



COMPUTER SAYS 'NO!'

Stage two: challenging decisions

July 2019

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About Child Poverty Action Group

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.

About CPAG's Early Warning System

Our Early Warning System helps us get a better understanding of how changes to the social security system, including the introduction of universal credit, are affecting the lives of children and families. We gather information from advisers about the experience of children and families, and identify recurring problems. This intelligence informs much of our policy, research and campaigning work on universal credit, and also feeds into the advice we give frontline staff through our training, publications and advice service. The Early Warning System is made possible by the support of Oak Foundation and Barrow Cadbury Trust.

For further information or to submit cases to the Early Warning System, please visit <http://www.cpag.org.uk/earlywarning-system>.

Contents

Contents.....	2
Foreword.....	3
Summary	4
Submitting a mandatory reconsideration request	4
Receiving a mandatory reconsideration notice	5
Proceeding to a tribunal.....	5
Recommendations for the DWP.....	6
1. Introduction	7
2. Challenging decisions: what the law says.....	8
Universal credit: a decision-based system.....	8
Claimants are not required to be experts.....	9
3. Challenging decisions: the problems claimants experience.....	10
Submitting a mandatory reconsideration request	10
Acceptable routes	10
Refused claims.....	13
Dissuading mandatory reconsideration requests.....	15
Refusing a mandatory reconsideration request pending further evidence.....	16
Refusing a mandatory reconsideration request, raising a 'real-time information' dispute only	18
Refusing a mandatory reconsideration request, directing to change of circumstances instead.....	19
Two-tier 'problem-solving' acts as a gatekeeper.....	21
Consent	22
Receiving a mandatory reconsideration notice.....	24
Timescales	24
Lost requests	26
Failure to provide a mandatory reconsideration notice.....	27
Locating a mandatory reconsideration notice on the online account.....	27
Proceeding to a tribunal.....	28
Switch from electronic to paper.....	28
4. Conclusion and recommendations.....	29
Recommendations for the DWP.....	29
Advice for welfare rights advisers	30

Foreword

Child poverty is not inevitable, but it is currently a reality for millions of children in this country. Childhoods are blighted, families endure severe hardship and its effects can last a whole lifetime, consigning children to poorer health and poorer life chances in their adult years.

Child Poverty Action Group (CPAG) has worked tirelessly over many years to devise solutions to this scourge. High on the list is the ability of the social security system to step in where necessary, to prevent families from falling into poverty and to protect the most vulnerable in society. But that system needs to function properly. High on the list too is the ability of those charged with making decisions about social security benefits to get those decisions right, and the ability of those affected to challenge any decisions.

Universal credit (UC) is posing particular problems in this respect. The most recent government data show that an alarming 63 per cent of people's appeals against decisions to deny them financial support were successful, leading to the decision being overturned.¹ Too many decision makers are getting it wrong the first time, with an obvious and serious impact on people who are already disadvantaged and in desperate need. But the really worrying factor is that these successful appeals are just the tip of the iceberg. Many people are getting lost in the quagmire of the appeals process. Understandably, they lose confidence in the system and give up. Erroneous decisions therefore stand, to the detriment of individual families and to society as a whole.

The law values finality, but our system of justice recognises that appeals are a fundamental part of due process. If, due to complexity, inflexibility or incoherence, the appeals process in UC cases is almost impossible to understand and to pursue effectively, incorrect decisions go unchallenged and suffering is prolonged. Children fall through that safety net and our system of justice is undermined.

This second *Computer Says 'No!'* report from CPAG is therefore greatly to be welcomed, building as it does on the findings from the first report in this series, on information provision relating to UC. This report draws attention to the unacceptable scale and range of difficulties and systemic failures currently being experienced by those who attempt to challenge decisions they believe to be incorrect; and there are clear, practical and realistic recommendations on what the Department for Work and Pensions needs to do urgently to put matters right.

The original comedy sketch, which gives this series of reports its fitting title, represented not only faceless decision making on the basis of stored but inaccurate information, often in the face of common sense, but also an element of deliberate unhelpfulness towards service users, whereby more could be done, but is not being done to help them. Much more must now be done to enable those who wish to challenge a decision to do so effectively and without delay. The right to appeal against an adverse decision is an important part of respect for individual dignity, for the accuracy, predictability and consistency of decision making and, ultimately, for the rule of law.

Dame Laura Cox DBE (former Justice of the High Court)

Summary

This report is the second in a series looking at problems with understanding decisions, challenging errors and protecting the rights of people claiming universal credit (UC). It outlines some of the problems claimants experience when they try to challenge a decision about their UC award. These problems have been identified by analysing case studies received via CPAG's Early Warning System (EWS).

The first *Computer Says 'No!'* report focused on problems with the information provided to claimants about their UC award. It concluded that claimants are not being provided with sufficient information to understand their entitlement, and that the Department for Work and Pensions (DWP) is failing in its legal duty to provide adequate information to over two million claimants each month about how and when to challenge a decision they do not agree with.

This report focuses on the process of challenging a decision. Using evidence from the EWS, it shows that for those claimants who are able to overcome the initial obstacles of making sense of their UC award and identifying how to challenge a decision about it, there can be further trouble ahead.

We have seen examples of claimants experiencing difficulties at every stage: when trying to submit a request for the decision to be looked at again (a mandatory reconsideration); on receiving a mandatory reconsideration notice; and when they try to proceed to the next stage of the process (appealing to an independent tribunal). Claimants face a range of barriers, including being dissuaded from making a challenge, being required to provide documentation or submit the application in a certain form, and being diverted down another route that is not appropriate in the circumstances. Claimants who *are* able to make a mandatory reconsideration request can then experience long delays before they receive a mandatory reconsideration notice. In some cases, they do not receive a notice at all, or it is provided in the wrong format. And claimants who wish to proceed to a tribunal are required to move to a paper-based system after being required by the DWP to manage their UC claim online.

Summarised below are some of the problems experienced by claimants when they try to challenge a decision about their UC award.

Submitting a mandatory reconsideration request

- **Acceptable routes.** Some claimants have their request for a mandatory reconsideration refused on the basis that they are not following the correct process. This is contrary to the DWP's own guidance, which is clear that any communication with the DWP (via the online journal – the main way UC claimants are required to manage their claim – via phone or via letter) that indicates that a claimant would like a decision to be looked at again is a request for a mandatory reconsideration.
- **Refused claims.** When claims are refused by DWP officials before the first payment is made, it is very difficult for claimants to challenge these decisions because previous online accounts often cannot be accessed and claimants are required to start a new claim before they can send an online message querying the refusal, delaying the resolution of the issue even further.
- **Dissuading mandatory reconsideration requests.** Some claimants are dissuaded by DWP officials from requesting a mandatory reconsideration for various reasons. Examples include being told that the request is unlikely to be successful, or that the decision is not appealable (in circumstances where it is), or being encouraged to have a journal chat with their work coach instead of trying to resolve the issue via formal channels.

- **Refusing a mandatory reconsideration request pending further evidence.** Some claimants are told by DWP officials that their request for a mandatory reconsideration will only be processed once certain evidence is provided. This is not lawful. In some cases, claimants cannot provide this evidence, effectively halting the request indefinitely.
- **Refusing a mandatory reconsideration request, raising a 'real-time information' dispute only.** In situations in which claimants believe errors have been made about the calculation of their earnings, some claimants are told that the issue is a 'real-time information' (the information feed from HM Revenue and Customs (HMRC) on UC claimants' earnings) dispute and that they should not submit a request for a mandatory reconsideration. Claimants are entitled to make a request in addition to pursuing a 'real-time information' dispute; the two processes are not mutually exclusive.
- **Refusing a mandatory reconsideration request, directing to change of circumstances instead.** This has consequences for historic errors in relation to UC awards, as a change of circumstances only changes an award going forward. This means that claimants can lose out on back payments to which they are legally entitled, and which can help address debts accumulated as a result of the error.
- **Two-tier 'problem-solving' acts as a gatekeeper.** The DWP makes some claimants go through a 'problem-solving' stage (known as 'simple decisions') before they are allowed to submit a request for a mandatory reconsideration. This additional step is not set out in regulations and delays the appeals process.
- **Consent.** Welfare rights advisers experience problems when trying to submit challenges and resolve issues on behalf of claimants. Advisers are told that they do not have consent to act for a client, contrary to the DWP's own guidance.

