tenants of the information, they need to report to their UC account and the date of this change in any communications. Claimants will receive a to-do asking for the information.***

The combination of requiring claimants and landlords to submit and verify the annual change in rent and not allowing future changes in circumstances means social landlords and tenants can struggle to ensure the change is reported before the end of the assessment period including the beginning of April. One adviser described the extent of the administrative burden for both claimants and landlords, which is in direct contrast to the automatic increases for social housing tenants in receipt of housing benefit (HB).

**Rowan (adviser) – February 2022**

*'A guy that I saw a couple of weeks ago... we sent him his rent-increase letter last year, he immediately went on his journal and tried to do his rent increase, but you can't do your rent increase until it's happened because universal credit can't handle the future. He realised that he couldn't do it and somehow cancelled his whole housing costs... He'd put notes on it, saying: "I don't know what I'm supposed to do." ... There was a note on his journal the next day, saying: "Oh, it looks like you've sorted it out for yourself now. Is that right?" ... They should have been looking at it and going: "Did you really mean to cancel your housing costs because the address is the same but you're saying you haven't got any rent now?"*

*... it's supposed to be that on 5th April, ... Any housing association or council tenant... on the Landlord Portal... are supposed to get a to-do that says: "Has your rent increased?" Then, if they tick "yes", it will say: "What's your new rent? Has anything else changed or have you got any service charges? Is it still paid weekly?" Tick, tick, tick. Then, it gets sent to us. We verify it... Obviously, that's a manual process... We'll almost certainly get them all, which is great in the sense that we want all our tenants to have the right rent, but yes, it's a massive administrative burden on us as a small social landlord.'*

**Rhys (adviser) – February 2022**

*'People not realising, if you're in the social renting sector, you have to notify the DWP of your rent increase. People were so used, on housing benefit... They didn't have to tell the housing benefit service that their rent had gone up because it was done on a bulk data transfer... Now they have to do it themselves, a lot of people fall foul of that. We'll see that in the next few weeks.'*

The DWP has designed a system that is unable to supersede awards based on changes of circumstances that are expected to occur in the future. Claimants have been granted the procedural right by parliament to apply for supersessions on the basis of expected changes, but the DWP has failed to provide a mechanism allowing them to access this procedural right. This does not adhere to the rule of law principle of procedural fairness. This is also an example of the DWP not sharing the benefits of digitalisation and automation, which can improve accurate and prompt decision making, with claimants and other stakeholders required to interact with the UC digital system. Social rented tenants in receipt of UC have a higher administrative burden with regard to annual rental increases than those in receipt of HB.

**2.4.3 Suspension and termination to end awards****What the law says****Suspension**

Sometimes the DWP may question whether a UC recipient is currently, or was previously, entitled to the award at all or at the same rate. While the DWP is determining this question, it might be paying the wrong amount of benefit. To guard against such situations, the law provides discretionary powers to the DWP to 'suspend' payment if a claimant fails to provide requested information or evidence within 14 days, or in certain circumstances, to suspend the benefit before the evidence request is made. The regulations require that any request for information or evidence must clearly state, not just the 14-day deadline, but also the possibility of requesting an extension or satisfying the DWP that the evidence does not exist or cannot be obtained.<sup>197</sup> As suspension powers

<sup>197</sup> Regs 44 and 45 Decisions and Appeals Regulations 2013

are discretionary, decision makers must consider each case's specific facts and any potential hardship.<sup>198</sup> Suspensions are not appealable decisions.

### Termination

The DWP can terminate a suspended award (by supersession) in certain circumstances where the claimant has not provided the requested information. Such decisions may end entitlement that the claimant was properly entitled to, not because the claimant no longer meets the entitlement conditions, but solely because they have failed to comply with a procedural requirement to provide evidence. Given the potential for injustice in such a process, the DWP must strictly comply with the procedural rules which apply to it before it can make such a decision. For example, if the DWP has not included all of the information required by the regulations in the request for evidence, such as the possibility of requesting an extension beyond the 14 days, then any subsequent termination will be unlawful.<sup>199</sup> Any decision to terminate an award is a type of supersession and is, therefore, appealable.<sup>200</sup> If the DWP suspends and then terminates an award of UC, it should not result in an overpayment because the termination should happen from the date of the suspension, and the previously paid award remains unchanged up until that date.<sup>201</sup>

### What happens in practice

UC may be the majority or entirety of a claimant's income, so suspension of UC can have severe consequences. This is in comparison to the different legacy benefits which are paid separately so that if a person's HB, for example, were temporarily suspended, they would still be able to receive their child tax credit and income support. It is important that the DWP uses its discretionary power to suspend lawfully and carefully, with decision notifications including all the information required, partial suspensions being favoured over full suspension when only one element is under examination, and with timely investigations. A claimant cannot challenge a suspension via the usual mandatory reconsideration and appeal route; therefore, judicial review is the only legal remedy if claimants are in hardship.

