

# You reap what you code: universal credit, digitalisation and the rule of law

**ROSIE MEARS**

*The digitalisation of universal credit has many potential benefits, but better design of the system would have avoided rule of law breaches that have caused problems for claimants.*

**Universal credit (UC) is the UK's first digital-by-design benefit. The vast majority of UC claimants make their claims and manage their ongoing awards online, and some processes for calculating awards have been automated, including gathering employees' earnings information directly from HM Revenue and Customs. What has been the impact of this major change in social security administration? And has this digitalisation of means-tested benefits been implemented in a way that adheres to the rule of law?**

The rule of law consists of a number of principles which, if complied with, should help to ensure citizens are treated lawfully and fairly in their interactions with the state. The rule of law for someone claiming benefits is not just a matter of legal theory, it is vital to day-to-day life. Where UC is all that stands between a family and destitution, that family relies on the Department for Work and Pensions (DWP) to calculate the amount of benefit correctly according to the legislation and to provide adequate explanations for decisions. Claimants should be able to identify errors and challenge them if required.

In 2020, CPAG set out to investigate the way UC is claimed, decisions are made and communicated, and disputes are handled. In our research we looked at the extent to which these processes comply with the rule of law principles of transparency, procedural fairness and lawfulness. We reviewed relevant cases from CPAG's Early Warning System, a bank of case studies from welfare rights advisers and members of the public on the problems they are seeing in the social security system (see p3). We interviewed 28 UC claimants and 13 welfare rights advisers. We also carried out significant amounts of desk-based research, including obtaining DWP training materials and administrative data through approximately 50 freedom of information requests.

## Key findings from the research

### Transparency

Historically, the DWP has notified claimants of decisions affecting their benefit entitlement via letters through the post. This can lead to delays and lost or missing information, and can require claimants to wait in telephone queues to different government departments to investigate the status of their different benefits. UC is managed through an online account, which has the potential to give claimants access to up-to-date records and a history of decision-making for their one combined benefit.

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This, in theory, could increase adherence to the rule of law principle of transparency. However, our research has found a number of design and implementation choices which prevent this potential from being realised.

### Missing claimant-facing audit trail of decisions

When the DWP makes a change to a claimant's UC award, their UC payment statement (which provides a breakdown of how the award has been calculated that month) is overwritten. The amended payment statement replaces the original, rather than making both the original and amended decisions available for comparison. Overwritten payment statements make it difficult for claimants to work out what has changed about their award, and present a false narrative of the payments that the DWP has made, as described by one of our interviewees:

*'By looking at that statement, it looked like they'd paid us correctly the first time around on the correct date, which is not what had happened... [I told them] "Well, that's just wrong. You didn't pay me that much on that day. I can show you a bank statement that proves you didn't, but you just changed the statement and have not indicated anywhere that it's been edited... It just changed overnight." The paper trail is just dodgy.'*

### Inadequate reasons for decisions and information

Payment statements and the accompanying guidance for claimants do not contain adequate information about how awards have been calculated. UC has lots of different elements, exceptions and exemptions, but these are not set out if the UC digital system does not recognise them as applicable to the individual even when they might apply. This means that certain groups of claimants, including disabled people and those who have been in homeless accommodation, may unknowingly miss out on their full legal entitlement, as described by an adviser:

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



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**Inaccurate information about appeal rights**

The notifications provided to claimants about their appeal rights do not accurately reflect the legislation. For example, they do not tell claimants about the possibility of applying for a mandatory reconsideration (the first step in appealing) more than a month after a decision, which would be the usual deadline, if they provide a reason for the delay. The consequences of this lack of transparency could include decisions going unchallenged if claimants wrongly believe deadlines have expired and cannot be extended, or claimants failing to provide reasons why they could not apply for a mandatory reconsideration within the one-month period, as is illustrated by this case study from the Early Warning System:

*‘After I started my new job, I didn’t see the need to be logging on to my journal [part of the UC online account] as I had told them to remove me from the system. A few weeks ago, I received a letter that said I had been overpaid £4,000 which I was totally shocked about... I logged on to my journal and saw a few messages explaining to me about the so-called “overpayment”... I could not reply to any of these messages on my journal as they said my claim was closed. I rang and they said I needed to fill in a reconsideration letter, which on my journal stated that this form had to be filled in by October, which at this point had already passed, so there seemed nothing I was able to do at this point.’*

**Procedural fairness**

**Gatekeeping mandatory reconsideration requests made via the journal**

A fair and effective dispute process, which includes access to an independent adjudicator, is fundamental if UC is to comply with the rule of law principle of procedural fairness. In UC, claimants must usually request a mandatory reconsideration before they can appeal a decision to the independent First-tier Tribunal. However, the DWP has not built a specific way for a claimant to lodge a mandatory reconsideration request in their UC account. Instead, claimants most commonly request a mandatory reconsideration by writing a note in their online journal (or they can call the UC helpline). Our research suggests that the informal communication style of the UC journal can encourage DWP officials to act as ‘gatekeepers’ to the mandatory reconsideration process. One of the common reasons for gatekeeping is simply because the DWP official believes the decision to be correct, as is described by one of the advisers interviewed for this research:

*‘Often there are times, when you go on your journal and you say, as a claimant: “I believe I’m entitled to this. Please could you sort it out,” you just get fobbed off. There’s a particular way that all the case managers seem to communicate, which is very much just a, “We are right, you’re wrong.”... It’s not communicated as being a decision. It’s not communicated as something against which there is any discussion or right of review or appeal. It’s just... “No, no, we’ve calculated your award correctly.”... They say things like that all the time.’*

As a result of gatekeeping, claimants can be dissuaded from pursuing a challenge before a DWP decision maker has ever had the opportunity to formally reconsider the decision, let alone the independent tribunal. Our research has found that the lack of separation between using the journal for informal communication (such as rearranging appointments) and for the formal mandatory reconsideration process, which has particular legal significance, is unreliable and ineffective. This barrier to requesting a mandatory reconsideration is a breach of the rule of law principle of procedural fairness.

**Lawfulness**

Our research found that in UC, unlawful decisions can occur for a number of different reasons: because digital design and implementation choices systematically produce the wrong decisions for claimants in certain situations; because the digital architecture does not accurately reflect the legislative decision-making framework; because certain digital design or implementation choices contribute to repeated errors in human decision making; and because human decision makers apply the law incorrectly with no obvious contribution from the digital design of the system.

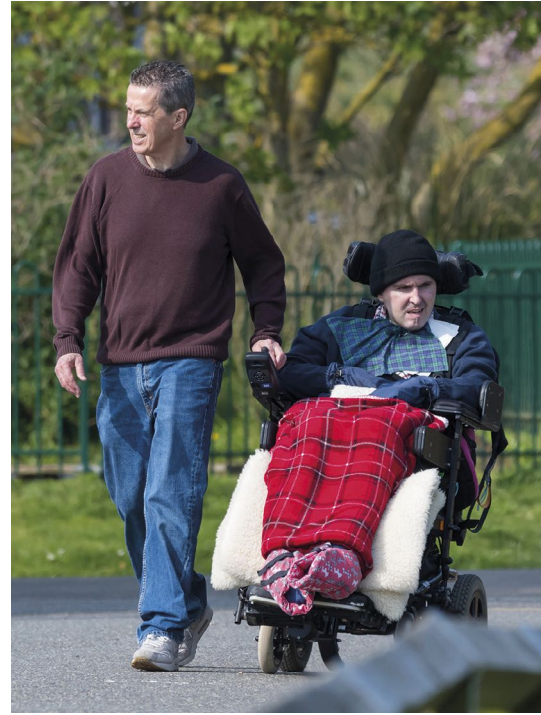
**A failure to use the data available to accurately calculate awards**

As an example of how the digital system can systematically produce unlawful decisions for certain groups of claimants, the DWP has failed to use the data it holds about claimants’ entitlement to other benefits to ensure that the UC digital system automatically calculates accurate UC awards.