Receiving a mandatory reconsideration notice

- **Timescales.** Some claimants experience significant delays (of up to 26 weeks, in some cases) in receiving a mandatory reconsideration notice once their request has been submitted.
- **Lost requests.** Some claimants have made mandatory reconsideration requests by post that have been lost by the DWP, causing significant delays.
- **Failure to provide a mandatory reconsideration notice.** Some claimants are provided with a journal entry, rather than a formal mandatory reconsideration notice, in response to their mandatory reconsideration request. If these journal entries do not include information about appeal rights this is unlawful, and it can cause further difficulty for claimants looking to proceed to the next stage of the appeals process as they lack the necessary paperwork.
- **Locating a mandatory reconsideration notice on the online account.** The letter notifying claimants of the outcome of their mandatory reconsideration request is provided via their online journal, sometimes with no indication it contains a mandatory reconsideration notice. Letters can also be difficult to locate on the UC online account, with no central place for letter communication from the DWP.

Proceeding to a tribunal

- **Switch from electronic to paper.** Claimants are required to submit their appeal application on paper, after being required by the DWP to manage their claim online. The switch to a paper-based appeals system can cause added difficulties for claimants trying to exercise their appeal rights.

Collectively, these problems contribute to claimants losing confidence in a system that should be helping them. Errors in decision making go unresolved and claimants' hardship can be prolonged, with no easy way to fix the situation. Children and families can be left without any income for months on end. Ill and disabled people can be required to look for work they cannot find or maintain. Debts can accrue and housing can be put at risk.

The DWP must address these issues as a priority, and we welcome the steps that have already been taken (outlined in this report) to fix some of these problems. The report concludes with a set of recommendations, which are also set out here, for further steps that would improve the current situation.

Recommendations for the DWP

- Take further steps to educate its workforce on the various options for making a mandatory reconsideration request, so that claimants are supported to use the route that best suits their circumstances (online, over the phone or by post).
- Investigate and address the problems with receiving and processing mandatory reconsideration requests submitted by post.
- Publicise the different routes for making a mandatory reconsideration request across the DWP access points (via advisers and work coaches, as well as on gov.uk and online statements).
- Allow access to refused claims after a new UC claim has been started.
- Ensure that mandatory reconsideration notices are issued in all circumstances where a revision has been considered.
- Monitor, transparently report and improve mandatory reconsideration processing times.
- Implement the Information Commissioner's Office recommendations on the current UC consent policy, and continue to work with the Social Security Advisory Committee to improve the policy overall.
- Ensure the UC consent policy is consistent with the legacy benefits consent policy, which included the provision for implicit consent.
- Make changes to the UC online account, so there is a central place for decision letters, including mandatory reconsideration notice letters.
- Provide claimants with a hard copy of their mandatory reconsideration notice letter, as this is essential for those who wish to appeal to an independent tribunal.

In addition, the DWP should draft guidance and implement training for DWP staff in order to:

- Keep claimants updated on mandatory reconsideration processes. Once a request has been made, DWP staff should inform claimants about timescales and provide regular updates on how their request is progressing.
- Assist claimants to progress their mandatory reconsideration request in a practical and timely manner – eg, tell them how to provide further evidence and what to do if this cannot be provided.
- Ensure DWP staff recognise that mandatory reconsideration is an appropriate route to challenge decisions based on real-time information, as well as using the real-time information dispute procedure.
- Ensure DWP staff understand the appeals process and how their decisions fit into the current framework, including understanding the difference between a revision and a supersession, and the importance of informing claimants about their appeal rights at the necessary stages.
- Support staff to seek advice in circumstances where they are unsure whether a mandatory reconsideration request is possible – eg, where they think the time limit has expired.

1. Introduction

Entitlement to universal credit (UC) is governed by law. All decisions regarding entitlement, including the amounts, should be made in accordance with strict legal requirements. These permit claimants to challenge and appeal those decisions, where appropriate. However, the Early Warning System (EWS) has received cases that illustrate failures in the UC system to comply with these requirements, and which discourage or prevent claimants from challenging decisions they believe to be wrong.

Furthermore, welfare rights advisers and claimants have informed CPAG about persistent delays in the mandatory reconsideration and appeal process. Where a problem has arisen in relation to a UC award, particularly when it appears that a claimant is financially worse off than s/he should be through no fault of her/his own, it is reasonable to expect the DWP to resolve the issue promptly. The financial support provided via UC is set according to the minimum subsistence levels the government considers necessary for claimants to meet their basic needs, and it is unfair to delay correcting an award if this amount is incorrectly reduced or denied.

Inhibiting people from exercising their right to appeal, whether by discouraging or preventing challenges from being raised, or by allowing lengthy and unnecessary delays, is a serious concern. If people do not receive their correct entitlement of UC, they may struggle to pay their rent, feed their children, or cover basic living costs. The longer these situations go unresolved, the more severe the impact is for children and their families.

There are broader concerns too. The existence of appeal rights, and ensuring that people have access to those rights, is the cornerstone of a healthy democracy. It helps ensure that the government acts in a way that is lawful, transparent and accountable. Failing to uphold these basic legal principles in the UC system, where the day-to-day lives of claimants, and their very survival, is directly affected by DWP decision making, sets an extremely worrying precedent.

It must be a priority for the DWP to resolve the problems outlined in this report. We conclude with a number of recommendations for how to improve the current system. The report also includes some practical advice for welfare rights advisers who work with claimants experiencing some of the problems featured in this report, while we await the urgent changes that are needed to the UC system as a whole.

2. Challenging decisions: what the law says

Universal credit: a decision-based system

UC, like any other social security benefit, is a decision-based system. The Social Security Act 1998 states that it is the duty of the Secretary of State for Work and Pensions to make decisions about any claims for benefit.² In practice, that duty is delegated to decision makers at the DWP.

The only way in which someone can be awarded UC is by a decision. Once a person has been awarded UC, the amount of her/his ongoing entitlement can only be changed in one of two ways:

- **Revision.**³ A revision completely remakes the original decision and changes a person's entitlement from the same date the original decision took effect (or should have taken effect). Usually, a revision is made when the original decision is accepted as having been wrong.
- **Supersession.**⁴ A supersession typically changes a person's entitlement from a date *after* the original decision took effect. The supersession of an original decision does not imply that the original decision was wrong. Usually, a supersession occurs because the amount of the award is no longer appropriate – eg, because a claimant's circumstances have changed.

Revisions and supersessions are decisions, and detailed rules set out the circumstances in which a decision can be revised or superseded.

The way this decision-based system operates is critical in order to ensure that the UC system correctly functions as a rights-based system, subject to the rule of law. Decisions are 'final' unless they are changed by revision or supersession (or appeal). This provides a guarantee to claimants that the way in which their entitlement is decided, and then altered, is through a conscious system of decisions which can be identified and, if necessary, challenged.

Social security: the importance of a decision-based system

'A further principle underpinning the 1998 Act is that decisions taken by the Secretary of State are final, subject to the provisions of that part of the 1998 Act and the Tribunals, Courts and Enforcement Act 2007 (see section 17(1) of the 1998 Act). In effect, this provision embodies the rule of law. Outcome decisions cannot be arbitrarily changed. Rather, they can only be changed by the statutory mechanisms of revision, supersession and appeal, each of which is subject to specific statutory controls.'

(see the majority decision in *Wood v Secretary of State for Work and Pensions* [2003] EWCA Civ 53, reported as R(DLA) 1/03).

Upper Tribunal Judge Wikeley, *AI v SSWP (PIP)* [2019] UKUT 103 (AAC)

For the system to operate properly, the DWP's administrative processes (including the computer system) must be underpinned by these principles. It is also essential that staff understand them and how to administer a claim correctly.

All decisions, whether on new claims, on revision, or on supersession, must be notified to the claimant. Where an explanation for a decision is requested, this must be provided to the claimant. Claimants should then be in a position to challenge a decision about their entitlement where they disagree.

Appealing a decision: a two-stage process

Decisions on new claims and supersession decisions can be changed by a revision if the claimant applies for a 'mandatory reconsideration'. A mandatory reconsideration is the first step in the appeals process: a claimant must apply for a revision which must be considered by the DWP, and the outcome communicated to the claimant via a mandatory reconsideration notice.

If a claimant does not agree with the mandatory reconsideration notice, usually s/he then has a right of appeal to an independent tribunal. Claimants must go through the mandatory reconsideration process before they can make an application to an independent tribunal. If a claimant's right to request a mandatory reconsideration is frustrated, in the vast majority of cases her/his access to a tribunal is effectively blocked.

The mandatory reconsideration stage of the appeals process is an internal process introduced by the DWP in 2013. Previously claimants could appeal directly to an independent tribunal. While CPAG welcomes the swift resolution of issues for claimants, problems with the **mandatory reconsideration** process have been apparent in the EWS for years, and this report builds on earlier findings.⁵ Having access to an independent body that can scrutinise decision making on behalf of claimants is essential to the social security appeals system.