An investigation of the template language used to notify claimants that they must provide information or evidence at the risk of, or following, suspension strongly suggests that the UC notices do not comply with the requirements of the suspension and termination regulations.<sup>202</sup> In response to a freedom of information (FOI) request for the written communication used when advising UC claimants they must provide information or evidence under regulation 45 of the 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'), the DWP provided the following illustrative example of the wording used.<sup>203</sup>

<sup>198</sup> ADM Ch A4: 'Supersession, suspension and termination', paras A4321-A4345, available at

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1065518/adma4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1065518/adma4.pdf)

<sup>199</sup> *AA v Leicester CC* [2009] UKUT 86 (AAC), paras 54-56, available at [casemine.com/judgement/uk/5a8ff78660d03e7f57eae361](https://casemine.com/judgement/uk/5a8ff78660d03e7f57eae361); *VW v*

*Hackney LB (HB)* [2014] UKUT 277 (AAC), para 5, available at [casemine.com/judgement/uk/5b46f2182c94e0775e7f222f](https://casemine.com/judgement/uk/5b46f2182c94e0775e7f222f); and *SS v NE*

*Lincolnshire Council (HB)* [2011] UKUT 300 (AAC), para 21, available at [hinfo.org/caselaw/2011-ukut-300-aac](https://hinfo.org/caselaw/2011-ukut-300-aac)

<sup>200</sup> R(H) 4/08

<sup>201</sup> A termination is 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.

<sup>202</sup> Reg 45 Decisions and Appeals Regulations 2013

<sup>203</sup> FOI2022/55231, available at

[cpag.org.uk/sites/default/files/files/policy/post/FOI2022\\_55231\\_Suspension\\_evidence\\_request\\_notification\\_wording.pdf](https://cpag.org.uk/sites/default/files/files/policy/post/FOI2022_55231_Suspension_evidence_request_notification_wording.pdf)

Figure 2G: CPAG mock-up of template notice requesting evidence or information

**Your payment has stopped.**  
Your payment was stopped on XX/XX/XXXX. This is because there's a problem with your claim.

**What you need to do**  
Call XX on XXXXXXXXXX before XX/XX/XXXX or your claim will be closed.

If we've already asked you for evidence, your claim may close on a different date. You have 14 days from the date of the request to provide that evidence, unless we've told you otherwise.

Your claim will restart if you provide any missing information and it shows you are still entitled to universal credit. You'll also get any missed payments.'

The wording of the template notice suggests it could be used simultaneously in cases where the DWP has already requested the information or evidence and as the first notification that information is required. In the latter situation, it is inadequate to ask the claimant to contact the DWP without expressly stating what information or evidence is required.<sup>204</sup> This notification also fails to include the possibility of requesting an extension beyond 14 days or satisfying the DWP that the evidence does not exist or cannot be obtained.<sup>205</sup> The failure to include the lawfully required information in the decision notice is a procedural error that is likely to result in any subsequent termination decisions being unlawful.

Furthermore, the Early Warning System cases below show examples of suspensions of the whole of claimants' awards when there is only a question over the accuracy of one particular element.

***Early Warning System: housing costs following wife's death – October 2021***

*A widower struggled to get DWP to pay his full housing costs from the date of his wife's death. Despite support and intervention from his social landlord, DWP took months to respond to his requests, and then suspended his whole UC award, rather than just the housing costs, while a decision was pending. The claimant's payment was delayed for two weeks, leaving him reliant on family and friends. A payment was only made when his social landlord escalated the matter.*

***Early Warning System: payment of childcare element following summer break – November 2020***

*'A woman in receipt of UC had a break from receiving childcare costs during the summer while her elder daughter was back from university, but since September she has been having difficulty uploading the correct evidence of her childcare costs as some of the receipts had the incorrect dates. She was expecting to be paid on 2 November but she hasn't received her payment statement, or any of her UC, and there is no letter or journal message to say it has been suspended. Surely they shouldn't withhold the whole UC payment when there is only an issue with the childcare element?'*

<sup>204</sup> Reg 45(2)(a) and (c) Decisions and Appeals Regulations 2013

<sup>205</sup> Reg 45(4)(a)(ii) and (b)(i) and (ii) Decisions and Appeals Regulations 2013



***Early Warning System: couple's UC suspended waiting for confirmation of wife's application to European Union Settlement Scheme (EUSS) – December 2020***

*'A married couple, husband British and wife French, have had their UC suspended which is their only source of income so they are destitute. She has lived in the UK for 30 years and made a late application for the European Union Settlement Scheme. The UC claim has been suspended because they have been asked to provide a certificate of application from the Home Office which they do not have yet. Could he not still be paid at the single rate seeing as he is a British citizen?'*

The purpose of suspension is to ensure that overpayments are not made and, in some cases, to put pressure on claimants to provide information. As such, the suspension power should only be used for these purposes. Suspending the entirety of an award where there is only doubt about one part of it, or suspending a current award where there is only doubt about a past period, does not align with this purpose and is, therefore, likely to be a breach of the rule of law principle of lawfulness.

## 2.5 Claim closure

### What the guidance says<sup>206</sup>

The *Claim Closure* internal operational guidance describes 'claim closure' as an 'important process' within universal credit (UC).<sup>207</sup> The guidance lists examples of when the DWP might consider 'claim closure', including if a claimant fails the habitual residence test, has failed to provide evidence, or if a claim has been suspended for 30 days.<sup>208</sup> The examples suggest that the DWP can 'close a claim' both when deciding a claim and after an award is in place, both for failing to meet entitlement conditions and for failing to follow procedures.<sup>209</sup> Similarly, in the DWP's training materials, they make the distinction between 'claim closure' before the end of the first assessment period and after the first assessment period.<sup>210</sup>

### What the law says

'Claim closure' is not a concept that is recognised within the Social Security Act 1998.