First, the DWP has failed to use the information it holds about carer’s allowance entitlement to automatically include the carer element in UC awards for claimants who start receiving carer’s allowance after their UC award has already started. This is despite the DWP taking carer’s allowance into account as income automatically to reduce a UC award accordingly, as described by one of the advisers we interviewed:



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*‘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 [the DWP] 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.’*

Similarly, the UC system is unable to automatically identify when entitlement to contribution-based benefits begins or ends. One of our interviewees described having to contact the DWP every month for five months to have her contributory jobseeker’s allowance (JSA) removed from her UC award calculation as she was no longer receiving it:

*‘They said the JSA and UC are not linked together or there is a system error or whatever. But I really don’t care... it’s up to them to make sure it’s right, not for me to calculate it every month. I should be able to just receive the money in my bank, pay my bills and that’s it, but what I was doing was checking it every 28th, when the statement come through, and having to tell them: “You’ve done something wrong.” And then hoping they’ll fix it by the time I get paid.’*

As a result of this failure to use the data available, certain groups of claimants miss out on their full entitlement. Those who identify that an error has been made in their award calculation then face an administrative burden while they attempt to challenge incorrect decisions.

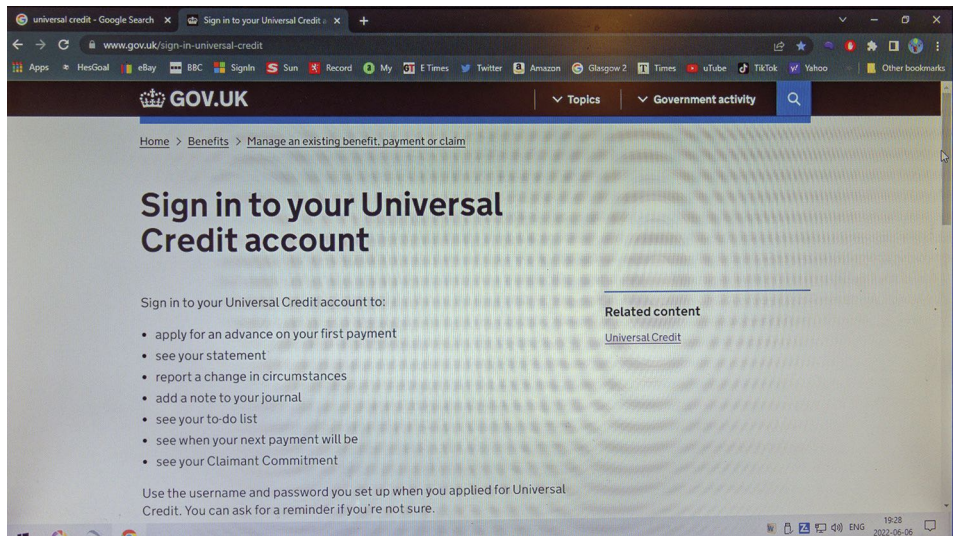
## Digitalisation of UC has undermined the rule of law

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

We are particularly concerned that claimants who are entitled to additional elements, or exemptions or exceptions from the standard rules in the UC legislation for their particular circumstances, are more likely to be affected by the issues raised in this research. These people include claimants with health conditions or disabilities, and carers. This is because the UC system does not reliably capture all it needs to calculate an award, and claimants are missing out on entitlement as a result.

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

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*Some relatively low-cost changes to the UC digital system would improve compliance with the rule of law, such as adding a specific 'request a mandatory reconsideration' function in the online account.*

## Opportunities for improvement

Digitalisation presents opportunities to improve public services, and UC is no exception. Our research has found that there are many potential benefits of digitalisation for UC claimants, however these have not been fully realised. There are also opportunities to improve compliance with the rule of law, rather than reducing it. This can be achieved with some relatively low-cost changes to the UC digital system, which CPAG will be recommending to the DWP. These include providing additional information about the reasons for decisions, changing the digital system so payment statements

are not overwritten, and introducing a specific 'request a mandatory reconsideration' function within the UC online account.

To read our full research report and complete list of recommendations, see [cpag.org.uk/reports](http://cpag.org.uk/reports) (available end of June).

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