Claimants are not required to be experts

Claimants are not expected to know the minutiae of how decisions can be changed. They need not specify that they are applying for a revision or supersession, but must simply identify the relevant decision, and state that they want it to be looked at again.

Exercising appeal rights: claimants do not have to be experts in the law

'... Appellants often have difficulty in identifying the decision or decisions which they should appeal... In my judgement the approach to be adopted is that, once the appellant has expressed a grievance in the letter of appeal, it is then for those more knowledgeable with the process, be they officers of the DWP or tribunal judges to identify the decision or the decisions which are the source of the appellant's grievance and then to treat the letter of appeal accordingly.'⁶

Upper Tribunal Judge Poynter, (*LJT v SSWP (PIP)* [2019] UKUT 21 (AAC)) quoted by Judge Warren in *CS v Secretary of State for Work and Pensions (DLA)* [2011] UKUT 509 (AAC)

3. Challenging decisions: the problems claimants experience

Cases submitted to our EWS show that claimants experience problems at various stages of the appeal process:

- submitting a mandatory reconsideration request;
- receiving a mandatory reconsideration notice;
- proceeding to a tribunal.

Submitting a mandatory reconsideration request

Acceptable routes

The law does not explicitly state how a mandatory reconsideration request can be made. However, the Secretary of State for Work and Pensions has accepted that any communication with the DWP from a claimant indicating that s/he wants a decision to be looked at again is an application, regardless of whether this is verbal, in writing, or electronic via the UC online account/journal (the main way UC claimants are required to manage their UC claim/award). In a Freedom of Information response, the DWP confirmed that:⁷

All mandatory reconsideration requests are lawful and will be accepted by the Department, including by journal.

The EWS has, however, received case studies where claimants have had their applications turned down on the grounds that they had not followed the correct process, contrary to the DWP's own guidance.⁸

A claimant was found fit for work and submitted a mandatory reconsideration request on his online journal. The DWP refused to accept the online request, directing the claimant to submit it on the phone.

EWS case study, October 2018

A claimant was found fit for work, despite serious concerns about her mental health and emotional stability. Years of trauma and abuse had left her with an anxiety disorder and prone to explosive outbursts, as well as real difficulties in getting out of the house and engaging with other people. She tried to submit a request for a mandatory reconsideration on her online journal and was told to do it by phone. Her benefits adviser disputed this, but the work coach insisted that a call was required to gather evidence.

EWS case study, July 2017

A claimant was refused UC for not having an adequate right to reside as a European Union citizen. He had no income at all. There was no way to submit a request for a mandatory reconsideration online, so he submitted his challenge in writing. However, on following up with the DWP, he was told that a request could not be accepted by post and could only be made by phone.

EWS case study, February 2019

The DWP refused to backdate a claimant's UC award and he was able to challenge the decision by putting a mandatory reconsideration request on his online journal. When he tried to challenge another UC decision, he was told that a different process applied.

He chased up the second request that had been put on his journal with his adviser and was told: 'You and a CAB rep spoke to my colleague earlier. Unfortunately, this call did not cover all the elements we needed to discuss. You are within your rights to request a mandatory reconsideration and I will be happy to do this for you. However, as previously stated, the process must be completed over the phone. Your backdating mandatory reconsideration was raised via the journal as an exceptional last resort. We have tried calling you today, but your phone does not connect. Call us on 0800 328 5644 to enable us to process your mandatory reconsideration request.'

The adviser directed the DWP to its mandatory reconsideration guidance, which states that a mandatory reconsideration may be requested through any channel.

The DWP response was: 'Yes, and we have accepted the request. I was very clear about that. However accepting a request and actually processing it are two very different things. I have tried calling again, however still the call does not connect. To move this ahead Mr X, you will need to call us, or be available to take a call from us.'

The DWP representative was asked why a phone call was necessary and the response was: 'Hi, the document which provides the instructions for the UC mandatory reconsideration process requires a telephone call to have a recording of the decision being explained to the claimant, along with a declaration being read out for the claimant to consent to. I cannot provide the exact wording of this process as this comes from a document classified as Official-Sensitive.'

EWS case study, November 2018

Although the DWP has accepted that a mandatory reconsideration request may be submitted via any route, the internal process for referring the request to a decision maker can impede its progress. The 'Refer to Decision Maker' *pro-forma* provided in the DWP's Freedom of Information response⁹ includes the following step:

Figure 1

1.4 If you are not in conversation with the claimant - call the claimant

Explain the decision to the claimant

- Is the claimant satisfied with the explanation?

- Yes - go to 1.8
- No - go to 1.5

There is no legal requirement to have a conversation with the claimant in order to progress a mandatory reconsideration request. The DWP may wish to ascertain whether a claimant requires an explanation of the decision or whether s/he has further evidence to help it reconsider the decision and to help her/him make an informed decision about the next steps. However, a strict requirement for a conversation with the claimant should not act as a barrier to claimants wishing to exercise their appeal rights.

A request for a mandatory reconsideration should also not be affected by the DWP's separate requirement for a 'claimant declaration'. The DWP may require a claimant to make a declaration about her/his circumstances, in order to check or collate information or evidence in connection with an award.¹⁰ Failing to provide a declaration may conceivably result in the suspension or termination of an award (eg, because the DWP has reason to believe that the information provided is inaccurate or that up-to-date information is required to calculate entitlement), but the requirement should not interfere with the progress of the mandatory reconsideration request itself.

To make matters worse, some claimants who have been told they must contact the DWP by phone have reported long waiting times when they try to do so. In a recent parliamentary question response, average waiting time for answered calls was given as four minutes, 55 seconds.¹¹ This figure is not the full picture, as it does not include time spent working through pre-queue options, nor waiting times for abandoned calls. If the overall picture is similar to that reported in a Freedom of Information response¹² (average waiting time for answered calls of four minutes, seven seconds; the longest exceeding 29 minutes; 12 per cent of calls abandoned before they were answered and of those, the average waiting time was four minutes, 55 seconds), it is clear that the requirement to submit a mandatory reconsideration request by phone has the potential to be an onerous one.

A terminally-ill disabled claimant is reliant on her son to sort out her benefits. He works full time and tries to contact the UC helpline every lunch time. Every day he spends 40 minutes on the phone before he is forced to abandon the call, without ever getting through to anyone.

EWS case study, June 2019

Requiring claimants to jump through various hoops in order to request a mandatory reconsideration (contrary to the DWP's own guidance) causes further delays for people looking to resolve a problem with their UC award. The DWP has made a recent change to its website to inform claimants that they can make a request via a journal entry, but this is of little use if the DWP officials responsible for administering such requests do not recognise this as an acceptable route.

Working with the DWP

After CPAG raised these concerns, the DWP updated the gov.uk website to make it clear that a mandatory reconsideration request may be submitted online by UC claimants, as well as by phone or post. The DWP has assured CPAG that communications to staff have made it clear that mandatory reconsiderations are accepted by journal, phone, in person or in writing and that it will continue to share that message across their workforce.

The "Refer to Decision Maker" pro-forma shared in the DWP's FOI response in December 2018 clearly requires the referrer to be in conversation with the claimant. CPAG is looking into whether this is the most up-to-date version of the pro-forma used in UC, and if so we will encourage the department to consider changing this form as this may be the reason why some claimants are being asked to have a phone call before their mandatory reconsideration can be processed.

Refused claims

The EWS has received numerous case studies regarding claimants whose UC claims have been refused part-way through the claim process and who have then been required to start a new claim from scratch. There is no way to submit a mandatory reconsideration request online in a refused claim. Although claimants may view their journal history, they cannot post messages onto their journal and the only action available is to start a new claim. Once a new claim has started, the history of the refused claim disappears and cannot be accessed at all.

If a claimant believes her/his UC claim has been incorrectly refused, s/he can only challenge the decision by either starting a new UC claim and then entering a request for a mandatory reconsideration on the new journal, or using the less reliable, and more time-consuming, telephone or postal routes.

Starting a new claim disadvantages a claimant who is seeking to challenge a previous refusal and closure, as once the new claim has started, s/he can no longer view the history of the refused claim. Unless the claimant or her/his adviser has had the foresight and capability to screenshot and save all relevant journal entries and letters before starting a new claim, s/he may struggle to identify whether a challenge is appropriate, or to remember or explain why s/he believes the refusal decision to be wrong, without first retrieving records from the DWP via some other route. It is our understanding that information relating to refused claims remains on the DWP system somewhere because it appears in tribunal appeal bundles. However, we have also been told that when people phone to ask what happened to their claim, the person on the helpline cannot see that information.