<sup>206</sup> Usually we start with what the law says and then follow it with what the guidance says, but in the example of 'claim closure', the guidance is so detached from the law that it requires starting with the guidance.

<sup>207</sup> *Claim Closure*, operational guidance v 19, available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028\\_Claim\\_closure\\_V19.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028_Claim_closure_V19.0.pdf)

<sup>208</sup> To qualify for UC, a person must be both present in Great Britain and 'habitually resident' (meaning the UK is your main home and you intend to keep living there), which includes having a 'right to reside' in the common travel area (s4(1) Welfare Reform Act 2012 and reg 9 UC Regulations 2013). Reg 47(1)(b) Decisions and Appeals Regulations 2013 requires that 'more than one month has elapsed since the first payment was suspended', not 30 days.

<sup>209</sup> If an award is in place, then the claim ceases to exist.

<sup>210</sup> *UC24GEN: claim closure and re-claim*, v36.0, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/UC24GEN\\_Claim\\_Closure\\_v36.0.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC24GEN_Claim_Closure_v36.0.pdf); version 15 (onwards) of the UC internal operational guidance on claim closure was updated to say 'claim closure (legally speaking the termination of an award)'.

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

*paragraph 7 ‘... The concept of “case closure” is jurisprudentially highly suspect. Over the years the former Social Security Commissioners and now the Upper Tribunal judges have done their best to try and eliminate this usage...’*

*paragraph 8 ‘Unfortunately, the notion of case closure, so beloved of frontline benefits administrators, has proven resistant to all such judicial attempts at erasure...’*

The regulations are clear that once the DWP has taken the decision to refuse a claim or make an award, the ‘claim’ ceases to exist.<sup>211</sup> The DWP can only bring an award of UC to an end by a revision to remove entitlement from the date of the original decision or by a supersession to end entitlement from a later date.

What the DWP describes as ‘claim closure’ can actually be five distinct decision-making mechanisms.

***Refusal of claims for substantive grounds***

The DWP has the power to immediately refuse a claim on substantive grounds if the claimant does not meet the conditions of entitlement – for example, if a claimant does not meet the residence requirements for UC.<sup>212</sup>

***Refusal of claims for procedural grounds***

If the DWP requires additional evidence to determine a claimant’s entitlement, it can request the information or evidence from the claimant.<sup>213</sup> The claimant then has a month, or longer if extended, to provide the required evidence. If the claimant fails to provide the required information within the given time limit, then the DWP must make a decision based on all available information and evidence. One outcome could be to refuse the claim on substantive grounds; however, there is no freestanding right to refuse a claim for benefit solely due to a failure to comply with a duty to provide evidence. This was confirmed by Judge Wikeley in the Upper Tribunal judgment of *PP v SSWP (UC) [2020] UKUT 109 (AAC)*.

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

*paragraph 43 ‘It follows that it was overly simplistic to say that the Appellant’s case was closed because he had failed to attend an interview about his self-employment. On a proper legal analysis, his universal credit claim was disallowed because he had not shown that he satisfied the financial condition of entitlement for a single person... That was a decision under section 8(1)(a) of the Social Security Act 1998... on his claim for universal credit...’*

The DWP cannot lawfully refuse a claim purely on procedural grounds. Once a valid claim has been made, the Secretary of State must decide whether the claimants meet the conditions of entitlement to benefit. (See section 2.2.2 of this chapter on the refusal of UC for a failure to book the initial evidence interview.)

<sup>211</sup> s8(2)(a) Social Security Act 1998

<sup>212</sup> s8(1)(a) Social Security Act 1998

<sup>213</sup> Reg 37 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’)

*The ending of awards for substantive grounds*

If someone with an award of benefit no longer meets the conditions of entitlement, the DWP should supersede the award to bring it to an end on the grounds of a change in circumstances.<sup>214</sup> For example, if a claimant receives an inheritance that brings them over the £16,000 capital limit, their award would be ended on substantive grounds.

*The termination of awards for procedural grounds*

The DWP may request evidence or information from someone in receipt of UC to assess whether the current award decision is correct or should be changed.<sup>215</sup> When requesting evidence, the DWP must notify the claimant exactly what information is required, that there is a 14-day deadline before they will suspend the benefit, and that the deadline can be extended.<sup>216</sup> In some cases, the benefit can be suspended at the same time the DWP requests evidence.<sup>217</sup> If more than a month has passed since the suspension started or since the request for evidence, all the decision notices included the required information, and the claimant has failed to provide the evidence requested, the DWP can supersede the award via termination for a failure to provide information from the date of suspension.<sup>218</sup>

*Revision of entitlement decisions to remove entitlement*

The DWP can revise a decision awarding UC to remove entitlement on any grounds within one month of the decision.<sup>219</sup> If more than a month has passed, the DWP can only remove entitlement by revision on two grounds: if the original decision was an ‘official error’ or because the original decision was made ‘in ignorance of, or based on a mistake as to, some material fact’.<sup>220</sup> (See [Chapter 4 – ‘Disputes’](#): section 4.4 for examples of the DWP revising entitlement decisions as part of the reverification of claims made during the early stages of the Covid-19 pandemic when evidence checks were reduced.)

