



FALLING THROUGH THE NET

18 December 2020

This is the first in a series of bi-monthly briefings, *Falling Through the Net*, which highlight some of the **persistent gaps in support** that exist for children and families affected by the COVID-19 pandemic. Evidence of these gaps is drawn from our Early Warning System (EWS) which collects case studies from frontline practitioners working directly with families on the problems they are seeing with the social security system.

This *Falling Through the Net* series follows on from our *Mind the Gaps* briefing series, which documented the problems experienced by families during the COVID-19 pandemic.¹ While some of the issues raised in *Mind the Gaps* have been resolved with quick policy fixes, it is clear that the vast majority of issues are long-standing problems affecting people using our social security system. These issues, still unresolved, are now affecting people in far greater numbers as more people seek help from social security to get by.

The issues outlined in this briefing are a selection of some of the 'top issues' emerging through the EWS. It is important to note that these briefings are not designed to capture everything we are seeing; instead the *Falling Through the Net* briefing series will feature different issues each week and return to issues that need urgent attention where necessary.

Migrants locked out of the benefit system

In the *Mind the Gaps* briefing series, the experience of migrants being locked out of the benefit system featured numerous times. The EWS continues to receive a high number of cases of migrants who are experiencing problems claiming benefits due to complex rules regarding the right to reside (in the case of EU nationals),² or who are simply unable to claim because their immigration status makes them ineligible. As the case studies below illustrate, claimants are sometimes incorrectly told by the Department for Work and Pensions (DWP) that they are

¹ A summary of the *Mind the Gaps* briefing series can be found [here](#).

² The habitual residence test is a two-part test for migrants (whether they are EU nationals, third party nationals or returning British citizens) to pass in order to access certain benefits. To pass the test, migrants must have an appropriate "right to reside" and be "factually habitually resident" in the UK. It can be very difficult for EU nationals who have not yet obtained settled status under the EU Settlement Scheme to meet the right to reside test unless they meet one of the following requirements:

- They are currently working;
- Having been workers they retain worker status because they are recently unemployed and have registered at the Jobcentre, or are temporarily unable to work due to illness;
- They are a family member of someone with worker status.

not eligible to claim benefits only to have those benefits awarded once a claimant appeals the original decision. It is extremely concerning that people who are eligible to claim benefits experience such difficulty getting support from the social security system, especially when many people cannot financially support themselves through work because of the Covid-10 pandemic. CPAG is concerned that this is an issue affecting an increasing number of families. Information shared by the DWP at an external stakeholder workshop on 17 November indicated that universal credit (UC) applications that require a habitual residence test³ (HRT) are double what they were prior to the pandemic.

An EEA⁴ national came to the UK in 2001 and has been in and out of work over the past five years. His last job ended in late 2019 and he hasn't had any income since then. His application for UC was refused in February 2020 because the DWP decided he did not satisfy the HRT. He became homeless as a result and was accommodated in April 2020 due to the pandemic. He is still unclear about which benefits he might be able to claim.

An Italian national came to the UK in March 2019 and worked full time in the hospitality industry until September 2020. His employer then offered him a zero-hour contract and said that they could not guarantee any hours due to the pandemic. He did not accept the contract and applied for UC instead. His claim was refused. The DWP decided that he didn't pass the HRT, and that he could not retain his 'worker' status because he was not involuntarily unemployed. He has been looking for work since but he has had no luck. He will have no income unless or until the HRT decision is reversed.

A Greek couple have been in the UK with their adult daughter since 2019. The father is pension age and not working. The mother has a zero-hour contract cleaning for McDonald's. Before lockdown, she worked two days a week. Since then, her hours have been reduced drastically. Their daughter works 24 hours a week. Their UC claim was rejected because the DWP decided the couple were not working enough to satisfy the HRT. Their adviser suspects the DWP decision may be wrong because the mother's work may well count as "genuine and effective" despite the low number of hours, or because the mother may have retained 'worker' status from a previous job, or because the couple may derive a right to reside from their working daughter.

A Spanish woman came to the UK three years ago. She lived with her partner and worked full time in a restaurant until her job ended in March due to the pandemic. She had a baby in June. In September, her partner left the family. She worked for a month in October until the second lockdown put a stop to that too. She has pre-settled status and has been refused UC three times because the DWP have decided she does not satisfy the HRT. Until she sought advice, she was unaware that she could claim maternity allowance and she has had no income except for child benefit.

In 2010, a man came to the UK from Italy and started self-employment as a mini-cab driver shortly afterwards. He and his wife went abroad in January 2020 to care for her sick mother. They were due to return in March, but their flight had to be rearranged when she exhibited COVID-19 symptoms and the next two flights were cancelled due to the lockdown. He returned to the UK in August but hasn't had any work since. He applied for UC in November but the claim was rejected. The DWP decided that he did not satisfy the HRT even though he had attained permanent residence (from his five years of continuous self-employment in the UK).