Where there is a possibility that the DWP has made a mistake in closing a claim, it is imperative that claimants have swift and easy access to the resolution of that potential error. Roughly 130,000 individuals and families are moving onto UC each month.¹³ However, the latest UC statistics indicate that, in May 2019, around 18 per cent of UC 'starts' failed to result in 'claims', and would have presented to claimants as claim closures (before any payment was made).¹⁴ We know from Freedom of Information responses that the reasons for a claim closure at this stage can vary, but are most likely to be due to issues with claim process requirements (eg, to book and attend job centre appointments for identity verification and claimant commitment agreements), rather than non-entitlement.¹⁵ It is therefore likely that a substantial number of people who are entitled to UC are falling at the first hurdle. Having made mistakes or encountered problems in the claim process, their claims are refused and closed without a clear route for challenging that decision.

Claimants who cannot view or access their refused claim also risk making the same mistake or encountering the same problems when they claim again because they cannot review their previous attempt to see what went wrong. These claimants may wait longer for a resolution when a mandatory reconsideration request may have been more effective in getting the problem resolved and could have resulted in an earlier claim start date (which would also have prevented them from losing out on much-needed entitlement).

A claimant received a decision letter on his online journal on 5 December, telling him that he did not have the requisite right to reside to claim UC as a European Union citizen. His benefits adviser helped him to draft a mandatory reconsideration request to place on his journal, but when he logged on, he discovered that his claim was closed from 8 November and he could not add anything onto the journal until he made a new claim. He could not see how making a new claim before the refusal decision had been overturned would help; he would just be facing the same situation again. He had to submit his mandatory reconsideration request to the UC Freepost address.

EWS case study, December 2018

A pregnant 17-year-old tried to start a UC claim after becoming estranged from her parents. The claim was wrongly refused, so she submitted a mandatory reconsideration request immediately on her journal. However, the UC online account was closed soon after and no one responded to the online journal entry. The claimant's benefits adviser helped her send the request by post as well to make sure it was dealt with. In the meantime, the claimant was left in precarious circumstances with no income at all.

EWS case study, August 2018

A young UC claimant had her claim refused on the grounds that she was under 18 years old, before further eligibility checks were carried out. She received no notice of the closure and could not put a mandatory reconsideration request on her journal because it was inactive. The only option available to her was to start a new UC claim, which resulted in the loss of over a week's entitlement and a further week's wait for her first payment.

EWS case study, October 2017

A 55-year-old cancer patient first attempted to claim UC online in December 2018. His claim was refused before he received any payment but he did not understand why. His benefits adviser could not help him check the reason or access his closed claim online because he had started another claim in January 2019 and could no longer access the closed claim. The January 2019 claim was also refused without payment and the claimant tried claiming again in March 2019. Being unable to access details of his past claims makes it difficult for him or his benefits adviser to see what went wrong, to avoid running into the same problems again, and to determine whether the past refusals should be challenged.

EWS case study, May 2019

Working with the DWP

The DWP have assured CPAG that they would look into this issue to determine what might be done.

Dissuading mandatory reconsideration requests

When claimants are trying to make a mandatory reconsideration request, some are being dissuaded from doing so by DWP officials. The EWS has received case studies where claimants have been told that there is no point in making a request because it is not likely to succeed.

A UC claimant with pancreatitis and musculoskeletal problems was dissuaded by a DWP case manager against pursuing a mandatory reconsideration because he was told he was 'unlikely to win'. Citizens Advice is now helping him to challenge four UC decisions (regarding failure to backdate his claim to the date of the first telephone call, a work capability assessment 'fit for work' decision, a claim refusal for failure to attend a claimant commitment interview, and a three-month sanction for a missed appointment). Numerous benefit problems and a lack of recourse have induced what the claimant describes as mental breakdown; he did not respond to communication from his adviser or family members for some months, despite grave concerns about his health and the possibility of self-harm.

EWS case study, March 2019

Other claimants have been prevented from making a mandatory reconsideration request because they have been told that the decision is not appealable, or they have been advised to take another course of action, such as submitting a change of circumstances or entering into an unnecessary journal chat about the issue.

A single mum of two started her UC claim when her partner left the family home. There were no housing costs included in her first payment over a month later, so she could not pay anything towards her rent. She had put her rent onto her online claim and taken her tenancy agreement into the job centre, but when she asked why there were no housing costs included, she was told that the DWP had no evidence of her rent liability. She asked the DWP to change its decision, but was told that the non-inclusion of the housing element could not be appealed. Increasing rent arrears put her family at substantial risk of homelessness.

EWS case study, January 2019

A claimant's housing costs were reduced by a housing costs contribution (a non-dependant deduction), even though no other adults live with her. She submitted a mandatory reconsideration request on her journal, but instead of processing it straight away, the DWP staff asked her why she wanted a reconsideration, then told her that this was inappropriate and that she should submit a change of circumstances instead. Resolving the problem added to the stress of rent arrears building up in relation to her private tenancy.

EWS case study, November 2018

A claimant tried to make a single claim for UC. The claim was refused because the DWP believed he had a partner living with him. He tried to submit a request for a mandatory reconsideration, but the DWP told him that the decision was not appealable.

EWS case study, November 2018

A claimant who requested a mandatory reconsideration of her entitlement, specifically the amount of housing costs used in the calculation, was told that: 'The amount of housing element paid to you was not a decision and therefore unable to have a mandatory reconsideration made against it.'

EWS case study, September 2017

The EWS has also received case studies in which attempts to submit a mandatory reconsideration request have been delayed by DWP officials insisting that the original decision was correct. Other claimants experience difficulties when making a late application for a mandatory reconsideration, even though they have good reasons for the delay.

A disabled mum of two was told that she was fit for work in July 2018. It took her some months to sort out her benefit entitlement for her housing costs in temporary accommodation, which she had to prioritise to prevent herself and her three- and five-year-olds from being made homeless. Her disabilities meant that she should have been in the 'limited capability for work-related activity' group and so receive an additional £328 a month. She had to rely on food bank vouchers and charitable grants to make ends meet. Once her housing costs were finally sorted out and the family had permanent accommodation in January 2019, she requested a mandatory reconsideration of the 'fit for work' decision with an entry on her journal. She included details of why her request was late, but her work coach responded with the message: 'Hello. The mandatory reconsideration for the work capability assessment needs to be requested within one month of the letter being in your journal. Thank you.' She did not receive a mandatory reconsideration notice or information about her appeal rights.

EWS case study January 2019

Regulations are clear that a request for a revision of a decision may be made within 13 months of a UC entitlement decision. The one-month time limit that applies to mandatory reconsideration requests can therefore be extended in certain circumstances (such as the one outlined above), where claimants can demonstrate good reasons for the delay. Furthermore, even if the DWP does not accept that a claimant has a good reason for making a late request and therefore refuses to reconsider the decision, in a case represented by CPAG a three-judge panel of the Upper Tribunal established that the claimant will, nonetheless, retain a right of appeal against the original decision.¹⁶

Working with the DWP

The DWP noted that there was no policy intent to dissuade claimants from requesting a mandatory reconsideration and agreed to investigate this issue further. CPAG has agreed to provide further information including the geographical spread of these complaints.

In the meantime, the DWP has issued the following assurance: calls querying a decision will involve a conversation and explanation of the decision, but this is not intended to dissuade claimants from raising a mandatory reconsideration request.

Refusing a mandatory reconsideration request pending further evidence

Other claimants have tried to submit a mandatory reconsideration request and have been informed that the request can only be processed if further evidence relating to their claim is provided to the DWP. The EWS has received case studies where claimants have been asked to submit information that they cannot provide, which has the effect of halting their mandatory reconsideration request indefinitely.

A single mum moved away from her Italian husband, who worked full time, following domestic abuse. She started a claim for UC, but it was refused because the DWP decided she did not pass the habitual residence test. When she challenged the decision, she was told that the decision would not be changed unless she retrieved documents that were kept at her old address, where her husband still lived.

EWS case study, May 2019

A single man who had been separated from his partner started a UC claim. The DWP accepted that he was single, but only took half his rent into account because his ex-partner was still named on the tenancy agreement. When he challenged the decision (on the grounds that all his rent should be included because he is the only tenant residing in the property), the DWP said that the decision would not be reconsidered unless and until the claimant had his ex-partner removed from the tenancy agreement. Amending a tenancy agreement is a costly legal process and could put the claimant's housing rights at risk.

EWS case study, November 2018

A claimant requested a mandatory reconsideration on her journal. The DWP told the claimant that she must indicate that she is 'not satisfied' with the explanation of the decision and provide supporting evidence within 14 days in order for it to progress the request.