**What the UC digital system looks like and how it works***For DWP officials*

The UC system automatically generates a ‘Consider closing claim’ agent to-do, which prompts work coaches and case managers to begin the ‘closure’ process, although the system does not generate the to-do in all circumstances.<sup>221</sup> DWP agents are expected to make a number of manual checks before ‘claim closure’, including checking whether the claimant has complex needs, checking for any outstanding appointments, and seeing whether there is any recent contact in the journal, with the option available to defer the ‘closure’ to a future date.<sup>222</sup> Decision makers also have the power to ‘close claims’ if their decisions directly affect entitlement, such as a determination that someone has not satisfied the habitual residence test. The ‘claim closure’ decision

<sup>214</sup> Reg 23 Decisions and Appeals Regulations 2013

<sup>215</sup> Reg 38 Claims and Payments Regulations 2013

<sup>216</sup> Reg 45 Decisions and Appeals Regulations 2013

<sup>217</sup> Reg 44 Decisions and Appeals Regulations 2013

<sup>218</sup> Reg 47 Decisions and Appeals Regulations 2013. 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) and CH/2995/2006).

<sup>219</sup> Reg 5 Decisions and Appeals Regulations 2013

<sup>220</sup> Reg 9 Decisions and Appeals Regulations 2013

<sup>221</sup> *UC24GEN: claim closure and reclaim*, facilitators guide, accessed via FOI2020/59338, available at

[cpag.org.uk/sites/default/files/files/policypost/UC24GEN\\_Claim\\_closure\\_and\\_reclaim\\_facilitator\\_guide\\_FOI2020\\_59338.pdf](https://cpag.org.uk/sites/default/files/files/policypost/UC24GEN_Claim_closure_and_reclaim_facilitator_guide_FOI2020_59338.pdf); *Claim Closure, internal operational guidance, v 19*

<sup>222</sup> *Claim Closure, internal operational guidance, v 19*. The DWP has a broad definition of what may be considered complex needs, which includes different life events, personal circumstances, health issues and disabilities that may be either permanent or temporary. See [Complex Needs Overview, UC internal operation guidance, v 18](#), available at [data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039\\_Complex\\_needs\\_overview\\_V18.0.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/039_Complex_needs_overview_V18.0.pdf)

notifications are automatically posted in the UC journal. A drop-down menu for DWP officials in the to-do provides the claimant with the reason for the decision.<sup>223</sup>

### *For claimants*

The claimant receives a 'claim closure' notice pinned to their UC account home screen with a one-line explanation for the decision, such as 'you did not accept your claimant commitment to-do'. Claimants are given instructions on making a new claim and directed to their journal to 'find out why we have closed your claim and how to contact us if you disagree'. The decision notification in the journal repeats the (usually) one-line explanation for the decision, accompanied by a notice of appeal rights. The UC journal is immediately frozen, so claimants cannot post new messages, meaning they cannot use their journal to request an explanation of the decision or a mandatory reconsideration (a revision).

Figure 2H: CPAG mock-up of a 'claim closure' notice displayed on the home screen

## Your claim has been closed

**We closed your claim on 6 July 2022.**  
This is because you failed your habitual residence test.

**This means your Universal Credit has stopped**  
Including payments to your landlord or mortgage provider for rent, interest or service charges.

**If you need to claim again**  
You can make a new claim if your circumstances change, or if your partner claims Universal Credit and gives you a linking code.

Once you have made your new claim, you can apply for an advance if you need money before your first payment.

**What to do if you disagree**  
Find out why we closed your claim and how to contact us if you disagree – go to your [journal](#).

**Make a new claim**

**Enter a linking code**

<sup>223</sup> UC24GEN: claim closure, v36.0, pp.7-11, accessed via FOI2021/75537, available at [cpag.org.uk/sites/default/files/files/policypost/FOI2021\\_75537\\_response.pdf](https://cpag.org.uk/sites/default/files/files/policypost/FOI2021_75537_response.pdf)

Figure 21: CPAG mock-up of 'claim closure' decision notice displayed in the journal