³ See footnote 2 for an explanation of the habitual residence test. For further information about the habitual residence test see the latest [EWS E-bulletin](#) (November 2020)

⁴ The European Economic Area (EEA) includes all EU countries and some countries that are not in the EU; Iceland, Liechtenstein and Norway.

Ill and disabled claimants losing out on entitlement

In May 2020, CPAG reported on the issue of claimants who were in receipt of personal independence payment (PIP) being refused an extension of their award because it had been made by a Tribunal.⁵ Most claimants of PIP could access an automatic extension because assessments had been temporarily suspended due to the pandemic. However some claimants of PIP were disadvantaged and in some cases left without any income at all because their benefit award had been made by a Tribunal. After this issue was raised by CPAG and other organisations working on behalf of claimants, the DWP took action to resolve this disparity and all claimants of PIP were entitled to an extension.⁶

In July, the DWP confirmed that face-to-face assessments would remain suspended and that they would announce any changes to this in due course.⁷ This announcement did not clarify if the DWP would automatically extend awards that were due to expire, but evidence submitted to the EWS indicates that this is what has been happening in practice. However, in recent weeks the EWS has received a handful of cases which appear to show that the DWP has reverted to its previous position of refusing to extend awards that were made at Tribunal. Losing a PIP award can have a knock on effect on entitlement to other benefits, so people in this position may lose their exemption from the benefit cap for example,⁸ or their carer may lose their entitlement to carer's allowance – placing further strain on household finances.

A man with a learning disability, who was in receipt of PIP, only became aware that his PIP award expired in November 2020 when the payments stopped. He had not been invited to renew his claim prior to it expiring. When an adviser helped him contact the DWP to check his award would be extended as happens to other claimants, the DWP told him that it couldn't be extended because they can't change awards made by a Tribunal. He has been forced to start a new claim but he is worried it will take a long time for PIP to be awarded, especially in light of the pandemic and the possibility that an appeal will be required (again) to obtain the award.

A woman who has disabled children, and receives PIP, wasn't warned that her payments would stop in September 2020. She asked the DWP to extend her award but they said they couldn't "because it was awarded by a Tribunal". She made a new claim immediately in September and is still waiting for an assessment. In the meantime, she has had to make ends meet with £80 a week less. Her adviser has helped her to raise a complaint and liaise with her MP to speed up the reassessment process, but they note that this may not be possible for many claimants affected by this issue.

In previous *Mind the Gaps* briefings⁹ we reported on the issue of ill and disabled claimants losing out financially as a result of delays in work capability assessments. Although the DWP has said that assessments haven't stopped,¹⁰ and that paper-based and telephone assessments will continue to take place, this does not appear to reflect the experience of claimants. The EWS continues to receive case studies regarding claimants who have experienced significant delays getting an assessment, causing financial hardship for many as a result.

Put simply, claimants who do not yet have limited capability for work (LCW) or limited capability for work-related activity (LCWRA) status in their UC claim may be missing out on hundreds of pounds each month due to this delay in assessments. LCW and LCWRA adds a work allowance against which claimants' earnings are offset before

⁵ [Mind the Gaps 4](#), 7 May 2020

⁶ See the [response by the Minister for Disabled People, Health and Work](#), to questions on 11 May 2020, Hansard, House of Commons.

⁷ [Face to Face assessment suspension continues for health and disability benefits](#), July 2020

⁸ Claimants of certain disability benefits, including PIP, are exempt from the benefit cap.

⁹ See [Mind the Gaps 7](#) and [Mind the Gaps 13](#)

¹⁰ See [Parliamentary question UIN 43596](#), tabled on 5 May 2020

entitlement is reduced – providing a much-needed boost to the income of sick and disabled people. LCWRA status also adds an additional amount to a claimant’s UC payment, to reflect the fact that they cannot work, or can work in a very limited capacity, because of a health condition or a disability. LCWRA also means claimants are exempt from the benefit cap, which can reduce entitlement considerably.

A man who was in receipt of contributory employment and support allowance (ESA) was advised that his award would come to an end on 13 November 2020. The man had undertaken a paper-based/telephone work capability assessment earlier in the year and was advised that they could not make a decision without a face-to-face assessment. He cannot attend a face-to-face assessment at present due to the pandemic, and his contributory ESA award has expired. The job centre has advised that he has no right to appeal. He is not eligible for means-tested benefits.

A man who claimed contributory ESA waited over a year for a work capability assessment, by which point his ESA had expired. He couldn't claim UC due to his partner's income and capital. His adviser has been helping him to challenge the delay and obtain a decision, which is now subject to judicial review.

A woman with mental health problems and Cushing’s disease claimed UC in July 2018. She provided lots of medical evidence but hasn't been assessed for LCW despite repeated attempts to attend a work capability assessment. The woman was hospitalised with a panic attack on the way to one assessment, then got a late notification for the second assessment and no notification for the third assessment. The job centre manager has said she had to wait her turn. When the woman challenged the decision she was awarded LCWRA and £8,000 in backdated awards.