EWS case study, October 2018

The last case study above illustrates two separate problems which affect a claimant's access to her/his legal rights. Firstly, the DWP's insistence on offering an explanation of the decision before the claimant can request a mandatory reconsideration appears to be an attempt to enforce a *three*-stage process: the claimant asks for a mandatory reconsideration; the DWP provides an explanation of the original decision; the claimant then asks for a mandatory reconsideration again. This is unlawful. There is no legal requirement for a decision to be explained to the claimant in order for a mandatory reconsideration to be requested.

Secondly, the DWP's requirement for further evidence to be provided in order for the mandatory reconsideration request to be processed frustrates the claimant's right to challenge a decision if the requested information is not provided. This is also unlawful. Although the DWP may ask the claimant to provide further information in connection with a mandatory reconsideration request (and give the claimant one month or a longer period as needed to provide it),¹⁷ the DWP has no power to refuse to process the request when no further information is provided. The purpose of this provision is to give claimants time to gather information that the DWP may need to reach a correct conclusion, not to hinder their challenge. If the requested information is not forthcoming, a request for a mandatory reconsideration should be processed regardless.

Working with the DWP

DWP staff have told CPAG that claimants often do not send any evidence of why they think that a decision is wrong, which can make it hard for a decision maker to make a decision. In these cases, we understand that the DWP calls claimants and prompts them to provide more evidence to enable early resolution of the dispute, however this should not prevent the processing of a mandatory reconsideration request.

Refusing a mandatory reconsideration request, raising a 'real-time information' dispute only

The UC system interacts with the HM Revenue and Customs (HMRC) 'real-time information' system, which provides information about a claimant's earnings. The information provided on the 'feed' is used to calculate the amount of a claimant's UC award.

In cases where the UC award amount is wrong because it is based on incorrect facts (ie, inaccurate data from the real-time information feed), claimants have a legal right to challenge the decision by making a mandatory reconsideration request. However, the EWS has received examples of the DWP refusing to process mandatory reconsideration requests in these circumstances. Instead, the DWP refers claimants to its internal real-time information dispute process – a process which is not provided for in law. Furthermore, cases we have seen suggest that the real-time information dispute process is opaque to claimants and advisers, and some claimants are experiencing significant delays getting their issue resolved.

A single mum had her UC reduced by £1,085.76 in one assessment period, even though her earnings for that period were only £542.88. The claimant first asked for a mandatory reconsideration in a job centre appointment, at which she provided her wage slips, which were then forwarded to the service centre. She did not hear anything back and the job centre was unable to return her wage slips. The claimant then submitted a request for a mandatory reconsideration on her online journal, but the DWP has so far refused to change the UC award, or to provide an official mandatory reconsideration notice detailing her appeal rights.

EWS case study, June 2019

A lone parent claimed UC for the first time when she returned to work. She provided correct information about her hours and earnings, but it did not match the incorrect information her employer had submitted. The DWP nonetheless made awards based on her having had no wages for two months and then £8,000 in wages in the third month. As a result, she did not have enough money for her work travel (she has to drive to her patients' houses) and she expected to lose her job. The DWP appears to have accepted that the earnings information provided by her employer was wrong, but has refused to consider changing the decision. On her journal, the work coach said: 'I hope you can see that this situation has arisen due to your employer's reporting and not a situation that UC has caused as we can only act on the reported figures.'

EWS case study, April 2019

A UC claimant challenged the way his wages were counted in assessment periods. The DWP responded that it was not a mandatory reconsideration issue but a real-time information dispute issue.

EWS case study, March 2019

A UC claimant had earnings taken into account in his claim, even though his job ended over three months previously, and he has provided his P45. The DWP said that his UC entitlement would not be changed until his previous employer sent the correct information to HMRC. The claimant has asked HMRC and his previous employer to correct their figures, but has not heard back from them. In the meantime, he had no income at all for months; he became destitute and was admitted to hospital. He told advisers that he preferred to stay in hospital where he was warm and received hot meals.

EWS case study, December 2018

An adviser had been helping a client to challenge the DWP's reliance on inaccurate 'real-time information' data, rather than her documents showing how much she is actually receiving. The DWP responded on the journal to say that the client has 'been told several times' that it is DWP 'policy' to use the real-time information system and that she should go to her partner's employer with any dispute. On calling the DWP, she was told that it would not be reconsidering its decisions because they were not wrong.

EWS case study, December 2018

A single mother worked part time and had variable hours. The earnings figure that was used for her UC entitlement was £1,500 more than she actually earned, resulting in her receiving about £560 a month less than she should have. She took payslips and bank statements to the job centre, showing the amount she actually earned, but it refused to change her entitlement until the real-time information dispute process had been exhausted. The claimant was expected to make do on substantially less than she needed to live on for around three months (the amount of time taken to resolve a 'real-time information' dispute, in the adviser's experience).

EWS case study, November 2018

The law is clear that the DWP can make a decision that does not use the real-time information feed in certain circumstances.¹⁸ The real-time information dispute process should be an investigation to see whether these circumstances apply in individual cases. A request for a mandatory reconsideration is a separate process that claimants are entitled to pursue regardless of whether a real-time information dispute process is ongoing, and claimants should not be directed to this as their only option in situations such as the ones described in the case studies above.

Working with the DWP

The DWP persists in refusing to change UC award decisions until the real-time information dispute process has been exhausted, even where documentary evidence has been provided by claimants demonstrating the earnings information is inaccurate. The DWP notes that the documents provided by claimants do not always contain sufficient detail (e.g. bank statements only or payslips that are not clear). The DWP has not so far acknowledged a claimant's right to mandatory reconsideration and appeal in these circumstances but does state that a decision maker may make a new entitlement decision based on the claimant's information, in circumstances where the disputes process has been exhausted and the claimant has provided pay/wage slip information and no information has been received from their employer.

Regarding the real-time information dispute process, we understand from conversations with the DWP that it is likely that delays arise either from employers' failure to respond to HMRC enquiries or delays in referrals to the dispute resolution team by UC staff. The department has agreed to look into whether internal data is available which will shed more light on this.

Refusing a mandatory reconsideration request, directing to change of circumstances instead

Another problem reported to the EWS concerns claimants being advised by DWP officials to submit a 'change of circumstances', rather than a mandatory reconsideration request. A change of circumstances is a different process altogether, and results in a supersession of a decision rather than a revision. As a change of circumstances usually

only takes effect from the date it is reported, any errors relating to previous award decisions will not be corrected and claimants miss out on their previous entitlement.

A victim of domestic violence had only half her rent taken into account in her UC housing costs because she had a joint tenancy agreement with her ex-partner. When she queried this, the DWP advised her to submit a change of circumstances and state that she was the sole named tenant, which would have been a false declaration. Submitting a change of circumstances would also only correct her entitlement going forward, and leave her with rent arrears that should have been covered by her UC.

EWS case study, November 2018

A single mum with a six-year-old son started her UC claim soon after her husband left the family home. Only half her rent was included in the award, even though she was legally liable to pay all of it under the joint tenancy. She told the DWP that her housing costs amount was wrong and was told that she should have her husband's name removed from the tenancy agreement – the DWP did not process a mandatory reconsideration request. The claimant then told her UC case manager that it would be impossible to change her tenancy agreement without putting her housing at risk, as her landlord operates a 'no DSS' policy. The UC case manager advised her to submit a change of circumstances, notifying the DWP that her husband had left the property. This would have been a false declaration; she had already told the DWP in her initial claim that she was the only adult residing in the property. Submitting such a declaration would also only have corrected her award from that point onwards and she had already gone two months without her full entitlement. She had only avoided accruing rent arrears by borrowing from family and friends for over two months.

EWS case study, April 2019

A single mother of two failed to include her housing costs in her UC claim in November 2018, resulting in rent arrears. When she attempted to correct the DWP's calculation in April 2019, it treated the adjustment as a change of circumstances and refused to backdate to the start of her claim, despite it being clear that her housing costs entitlement had started then.

EWS case study, May 2019

A UC claimant started caring for a family member and receiving carer's allowance. He told his work coach at the job centre straight away. Unfortunately, his UC claim was not automatically updated with the carer element and when he later submitted the change of circumstances online, the carer element was only included from then onwards, not from the date his entitlement to the element started.

EWS case study, May 2019

As these case studies illustrate, the EWS is seeing a worrying number of claimants being advised to submit false declarations about changes of circumstances as a 'work-around' to the system, rather than the DWP correcting decisions from the start of the claim, which can happen via a mandatory reconsideration request. The DWP is legally bound to calculate entitlement based on the actual circumstances of a claimant at the relevant time. If the DWP later learns that entitlement was based on the wrong information, it is obliged to recalculate entitlement for the relevant period. However, it appears that the DWP's digital system, which automatically calculates the original UC award, is incapable of processing any amendments to previously-logged circumstances and recalculating the award accordingly. In response, it appears that some DWP officials are advising claimants to submit false declarations about changes of circumstances in order to get changes made without needing to do a manual calculation and without the claimant having to wait for a mandatory reconsideration to be processed, with no

consideration of the implications in terms of their previous entitlement or the consequences for their appeal rights.