<a href="#">Home</a>	<a href="#">Journal</a>
<h2>Your claim has been closed</h2>	
<p>Monday 16 August 2021 at 11.30am</p>	
<p>Closed date <b>5 August 2021</b> Reason <b>You did not complete your 'accept your commitments' to-do.</b></p>	
<h3>Why we closed your claim</h3> <p>You did not complete your 'accept your commitments' to-do. This means you did not accept your commitments.</p> <p>Your commitments explain what you must do in return for Universal Credit.</p>	
<h3>Your Universal Credit has stopped</h3> <p>This includes any payments to your landlord or mortgage provider to cover your rent, interest or service charges. You must arrange to pay these directly.</p> <p>Check what you were previously paid and how it was worked out – on to <a href="#">payments</a>.</p>	
<h3>What you should do next</h3> <p>The quickest way to check if you can get Universal Credit again is to make a new claim. You can make a new claim on your <a href="#">homepage</a>.</p> <p>Once you have made your new claim, you can apply for an advance if you need money before your first payment.</p>	
<h3>Ask us to explain</h3> <p>If you disagree with our decision, you can ask us to explain. You can also ask for a written explanation.</p> <p>You need to ask us by <b>15 September 2021</b>.</p>	
<h3>How to do this</h3> <p>The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.</p> <p>You cannot use your journal to contact us.</p> <h4>Call the Universal Credit freephone helpline</h4> <p>Telephone 0800 328 5644 Textphone 0800 328 1344 Welsh language telephone 0800 328 1744</p> <p>Monday to Friday, 8am to 6pm (closed on bank holidays). Calls to 0800 numbers are free from landlines and mobiles.</p> <h4>Send a letter</h4> <p>Our postal address is: Freepost DWP UNIVERSAL CREDIT FULL SERVICE. Dial 18001 followed by 0800 328 5644 for Relay UK (previously Next Generation Text).</p> <h3>Ask us to reconsider</h3> <p>You can also ask us to look at the decision again. This is called a 'mandatory reconsideration'.</p> <p>You need to ask us by <b>15 September 2021</b>.</p> <h4>How to do this</h4> <p>The quickest way to contact us is by calling the freephone helpline. You can also send a letter to the Freepost address.</p> <p>If you want us to look at the decision again, you can use the mandatory reconsideration form on the GOV.UK website.</p> <h4>What happens after this</h4> <p>When we have looked at the decision again, we will send you a 'mandatory reconsideration notice'. This explains what we have decided and why.</p> <h4>You can appeal this decision</h4>	

## What happens in practice

### *Awards being described as 'claims'*

As soon as the DWP has decided a claim and made an award, the 'claim' ceases to exist.<sup>224</sup> It is legally inaccurate for the DWP to describe both claims and awards as 'claims'. When claiming UC, *'the department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met. The claimant is the one who generally speaking can and must supply that information.'*<sup>225</sup> (See [Chapter 1 – 'Claims'](#) for more information). Once the DWP has decided the claim, and an award is in place, the responsibility shifts to the DWP to demonstrate that a claimant is no longer entitled to the benefit in order to remove entitlement, either because the claimant no longer meets the conditions of entitlement or because they have failed to comply with procedural requirements within given time limits.<sup>226</sup> The DWP and claimants have different rights and responsibilities during the claims process compared to when an award is already in payment that should not be confused.<sup>227</sup> By describing both claims and awards as claims, the DWP obscures this change in the burden of proof.<sup>228</sup>

### *The concept of 'closing'*

The DWP uses the same terminology of 'closure' when referring to five distinct decision-making mechanisms.<sup>229</sup> This frustrates the ability of claimants to identify whether there has been an error in the decision making and if there are any grounds for a challenge.

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

*paragraph 8... 'As the written submission by the Secretary of State's representative on the present appeal frankly concedes:*

*"... training material and operational guidance for the new benefit ubiquitously describe both the termination of an award and any disposal of a claim as the 'closing' of a 'claim'. As a result, any attempt to understand the legal nature of any given instance of 'claim closure' is obliged to have recourse to informed inference (or desperate guesswork)."*

The DWP has normalised the concept of 'claim closure', which confuses initial entitlement, revision and supersession decisions. It has done this within the digital system design itself and in the accompanying guidance. As a result, DWP officials are encouraged to make decisions without first identifying whether they have the power to do so, whether they require or have a ground, and what the correct effective date is. One adviser described how problematic 'claim closure' can be for advisers and claimants trying to challenge decisions, as the decision-making process itself is made opaque by this catch-all and legally meaningless term.

<sup>224</sup> s8(2)(a) Social Security Act 1998

<sup>225</sup> *Kerr v Department for Social Development NI* [2004] UKHL 23, para 62, available at [publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm](https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm): 'But where the information is available to the department rather than the claimant, then the department must take the necessary steps to enable it to be traced.'

<sup>226</sup> Regs 23 and 47 Decisions and Appeals Regulations 2013; *LP v SSWP (ESA)* [2018] UKUT 389 (AAC), para 13, available at [assets.publishing.service.gov.uk/media/5c1bd7fde5274a65cc0f5ce0/CE\\_0729\\_2018-00.pdf](https://assets.publishing.service.gov.uk/media/5c1bd7fde5274a65cc0f5ce0/CE_0729_2018-00.pdf)

<sup>227</sup> See ADM Ch A1: 'Principles of decision making and evidence', para A1405, available at [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1084744/adma1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084744/adma1.pdf).

<sup>228</sup> Although see *Kerr v Department for Social Development NI* [2004] UKHL 23, para 62, available at [publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm](https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/kerr-1.htm), which observes 'the process of benefits adjudication is inquisitorial rather than adversarial...it will rarely be necessary to resort to concepts taken from adversarial litigation such as the burden of proof.'