Claimants who are awaiting, receiving or recovering from cancer treatment are automatically entitled to the LCWRA element in UC. However, case studies submitted to the EWS show that claimants with cancer are missing out on vital financial support during this time.

A claimant with cancer who has been receiving chemotherapy hasn't had a work capability assessment in a year and she has completed three UC50 forms during this time.¹¹ After the last UC50 wasn't received, the Centre for Health and Disability Assessments said the file was closed as the form was not returned and they cannot extend a deadline, or open a closed referral. She has been waiting for LCWRA status for a year.

Families affected by the benefit cap

In previous *Mind the Gaps* briefings we have raised the issue of families being affected by the benefit cap.¹² Unemployment figures published this week show record numbers of people have been made redundant as a result of the pandemic, an indication of an increasingly challenging job market.¹³ The benefit cap, which is supposed to incentivise people to find work, is illogical in the context of mass unemployment. It is currently difficult, if not impossible, for some people, particularly parents with caring responsibilities, to find work.

Furthermore, the grace period – which gives newly unemployed claimants a nine-month exemption period before they are affected by the cap – does not cover many people working in low-paid jobs. To be covered by the grace period you must have earned above a certain earnings threshold (16 hours a week at national living wage in most cases) on a consistent basis over the last twelve months. This does not reflect the reality of many people’s working lives, where they may be working inconsistent hours on zero-hour contracts, or they may need to take periodic

¹¹ A UC50 form is a work capability questionnaire that claimants are required to fill out in advance of a work capability assessment.

¹² See [Mind the Gaps 2](#), [Mind the Gaps 5](#), [Mind the Gaps 8](#), and [Mind the Gaps 11](#)

¹³ [UK redundancies rise to record high amid second Covid-19 wave](#), 15 December 2020, Guardian

breaks in employment, for example over the school holidays, to care for children. The EWS continues to receive case studies regarding families affected by the cap and the financial hardship they are experiencing as a result.

A couple lives with their four children. The father was working in two jobs up to October 2020 when he became unemployed. When the couple claimed UC, they were immediately subject to the benefit cap. The grace period did not apply to them because there was one month in the preceding twelve when their earnings were below the £604 threshold, as the father had been off work through sickness.

A couple with two children are benefit capped. The father's work stopped in March due to the pandemic. The mother's work continued but she now has fewer hours, so her earnings have dropped below the £604 earnings threshold. Once their rent is paid directly to their landlord and other deductions are made (for debts), the family don't receive anything from their UC payment. They are reliant on discretionary payments and charity hand-outs to feed their children and meet other essential living costs.

A woman with four children lives with her partner, who was working full time before he lost his job due to the pandemic. The couple were advised to claim UC and were immediately benefit-capped, despite being told they wouldn't be by DWP staff. The grace period didn't apply to them. Even though the partner had been earning over the £604 per month threshold if his earnings are averaged over the year, there were two months in the last twelve when he was caring for a sick relative and had no income at all. Once their rent is paid, the family have very little left. They are living hand to mouth and are relying on food bank vouchers and help from charities.

A single mother of three is subject to the benefit cap. She applied for a discretionary housing payment (DHP) towards her rent, so that more of her UC award could be used for immediate living costs such as food and energy. However, the local authority refused to award the DHP. They said there was no shortfall to meet because her rent was paid in full directly to her landlord out of her UC award. This is not strictly compliant with DWP guidance on the administration of DHPs but appears to be the approach of numerous local authorities.

As the full scale of the economic crisis caused by COVID-19 unfolds, increasing numbers of families will be affected by the benefit cap. Many people face long-term unemployment, or underemployment. For those families who have been protected by the grace period, nine months is not enough. We can expect tens of thousands more families to feel the harsh effects of the benefit cap in coming months.

Conclusion

All of the issues raised in this first *Falling Through the Net* briefing have been raised previously in our *Mind the Gaps* briefing series. These are examples of persistent problems experienced by families accessing the social security system that urgently need to be resolved. It is hoped that by continuing to bring attention to these problems in 'real time', with up-to-date evidence from the EWS, we can help families get the support they need.

About CPAG

Child Poverty Action Group 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.

About the Early Warning System

Our Early Warning System helps us get a better understanding of how changes to the social security system are affecting the lives of children and families. We gather information from advisers about the experience of children and families. This intelligence informs much of our policy, research and campaigning work, and also feeds into the advice we give frontline advisers.

The [Early Warning System in Scotland](#) is supported by the Children, Young People and Families Early Intervention Fund, managed on behalf of the Scottish Government by CORRA foundation. The [Early Warning System in England, Wales and Northern Ireland](#) is made possible by the support of Oak Foundation, Barrow Cadbury Trust and The Mitchell Charitable Trust. The *Falling Through the Net* briefing series is also being supported by the Nuffield Foundation, increasing the capacity of the Early Warning System to effectively monitor the impact of COVID-19 on children and families, and identify issues with the social security response as they emerge.

Thank you to everyone who has contributed to our Early Warning System – to every adviser who has submitted a case and to rightsnet which hosts invaluable benefit forums for advisers.