Working with the DWP

The DWP was not aware that this is an issue that affects claimants prior to CPAG raising it. We think it is possible that some staff are recommending using a change of circumstances over mandatory reconsideration because recalculating entitlement for past assessment periods is a manual process in UC, and using a change of circumstances may be seen as a quicker route to having issues resolved. The DWP will need more detailed cases to investigate further and propose solutions; CPAG has agreed to provide cases from our EWS and we also encourage advisers to send in further cases.

Two-tier 'problem-solving' acts as a gatekeeper

The DWP takes a 'problem-solving' approach to promote local resolution and avoid adding to the backlog of mandatory reconsideration requests. This approach is called 'simple decisions'. While resolving issues quickly for claimants is desirable, in reality this creates a two-tier system that is not set out in law and can result in further delays for claimants trying to resolve issues relating to their claim. The 'simple decisions' approach may be well-intended but it appears to unlawfully require claimants to go through the problem-solving stage before accessing their legal right to a mandatory reconsideration. Some claimants are finding that even once they have gone through this stage and are trying to move on to a mandatory reconsideration, further barriers are placed in their way, as they are told the decision has already been looked at.

A 58-year-old disabled UC claimant only had half her rent included in her claim because she has a joint tenancy, even though her husband left the property over 10 years ago. She queried this and was told that her housing costs would not be changed unless she got her landlord to change the tenancy agreement or provide written confirmation that she is solely liable for the rent. A benefits adviser helped her to request a mandatory reconsideration, but the DWP said that the decision could not be looked at again because it had already responded on this issue.

EWS case study, March 2019

Introducing a problem-solving stage is, in effect, an additional step that does not exist in law. Not only does it cause further delays for claimants looking to resolve issues relating to their UC award, it blurs the legislative framework and the proper process for challenging decisions. It means that DWP officials making these decisions are not aware that they are, in fact, carrying out a revision which has consequences for a claimant's right of appeal thereafter. If the DWP requires a third stage in the appeals process, this must be legislated for, not introduced through the back door.

Working with the DWP

This issue may be linked to the 'Refer to decision-maker' pro-forma described in figure 1 and CPAG will continue to look into this and raise this with the DWP as necessary.

Consent

Welfare rights advisers may help claimants to address problems with their benefits, provide representation and act on their behalf, with their consent. However, the consent policy used in the UC system is impeding advisers from assisting claimants effectively. In the legacy benefits system (the benefits system that UC is gradually replacing), the DWP uses a consent policy that permits advisers to discuss their clients' claims either with their explicit consent (the client is physically present or has signed a written authority) or their implicit consent (recently renamed 'alternative enquiry' by the DWP).

DWP guidance: implicit consent (or alternative enquiry)

'Where there is no valid written authority, or the customer is not present to confirm permission verbally, staff should use their experience and judgement to decide whether the call is an alternative enquiry acting on behalf of the customer.

Staff must ask questions and use judgement based on the answers in order to determine whether or not the caller is a genuine representative, and alternative enquiry can be assumed... in most cases it will be quite clear from the information already held by the caller, and the questions they ask, that they are helping the customer with a benefit claim, and that information can be provided.

Where alternative enquiry cannot be established, then written authority is necessary. Do not disclose any customer information and explain that on this occasion it will be necessary for the caller to provide written authority to act on behalf of the customer.

Do not assume permission is for an indefinite period – authority to represent the customer is considered to be for a particular item of business.'

DWP, *Working with Representatives: guidance for DWP staff*, April 2019

The implicit consent policy in legacy benefits has proved invaluable for claimants who struggle to manage the process of sorting out their benefit problems, particularly those who have disabilities and/or mental health problems that may make resolving those issues more difficult. There is no implicit consent policy in UC (except for case workers of MPs) and the DWP will only discuss a claim with an adviser if the claimant is with her/him, party to the phone call, or has provided very specific and recent instructions on her/his journal.

Consent policy in universal credit

In the DWP's consent policy provided in response to a 2015 Freedom of Information request it is stated that: 'Fresh consent must be sought once the business covered by the consent has been completed. In order to ensure that consent remains valid, it is generally advised that in any case where consent is over 2 years old, action should be taken to confirm that it still reflects the customer's wishes.'¹⁹

In the DWP's UC consent and disclosure of information guidance, it is stated that: 'Explicit consent does not last forever, it usually lasts until either the specific request is completed or the end of the assessment period, after the one in which the consent was given.'²⁰

Advisers tell us that too often the DWP refuses to accept that an adviser is authorised to act on a client's behalf.

Where a dispute is long-running (including when this is due to delays on the DWP's part), advisers are frequently told that consent has 'expired'. As outlined above, the current DWP guidance is clear that consent lasts *until the specific request is completed* or the end of the next assessment period, yet this guidance is not always followed correctly.

A benefits adviser who helped a client raise a mandatory reconsideration request in July 2018 followed it up in subsequent months because the client had not yet heard back. In some calls, the benefits adviser was told that the consent was now 'too old' and must be resubmitted. In other calls, the adviser was instructed to submit consent on the journal for every single call. This policy results in unnecessary delays and inconvenience to claimants who have legally authorised a representative to deal with the matter on their behalf.

EWS case study, November 2018

One claimant encountered insurmountable problems accessing his online UC claim. He had no internet access and poor mobile coverage in his remote rural location. He had lung cancer and pneumonia which severely limited his mobility, so he could not travel to a library without risking his health. His computer literacy was also limited, so he relied on support to understand his online UC claim. Instead of accepting that his benefits adviser had authorisation to discuss the claim on his behalf, even though such authorisation had been entered on the journal, the DWP made the adviser the claimant's appointee – granting inappropriate complete control of the claim (including naming the account into which UC would be paid).

EWS case study, January 2019

A charity which provides advice nationwide relies on implicit consent to help its clients sort out their benefit problems, because they cannot see every client face-to-face. It reported that this is now impossible in UC without considerable drain on the charity's resources and delays for the clients.

EWS case study, May 2018

A terminally-ill cancer patient had submitted his DS1500, so he could claim UC under special rules and be automatically entitled to the limited capability for work-related activity element. When the claimant was repeatedly asked to attend medical assessments (not required under the special rules) and was still not receiving the element, his Macmillan adviser attempted to speak to the DWP on his behalf. It refused to talk to the adviser at all and it took eight months for the issue to be fully resolved.

EWS case study, October 2017

The Information Commissioner's Office has been alerted to the issues encountered by claimants attempting to resolve UC problems with the help of advisers. On 10 April 2019, it confirmed that a number of concerns had been raised with the DWP. The DWP acknowledged receipt of the Information Commissioner's Office opinion,²¹ and has confirmed that it is working closely with its data protection officers, and also collaborating with the Social Security Advisory Committee, with a view to improving its consent policy. However, the DWP has also noted that:

Under universal credit, the online digital account is fundamental to the design, which allows claimants access to all their personal, medical, financial and other data. As a result, the claimant 'holds the key' to that account at all times. Running a system other than that based on explicit consent in universal credit means that the risk of disclosure of this material to third parties is heightened beyond an acceptable level and might also undermine some of the other security features we build into the system through personal accreditation.

It appears that the DWP has therefore ruled out an implicit consent policy for UC, despite the consequences for claimants who are reliant on welfare rights advisers to resolve problems with their claims, and despite the fact that consent difficulties stem from the design of UC, rather than any change in a claimant's circumstances.

Working with the DWP

The DWP is working with the Social Security Advisory Committee and their Data Protection Officers to review the UC consent policy. This work is currently in progress and the DWP has said that it will include engagement with claimants and benefits advisers. Notwithstanding comments in a letter to advice charities which reiterate the department's reasons for retaining its requirement for explicit consent,²² The DWP has not confirmed that implicit consent has been ruled out completely: we await the results of the work with the Social Security Advisory Committee.

Receiving a mandatory reconsideration notice

The EWS has received examples of further problems claimants are experiencing once they overcome the potential hurdles in submitting a mandatory reconsideration request.

Timescales

Some claimants are experiencing significant delays in receiving a mandatory reconsideration notice once a request has been submitted.

Advisers reported persistent delays in having mandatory reconsideration requests processed in UC, saying that it can take up to six months to hear back from a challenge.