<sup>229</sup> ss 8, 9 and 10 Social Security Act 1998

**Charlie (adviser) – February 2022**

*‘Claim closure, yes, it’s a trigger word, isn’t it?... it’s a meaningless term. There’s no such thing as claim closure, and very often, there isn’t even a claim anymore to close because, very often, it’s been replaced with an award... It can lead people off going down wrong rabbit holes in terms of looking for legislation on what a closure is and how that differs from a refusal or a supersession and that is a waste of time...’*

*Also, in some cases, it’s used... as a loincloth for an unlawful process. Sometimes, the DWP will just say, “Oh, in circumstances X, we closed the claim...”, when nobody actually knows what that means... I think that a degree of procedural discipline would go a long way in improving decision making because the DWP will then have to ask themselves, “What is it we’re actually doing and what effect does that have on the award, and where is our actual legal power to do it derived?”, which are questions that really, you should expect civil servants to ask themselves... in the olden days... one of the boxes that you had to tick on the paper decision pro forma was which ground of revision you’d used. So, in overpayment cases, for example... they might have ticked the one that says ‘official error revision’. It’s forcing the decision maker to apply their mind to the question of what power it is that I’m using to do what I’m doing. Whereas with claim closure, that doesn’t really happy because they just say: “Oh, under circumstance X, we closed the claim.” Well, what does that mean?’*

The terminology also confuses advisers, as illustrated by the following Early Warning System case.

**Early Warning System: UC award brought to an end for failure to provide evidence – August 2021**

*A client in receipt of UC was required to provide evidence of ID and failed to do so in time due to pressing circumstances. The claim was ‘closed’. The adviser understood that to mean suspended, as other clients have had such claims ‘reopened’. Advised that ‘closed’ in this case means the decision awarding UC has been superseded ending entitlement.*

If a claimant is advised that their ‘claim’ has been ‘closed’ when, in reality, the DWP has terminated their award after a period of suspension for failing to provide evidence, then claimants and advisers are discouraged from investigating whether the DWP has provided the information and waited the time required to make any termination legally valid.<sup>230</sup>

Finally, the concept of ‘closed claims’ appears to have a similarly problematic parallel in the DWP’s description and concept of ‘open,’ ‘live’ or ‘reopened’ UC claims. If a UC claim is refused or an award is brought to an end, there is no legal basis for that claim or award subsisting after that time, and the DWP can only consider any new circumstances as part of a new claim. An individual can challenge the decision on the old claim or award while at the same time starting a new claim for benefit, which would often be the recommended course of action. In the following example, the DWP refused the individual’s new claim without proper consideration despite the claimant requiring a new decision based on his new circumstances. It appears in this case that the UC system allowed for an award that has legally ended to remain, for administrative purposes, ‘open’ or ‘live’, and the case manager’s misunderstanding of the legislation led to the ‘closure’ (legally speaking, a refusal) of a legitimate new claim which the DWP should have decided.

<sup>230</sup> As required by regs 45 and 47 Decisions and Appeals Regulations 2013

***Early Warning System: new UC claim refused due to outstanding appeal on ending of previous award***

*The client's ex was refusing to sell the jointly owned marital home and its value was disregarded for six months before his UC was terminated due to excess capital above £16,000. He requested a mandatory reconsideration and then went to appeal requesting an extension to the six months. His circumstances then changed and they took steps to sell the property. He was initially discouraged from applying again and when he submitted a new claim, it was closed. He has had no notification of his appeal rights, only a journal message stating: 'The claim you made on the 13/05/20 has been closed due to the fact you already have a claim open on the 09/01/2019 and this has an appeal waiting... Until your appeal is heard and the outcome of this known we are not able to pay any UC to you.'*

While the extract from a decision letter below describes the DWP's decision to revise a supersession decision which had brought an award to end an award as having 'reopened the claim'.

***Early Warning System: extract from decision letter revising a decision to end entitlement – May 2023***

*'I am pleased to advise that we have changed our decision and reopened the claim. Underpayments amounting to £5,500.50 has been released for the period from 15 November 2021 to 14 March 2023.'*

It must be acknowledged that the DWP was using the language of 'claim closure' long before the digitalisation of benefits, so this poor implementation of the law cannot be blamed solely on the digital nature of UC. However, the digital system design could be described as exacerbating the consequences of 'claim closure' by 'hard-coding' the concept into the digital system, and because of the digital environment in which claimants encounter it. For example, after the DWP refuses a claim or ends an award (claim closure), it freezes a claimant's journal so that claimants cannot post any new messages and are blocked from disputing their entitlement decision via the primary route claimants have been using to communicate with the DWP. One interviewee described how the combination of the 'closure' and journal freezing highlighted the power differentials that can be felt between the DWP and claimants, which is worsened by some of the UC digital processes.