EWS case study, February 2019

A claimant submitted a mandatory reconsideration request when the DWP refused to backdate his UC claim. He spent many months chasing the DWP for a response. He also exhausted the lengthy complaints process and, despite being assured that a mandatory reconsideration notice was forthcoming, never received one. In the end, his benefits adviser helped him to pursue a tribunal appeal without it. The proceedings were further delayed because it took the DWP five months to produce an appeal bundle.

EWS case study, March 2019

One UC claimant aged over 60 had not received any UC for two months, since her claim started. Her benefits adviser helped her to submit a mandatory reconsideration request and asked that it be prioritised because her rent was going unpaid and she was at risk of homelessness. The DWP told the adviser that any requests to escalate a mandatory reconsideration are essentially redundant because there is such a backlog that decision makers are dealing with them strictly in date order.

EWS case study, February 2019

A European Union citizen who was working but stopped working recently (and so retains his worker status) was refused UC because the DWP decided he did not have a sufficient right to reside. He requested a mandatory reconsideration against the decision, but while it was being considered the family had no income at all. The claimant sent his wife and nine-month old baby to live with friends because he had no money for food or heating. His mental health has declined significantly and he reported feeling 'broken' by the experience. UC had not been paid for three months by the time the claimant received a response to his mandatory reconsideration request, which was also refused.

EWS case study, November 2018

A Polish victim of domestic violence had a permanent right to reside for benefit purposes based on five years of employment prior to her marriage to a British citizen. When she fled the relationship, she had to claim UC, but it was refused. She had no income at all while the mandatory reconsideration request was considered and, at the time of reporting, she had been waiting over a month.

EWS case study, September 2018

A Polish man had been working in the UK since 2013 until he had an accident which meant he could not work again. He claimed UC in November 2018 and the claim was refused owing to failure to pass the habitual residence test. He submitted a mandatory reconsideration request in February 2019, but still has not received a response. He has had no income since November 2018 and the habitual residence test decision affected his application for housing help, putting him at increased risk of street homelessness.

EWS case study, May 2019

The DWP does not have target times for dealing with mandatory reconsiderations. However, a recent Freedom of Information request confirmed that the DWP expects most cases to be decided within 40 days.²³ As the cases above highlight, many claimants wait significantly longer than this to receive a mandatory reconsideration notice, which can cause significant financial hardship as well as stress and worry. In some cases, claimants have been prioritised once they explain their circumstances, but there does not appear to be a clear process or guidance for prioritisation; instead, it seems to fall to the discretion of the relevant DWP official.

The delays in the mandatory reconsideration process are compounded by delays in HM Courts and Tribunal Service. Claimants who are not satisfied with the outcome of a mandatory reconsideration notice and decide to proceed with an appeal to a tribunal wait even longer to have their issue resolved. The latest tribunal statistics show that the average wait for a tribunal hearing is 30 weeks (nearly seven months), six weeks longer than in the same period in 2017.²⁴ Furthermore, the high rates of success for claimants who proceed to tribunal demonstrate that long delays are affecting claimants who have been subject to incorrect DWP decision making.²⁵

Working with the DWP

The DWP has told us that these long delays are atypical and have asked CPAG to provide details of individual cases involving significant delay and requiring urgent attention.

Lost requests

The EWS has received a number of case studies where the DWP has lost mandatory reconsideration requests – particularly those submitted by post. The result is a significant delay for claimants looking to resolve problems in relation to their UC award.

A disabled UC claimant received a decision that he was fit for work in August 2017. In the same month, his benefits adviser helped him to submit a request for a mandatory reconsideration by post. The adviser chased up the request in November 2017, when the DWP stated that the request had not been received. The adviser re-sent the request and attempted to chase up by telephone, but the DWP refused to speak to her even though consent had been entered by the claimant on his journal. The claimant was obliged to chase it up himself over the Christmas period and finally received a journal reply at the end of December 2018, again stating that the request had not been received, that he should raise it over the phone or re-send. The original request was finally located in January 2018 and a response provided in March 2018, leaving the original decision unchanged. The case proceeded to a tribunal and the hearing was held in November 2018. The UC claimant reports that the whole process caused his health to deteriorate. He was subject to the stress of inexplicable delays and the pressure of meeting incorrect jobseeking conditions for 15 months when he should have been in the 'limited capability for work' group.

EWS case study, December 2018

UC was refused to a claimant on the grounds of failing the habitual residence test, even though he had a right to reside as a family member. He posted a mandatory reconsideration request, but was later told that it had not been received and he was advised that requests could only be made by phone.

EWS case study, February 2019

A single parent of two started a UC claim following separation from her working husband. UC was refused on the grounds that she failed the habitual residence test, even though she had provided evidence of her husband's work. Her UC claim was closed, so her adviser helped her to submit a mandatory reconsideration request by post. When they followed up the request, the claimant and adviser were told that it had not been received and, in any case, the DWP could not accept a mandatory reconsideration request submitted by post that was written by a third party, even if it included the claimant's signed authority. The claimant was directed to submit a copy of the same request to her local job centre. She and her children have been without income since January 2019. Their rent is going unpaid and they are reliant on school and food bank provisions.

EWS case study, May 2019

The following case suggests that unnecessary delays are being caused, at least in part, by the DWP's poor administration of post.

When chasing up a mandatory reconsideration request that had been submitted by post, an adviser was told that post sent to the UC Freepost address is not scanned immediately onto the DWP system, but sorted and sent physically (taking up to four weeks to be delivered) to the relevant case manager to deal with personally. If the case manager is away, the post is left in a locked drawer for her/him to deal with on her/his return and then scan it.

EWS case study, February 2019

Advisers have also told the EWS that mandatory reconsideration requests appear to be going astray if the letters do not use the right terminology. As outlined above, the case law is clear that any request to look at a decision again should be interpreted as a request for a mandatory reconsideration, and claimants do not have to make explicit reference to the term 'mandatory reconsideration' in order to request one.

It seems that DWP policies accept that a mandatory reconsideration request submitted by post is valid (and the relevant Freepost address is included on UC payment statements), and that letters requesting mandatory reconsiderations are not required to use specific language. However, DWP systems and processes (including the administration of post and the understanding of staff) do not support the correct application of these policies.

Working with the DWP

The DWP states that it now has a dedicated team devoted to clearing mail in UC, identifying mandatory reconsideration requests which may not obviously be mandatory reconsideration requests. The DWP has asked CPAG to update them with any further incidents of lost mandatory reconsideration requests submitted by post.

Failure to provide a mandatory reconsideration notice

When claimants do receive a response to their mandatory reconsideration request, in some cases this is provided in a way that is unlawful. Claimants should be given an official notice, in the form of a letter, rather than a response via a UC online journal entry. This is important for two reasons. Firstly, the letter should communicate information to claimants about their appeal rights. In failing to provide this information to claimants, the DWP is not upholding its legal duty to notify people about their rights of appeal and how to exercise them. Secondly, claimants need a mandatory reconsideration notice (in the form of a letter) in order to proceed to a tribunal. Proceeding to the tribunal stage without a mandatory reconsideration notice, although technically possible, is a complicated process that often requires legal help.

Working with the DWP

The DWP gave assurances that mandatory reconsideration notices given via the journal still contain the necessary information and are proper decision notifications. We remain somewhat concerned and will continue to monitor this issue and seek more information.

Locating a mandatory reconsideration notice on the online account

As noted in our first report in this series (*Computer Says 'No!': information provision*), the attachment of letters and documents to journal entries, without any central location in the UC online account, can result in difficulty locating and identifying important documentation relating to a person's claim, such as a mandatory reconsideration notice.

Mandatory reconsideration notices are sent as an attachment to the journal entry. The location of the document in the journal history means that returning to the letter at a later date can be difficult, as there is often no identifying information to distinguish it from other letters or journal entries.

Figure 2

24 Mar 2018 at 10:59am Hi
Please see the attached letter regarding your appeal request. [DWP official]
Universal Credit.
Read the attached file: [Letter_ _ .pdf](#)

Working with the DWP

The DWP continues to work on improving the accessibility of UC online accounts but does not currently have plans to develop a central place for certain documents (such as mandatory reconsideration notices and other important documentation).

Proceeding to a tribunal

Switch from electronic to paper

The UC system is 'digital by default'. This means that the vast majority of claimants are required to manage their UC claim online (via their UC online account). This can cause difficulties for claimants who need to appeal a decision that relates to their UC award because the tribunal system is paper-based. Claimants must submit their application for appeal on paper, which requires them to have access to a printer to print out the relevant paperwork from their UC online journal. This creates an additional barrier for claimants wishing to exercise their appeal rights, which could be easily solved by the DWP sending copies of mandatory reconsideration notices by post as well as posting them on the journal.