***Timothy (claimant) – April 2021***

*'They closed my claim, and I can't even reach them... they messaged me saying that I had failed the habitual residency test... my intuition immediately said that I should have passed the residency... And after that they immediately closed it. I could read the messages... but I couldn't reply ... It's a bit odd that they say that it's closed... a bit sort of passive aggressive almost... Sort of a one-way street... I think I then began calling them and that wasn't easy to get through to them and challenge their decision, saying to them: "Look, I think I should have passed the test. What's behind your reasoning? How did you make your decision?" I had to wait for them to call me... and some of the calls never happened.'*

The DWP's reliance on the concept of 'claim closure' throughout the UC system design and decision-making guidance creates problems across the three rule of law principles of transparency, procedural fairness and lawfulness. Describing decisions by a legally meaningless term rather than the specific decision-making mechanism in the legislation is a barrier to decision makers understanding the legal powers available to them and encourages unlawful decision making. Our research has already demonstrated how the system and guidance instructs officials to unlawfully refuse UC for a failure to attend the initial evidence interview when there is no



freestanding right to refuse a claim for a failure to comply with an evidence request (see section 2.2.2).<sup>231</sup> In that example, the drop-down menu, which allows officials to decide to 'close' (refuse) a claim for UC solely due to a missed appointment for the initial evidence interview, distances decision makers from their legal powers in that situation, which they may be exceeding. At the same time, the lack of transparency caused by misidentifying the correct legal decision-making mechanism is a barrier to claimants understanding the decisions taken against them and identifying any errors. Finally, the digital design choice to freeze the journal after 'closure' is a procedural barrier to challenging decisions, as the primary route of communication with the DWP is suddenly blocked when claimants are likely to want to query or dispute a decision, when they are refused UC or when their UC award is brought to an end.

## 2.7 Decision making conclusions

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

This research has found multiple breaches of the three rule of law principles of transparency, procedural fairness and lawfulness in the way decisions are made within universal credit (UC). These issues are not the inevitable by-product of digitalisation but rectifiable design and implementation choices. The DWP has designed a digital system that does not accurately capture the legislation's decision-making framework and contributes to human errors in decision making. It is not only the effects of artificial intelligence, or even automated decision making, which should be considered when investigating the impact of digitalisation on claimants and their rights; simple design choices when implementing a digital-by-design benefit can have a significant effect on the extent to which a system complies with rule of law principles.

### Inconsistencies and missed opportunities of digitalisation

UC is a partially digitalised system, and which parts have been automated and which parts remain clerical appear unpredictable and inconsistent from an outside perspective. One of the most obvious advances of UC as a digital-by-design benefit compared to legacy benefits is the automated sharing of employed earnings information between HM Revenue and Customs (HMRC) and the DWP. (Although, even when it comes to the automated sharing of earnings information from HMRC, Lord Freud was critical that the current system's reliance on reported information from employers was vulnerable to 'discrepancies', compared to his preferred vision for a more digitally advanced system using data on live salary transfers.<sup>232</sup>) This is contrasted with some obvious gaps, where the expected benefits of digitalisation have not been realised, such as the failure to use the data the DWP holds about other benefits to accurately calculate their effect on UC awards.

Under legacy benefits, many claimants missed out on the disabled child addition of tax credits (administered by HMRC) because they did not know that the disability living allowance award for their child (administered by the DWP) entitled them to an increase in their maximum amount for tax credits.<sup>233</sup> Claimants' lack of knowledge about the interaction between the two benefits, and the unreliable sharing of data between HMRC and the DWP, resulted in the many thousands of families with disabled children missing out on thousands of pounds a year.

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<sup>231</sup> Reg 37 Claims and Payments Regulations 2013, as confirmed in *PP v SSWP (UC)* [2020] UKUT 109 (AAC) with regard to information about self-employment and self-employed income.

<sup>232</sup> D Freud, *Clashing Agendas: inside the welfare trap*, Nine Elms Books, 2021, pp178-9; see also [ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit](https://ntouk.wordpress.com/2021/10/14/what-can-politicians-learn-from-universal-credit)

<sup>233</sup> Contact, 'Missing the disability element of child tax credit', [contact.org.uk/help-for-families/information-advice-services/benefits-financial-help/benefits-and-tax-credits/tax-credits/missing-the-disability-element-of-child-tax-credit-frequently-asked-questions](https://contact.org.uk/help-for-families/information-advice-services/benefits-financial-help/benefits-and-tax-credits/tax-credits/missing-the-disability-element-of-child-tax-credit-frequently-asked-questions)

Many would consider one of the most obvious advantages of a digital-by-design benefit for claimants is the sharing of benefits information (both within and between government departments) allowing for the interaction and effect of one benefit on another to be automated, increasing the accuracy of benefit award calculations and decreasing the administrative burden of reporting requirements from claimants.

This research has found examples of the DWP's failure to use its own benefits data to automate the interaction and effect of other benefits on the calculation of claimants' UC awards, including:

- the inclusion of the carer element if carer's allowance (CA) is in payment;
- the inclusion of the limited capability for work (LCW) or limited capability for work-related activity (LCWRA) elements of UC if the work-related activity or support group elements were included in a previous award of ESA.

The reliance on clerical intervention results in delays, miscalculated awards and an administrative burden for claimants in trying to secure their full legal entitlement via the revision process. In particular, errors within the clerical identification process for the LCW and LCWRA elements have been raised repeatedly since the inception of UC. On a much wider scale, the DWP decided to require all legacy benefits to make a new claim for UC rather than using the information they already held to pre-populate new UC claims and migrate claimants automatically.<sup>234</sup>

Our research has found that it is often the additional elements, exemptions or exceptions from the standard rules which remain clerical rather than automated. Therefore, it is the claimants who require these additional elements, exemptions and exceptions because of their particular circumstances, such as those in receipt of disability and carers benefits, who are most vulnerable to missing out on their full legal entitlement when DWP officials delay making decisions, misdirect themselves as to the legislation or fail to identify all eligible claimants. (See [Chapter 1 – 'Claims'](#) for examples of the failure to ask all the necessary questions during the claims process to identify if claimants are entitled to additional elements, exemptions and exceptions and [Chapter 3 – 'Communicating decisions'](#) for more information on the lack of transparency about these aspects of UC.)

#### Accuracy of language: claim closure

Across the social security system, the DWP uses legally inaccurate language. Specifically, the introduction of UC as a digital-by-design benefit has encouraged administrative and technical terminology for decision-making processes rather than the legally accurate identification of decisions and procedures as defined by the legislation.

The DWP's concept of 'claim closure' is the most obvious example of this problem, which the DWP uses to describe five different decision-making processes that are sometimes inaccurately described as 'claims', and always inaccurately described as 'closures'. Although, as has been acknowledged, the DWP was using the language of 'closed claims' long before the digitalisation of benefits, the issue has become pervasive under UC because the concept has been built into the fabric of the UC digital system, and reinforced by the freezing or closure of the journal and the opposing language of 'open', 'live' or 'reopened claims'. Elsewhere, in [Chapter 4 – 'Disputes'](#), case managers and work coaches refer to the technical, administrative processes of 'correcting' or 'updating' of current assessment period calculations as somehow distinct and separate from the revision or supersession processes which change the award of UC from previous assessment periods and which require the actions of a decision maker.

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<sup>234</sup> See [cpag.org.uk/sites/default/files/CPAG-Poverty-173-an-irresponsible-gamble.pdf](https://cpag.org.uk/sites/default/files/CPAG-Poverty-173-an-irresponsible-gamble.pdf) for more information.

Inaccurate language is not just an issue for the pedantic, but can cause real-life harm to claimants. When DWP work coaches, case managers and decision makers view legally meaningless terminology in their guidance, training materials and the design of the system itself, they are encouraged to make decisions without first identifying whether they have the power to do so under the legislation, whether they require or have a ground, and what the correct effective date is, if appropriate. These decisions can be the unlawful refusal of a claim or the termination of an award, which leaves claimants without any income. To compound the issue, if there is no transparency with claimants as to the type of decision that has prevented the payment of their benefit, they are frustrated in their ability to identify whether there has been an error in the decision making and if there are any grounds for a challenge. And, of course, it is not just claimants who face this issue; advisers supporting them can understandably adopt the language used by the DWP, reinforcing the inaccurate terminology and, in some cases, inhibiting their own understanding of the rules and the rights of their claimants.

Inaccurate language that does not reflect the legislation can both encourage and disguise unlawful decision making.

## 2.8 Decision making recommendations

### Quick fix

- DWP *Digital Design* should change the wording in the claim form so that previous employment and support allowance (ESA) claimants who are not required to provide a fit note are not asked to provide one, as it currently does not reflect the legislation.
- DWP *Digital Design* should amend the payment statement and increase the detail in the payment statement guidance to provide information to claimants about all the possible elements, exemptions and exceptions that exist in the legislation. Ideally there would be the easy-to-read summary, as is currently available, along with an expanded complete version with all the non-relevant elements greyed out.
- DWP *Digital Design/Communications* should amend the template notification of request for information or evidence so that it complies with regulation 45(4) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, by including what information or evidence is required and the possibility of requesting an extension or satisfying the DWP that the evidence does not exist or cannot be obtained.
- DWP *Digital Design/Communications* should provide additional information to claimants via the expanded statement or *Help Understanding Your Statement* guidance about:
  - effective dates;
  - calculating student income.

### 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 time for claimants to start the appeals process via their journal.
- DWP *Digital Design* should create new internal agent to-dos for when claimants notify of a new or increased award of a 'relevant benefit – eg, disability or carers' benefits, instead of using the inappropriately named 'late notification of a change in circumstances' to-dos.
- DWP *Digital Design* should amend the digital universal credit (UC) system to allow claimants and housing providers to notify of expected future changes in circumstances.
- DWP *Digital Design* should automate the annual rent changes for social tenants, to remove the significant administrative burden that is placed on housing providers.
- DWP *Digital Design* should use benefits data already held by the department to automate:

- inclusion of the carer element, if carer's allowance is present;
- the inclusion of the limited capability for work or limited capability for work-related activity elements of UC if the work-related activity or support group elements were part of a previous ESA award.
- The DWP *training team* should review and improve training for staff in the following areas:
  - the inability to refuse a claim solely for failing to attend an initial evidence interview and instead the duty to make a decision on entitlement based on all available evidence;
  - student income;
  - effective date rules;
  - suspension powers – eg, partial suspensions;
  - when claimants can lawfully be found not to have accepted a claimant commitment.
- The DWP should waive overpayments when they are caused by official error.

### Long-term reform

- The DWP should ensure the accuracy and legality of the language used throughout the UC system, training materials and guidance.
  - Specifically, DWP *Digital Design/Training* should remove the concept of 'claim closure' from training materials, guidance and the UC digital system design.

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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.