4. Conclusion and recommendations

This report builds on the findings from the first *Computer Says 'No!'* report, which focused on the information provided to claimants about their UC award and their rights to challenge a decision. The problems outlined in this report must therefore be viewed in the context of a wider experience, in which claimants may struggle to submit a mandatory reconsideration request because they cannot identify or do not understand the decision they seek to challenge, or do not know how and when to submit a challenge (in effect, they do not know their appeal rights or how to exercise them).

For those claimants who are able to overcome the hurdles outlined in the first *Computer Says 'No!'* report, there may be further problems to contend with. We have seen instances of claimants experiencing difficulties at every stage: when trying to submit a mandatory reconsideration request; on receiving a mandatory reconsideration notice; and when they try to proceed to the next stage of the process (appealing to an independent tribunal). They face a range of barriers, including being dissuaded from making a challenge, being required to provide documentation or submit the application in a certain form, and being diverted down another route that is not appropriate in the circumstances. Claimants who *are* able to make a mandatory reconsideration request can experience long delays before they receive a mandatory reconsideration notice. In some cases, they do not receive a notice at all, or it is provided in the wrong format. And claimants who wish to proceed to a tribunal are then required to move to a paper-based system after being required by the DWP to manage their UC claim online.

Collectively, these problems contribute to claimants losing confidence in a system that should be helping them. Errors in decision making go unresolved and claimants' hardship is often prolonged, with no easy way to fix the situation. Children and families can be left without any income for months on end. Ill and disabled people are required to look for work that they cannot find or maintain. Debts accrue and housing is put at risk. There are broader consequences too. The shortcomings in terms of transparency and accountability in the UC system, together with the failure to uphold basic legal duties, is a serious cause for concern.

Over two million people now depend on UC to meet their basic living costs, and by the time UC is fully rolled out half of the country's children will be living in households claiming UC. With approximately 130,000 people moving onto UC each month, the DWP must make it a priority to resolve the issues raised in this report. We welcome the steps that have already been taken to address some of these issues, and building on this work we have set out a number of practical recommendations for how to do this.

Recommendations for the DWP

- Take further steps to educate its workforce on the various options for making a mandatory reconsideration request, so that claimants are supported to use the route that best suits their circumstances (online, over the phone or by post).
- Investigate and address the problems with receiving and processing mandatory reconsideration requests submitted by post.
- Publicise the different routes for making a mandatory reconsideration request across the DWP access points (via advisers and work coaches, as well as on gov.uk and online statements).
- Allow access to refused claims after a new UC claim has been started.
- Ensure that mandatory reconsideration notices are issued in all circumstances where a revision has been considered.
- Monitor, transparently report and improve mandatory reconsideration processing times.

- Implement the Information Commissioner's Office recommendations on the current UC consent policy, and continue to work with the Social Security Advisory Committee to improve the policy overall.
- Ensure the UC consent policy is consistent with the legacy benefits consent policy, which included the provision for implicit consent.
- Make changes to the UC online account, so there is a central place for decision letters, including mandatory reconsideration notice letters.
- Provide claimants with a hard copy of their mandatory reconsideration notice letter, as this is essential for those who wish to appeal to an independent tribunal.

In addition, the DWP should draft guidance and implement training for DWP staff in order to:

- Keep claimants updated on mandatory reconsideration processes. Once a request has been made, DWP staff should inform claimants about timescales and provide regular updates on how their request is progressing.
- Assist claimants to progress their mandatory reconsideration request in a practical and timely manner – eg, tell them how to provide further evidence and what to do if this cannot be provided.
- Ensure DWP staff recognise that mandatory reconsideration is an appropriate route to challenge decisions based on real-time information, as well as using the real-time information dispute procedure.
- Ensure DWP staff understand the appeals process and how their decisions fit into the current framework, including understanding the difference between a revision and a supersession, and the importance of informing claimants about their appeal rights at the necessary stages.
- Support staff to seek advice in circumstances where they are unsure whether a mandatory reconsideration request is possible – eg, where they think the time limit has expired.

Advice for welfare rights advisers

CPAG urges the DWP to address the above issues as a priority, and CPAG will work with the Department by providing relevant evidence from the EWS and assisting in designing solutions. However, while we await the necessary changes, CPAG has the following advice for benefits advisers dealing with such cases:

- Log cases of concern with CPAG's EWS, which monitors systemic problems in the social security system and uses cases to evidence the need for reform.
- Print and/or save details of refused or closed UC claims (screenshots of journal entries, copies of letters and statements) before assisting claimants to start a new claim (when the closed claim history will no longer be accessible).
- Submit mandatory reconsideration requests to challenge a refused new claim and/or consider judicial review. A template judicial review pre-action letter is available on the CPAG website for challenging closure of a claim due to failure to attend an interview, or to provide evidence of identity or the right to reside.²⁶
- Be clear about which decisions may be appealed. If you are not sure, contact CPAG's advice line to clarify the legal position.²⁷
- Consider judicial review when the right to a mandatory reconsideration has been refused because of a 'real-time information' error. A template judicial review pre-action letter is available on our website for challenging entitlement when real-time information has been incorrectly reported.²⁸

- If a client has submitted a change of circumstances when s/he was seeking to change her/his award for earlier assessment periods, assist her/him to submit a journal entry requesting that the change of circumstances be dealt with as a revision (mandatory reconsideration) request, rather than a supersession.
- Work around consent issues by including your client in conference calls to the DWP.
- Raise complaints via your local DWP partnership manager, your client's MP or the DWP complaints department whenever your client encounters a barrier to exercising her/his mandatory reconsideration or appeal rights.
- If you are not sure who your local DWP partnership manager is, contact your regional partnership manager for their details.²⁹
- You can find your client's MP by entering her/his postcode into the 'MP finder' on the parliamentary website.³⁰
- Raise a complaint about UC online on the gov.uk website,³¹ on the UC helpline, by letter or at the local job centre.
- Consider a judicial review when a mandatory reconsideration request has been subject to unreasonable delay. A template judicial review pre-action letter is available on the CPAG website for this.³²
- Ensure that mandatory reconsideration requests reach your client's case manager by selecting the 'payment decision' or 'service standard' communication options when submitting the journal entry.

¹ DWP, *Tribunal Statistics, January – March 2019*, 2019

² Section 8 of the Social Security Act 1998

³ Section 9 of the Social Security Act 1998

⁴ Section 10 of the Social Security Act 1998

⁵ [Social Security Advisory Committee consultation on decision making and mandatory reconsideration](#), Child Poverty Action Group, March 2016

⁶ This approach was subsequently endorsed by Upper Tribunal Judge Wikeley in *AJ v Secretary of State for Work and Pensions (II)* [2012] UKUT 209 (AAC) at paragraph 34.

⁷ [DWP response to FOI request](#), November 2018

⁸ DWP, [Mandatory Reconsiderations](#), September 2016

⁹ [DWP response to an FOI request](#), December 2018

¹⁰ Regulation 38 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013, SI 2013/380

¹¹ DWP [Parliamentary Question response](#), February 2019

¹² [DWP response to FOI request](#), August 2017

¹³ Approximate figure provided by Neil Couling, DWP Director of Change, in an event on 13 June 2019.

¹⁴ DWP, [Universal Credit: 29 April 2013 to 9 May 2019](#), June 2019

¹⁵ [DWP response to FOI request](#), April 2018

¹⁶ *R(CJ) and SG v SSWP (ESA)* [2017] UKUT 324 (AAC), reported as [2018] AACR 5

¹⁷ Regulation 20 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013, SI 2013/381

¹⁸ Regulation 61 of the Universal Credit Regulations 2013

¹⁹ [DWP response to FOI request](#), May 2015

²⁰ DWP, [Universal Credit Consent and Disclosure of Information](#), March 2018

²¹ [DWP letter](#) to a group of advice charities and organisations, January 2017

²² [DWP letter](#) to a group of advice charities and organisations, January 2017

²³ [DWP response to FOI request](#), February 2019

²⁴ Ministry of Justice, [Tribunal Statistics Quarterly: January to March 2019](#), June 2019

²⁵ Ministry of Justice, [Tribunal Statistics Quarterly: January to March 2019](#), June 2019

²⁶ See <http://www.cpag.org.uk/content/judicial-review-pre-action-letters>

²⁷ See <http://www.cpag.org.uk/advisers>

²⁸ See <http://www.cpag.org.uk/content/judicial-review-pre-action-letters>

²⁹ See <https://www.gov.uk/government/publications/dwp-partnerships/national-partnership-teams>

³⁰ See <https://www.parliament.uk/mps-lords-and-offices/mps/>

³¹ See <https://makeacomplaint.dwp.gov.uk/>

³² See <http://www.cpag.org.uk/content/judicial-review-pre-action-letters>