



## OUTLINE POINTS FOR

### Universal Credit Full Service: Practical Advice Issues Workshop

#### *CPAG Welfare Rights Conference 2017*

Universal credit full service is rolling out at an increasing rate. Advising claimants or potential claimants in full service areas poses several practical issues for advisers. We will consider some of these issues:

- Problems with the online claiming process
- UC Journal- the standard method of interaction with the universal credit system- what issues arise for advisers in accessing the journal? Troubleshooting other issues with the journal.
- Problems with disclosure of information to advisers.
- Mandatory reconsideration gatekeeping.
- DWP misadvising claimants to claim UC.

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## Practical issues with online claims and the legislation

### Problems with the online system design

1. Regulation 8(1) of the UC etc. (C&P) Regs 2013 provides that the usual way of claiming universal credit is online (“by means of an electronic communication”). Schedule 2 of the regulations sets out how electronic communications operate as a matter of law (when documents are deemed to be sent / proof of delivery etc). It may be important to note that for a claimant to use an electronic communication to correspond with the SSWP requires an authorisation from the SSWP and if the correspondence is not in the format required it is to be treated as not having been made (Sch 1, para 2(6)).
2. Regulation 8(2) provides for the possibility of telephone claims “if the claim falls within a class of case for which the Secretary of State accepts telephone claims or where, in any other case, the Secretary of State is willing to do so”. However, in general it is difficult to make a claim for universal credit over the telephone:

A2028 A claim may be made for UC by a single person or members of a couple jointly<sup>1</sup>. Unless A2030 applies, a claim for UC must be made by means of an electronic communication as set out in Appendix 1 to this Chapter<sup>2</sup>.

<sup>1</sup> WR Act 12 s 2; <sup>2</sup> UC, PIP, JSA & ESA (C&P) Regs, reg 8(1)

A2030 A claim to UC may be made by telephone call to a telephone number specified by the Secretary of State<sup>1</sup>. if the claim falls within a class of case for which the Secretary of State accepts telephone claims or<sup>2</sup>. where in any other case the Secretary of State is willing to do so<sup>1</sup>. A claim so made is properly completed if all the information required to determine the award is provided during the call and defective if not<sup>2</sup>.

**Note:** Telephone claims will be accepted from claimants who do not have access to or cannot use a computer.

<sup>1</sup> UC, PIP, JSA & ESA (C&P) Regs, reg 8(2); <sup>2</sup> reg 8(4)

3. It is not clear whether the “Note” in this ADM is the only class of circumstances in which a claim by telephone will be accepted. In addition it does appear that when a claim by telephone is made then the Helpline operative is actually simply filling in the online claim form in their office.
4. The actual online claim form has some flaws which can prevent claims being made:

- a. Screening questions prevent all claims for UC by those who have 3 or more children in their household- whilst many claimants in this situation are in fact precluded from UC then this is not the case for people who have had UC within the last 6 months and have continued to meet the basic conditions in that time and also for those claiming as single within one month of a claim as a couple terminating- see reg 39 of the UC(TP) Regs 2014 (note in the former case if the reason not entitled was too much earned income then there is no need to make a new claim- see reg 6(1)). One way around problems with this screening question is simply to answer it wrongly (say less than 3 kids)- one can always correct this at the main claim pages.
- b. Bank account: Again the online claim cannot be completed unless a bank account number and sort code, or a post office account details are provided.. Note it is not a condition of entitlement or making a claim (as it is with Gateway Live Service cases) that a claimant has a bank account- *ADM* Guidance is that the DWP even still have simple payment service in UC cases:

#### Simple Payment service

B1006 The SimP service is a method of paying UC, PIP, ESA and JSA which is specifically designed for those claimants who, for the purposes of receiving their benefit payments, are unable to make use of mainstream accounts such as

1. a bank account
  2. a building society account
  3. a basic bank account
  4. a credit union account
  5. a PO account.
5. There is also some indication that people have been able to claim by attending a JCP and them being able to bypass these difficulties using their different access to the system.
  6. Another issue is whether one can argue for backdating in a case where the online system prevents a claim being made- this would depend on whether one could say that in this circumstance the "official computer system was inoperative" (regulation 26(3)(d) UC etc (C&P) Regulations.

7. Finally, it is worth noting that if the claimant is assisted to make the claim either at an appropriate office or during a home visit “for the purpose of enabling that person to make a claim” then the date of claim is the date on which the SSWP was first notified of a need for such assistance (regulation 10(1)(b)). Similarly if a person notifies they need to claim by telephone but SSWP cannot help when first requested but then a claim is fully completed by phone within a month of that the date of claim is the date of the first notification of intention to claim (regulation 10(1)(d)). If a defective claim is made without assistance but is corrected within a month or a longer period if the SSWP allows then it counts as properly made from when it is started.
8. One issue with claiming online is at what point is the claim completed- there is a distinction between when a claim is properly made and the claimant does not respond to a further information request and a case where the claim is not properly completed in the first place- in the former case the failure to provide information does not change the effective date of claim in the latter then the claim is only treated as made from day when properly completed if it takes more than one month to correct any defects.

*Problems with online claiming and administering of claims not being adequate due to disability etc*

9. For those who have a disability which renders using online form impossible then the SSWP will have a duty to make reasonable adjustment to allow them to claim. A failure to make such adjustments when alerted to them may give rise to a claim for damages under the Equality Act 2010.
10. A First-tier Tribunal (Tax Chamber) found regulations that required stuff for VAT to be done online breached the human rights of people unable to do this by reason of disability- <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html> - it could potentially also be argued that rules about interacting with UC via the journal and online claims cause similar breaches.

**Claim closed**

11. Once a UC account is opened then the UC claim must be completed within 28 days or the account is deleted.
12. If a claimant does not attend the first interview then we have seen anecdotal evidence that the claim is “closed”. The legal basis for such decisions is not clear.

## Backdating Rules

13. The maximum that UC can be backdated is one month (regulation 26). The circumstances which can found a claim for backdating are limited:

### Time within which a claim for universal credit is to be made

26.—(1) Subject to the following provisions of this regulation, a claim for universal credit must be made on the first day of the period in respect of which the claim is made.

(2) Where the claim for universal credit is not made within the time specified in paragraph (1), the Secretary of State is to extend the time for claiming it, subject to a maximum extension of one month, to the date on which the claim is made, if—

(a) any one or more of the circumstances specified in paragraph (3) applies or has applied to the claimant; and

(b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

(3) The circumstances referred to in paragraph (2) are—

(a) the claimant was previously in receipt of a jobseeker's allowance or an employment and support allowance and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that the claimant's entitlement expired;

(b) the claimant has a disability;

(c) the claimant has supplied the Secretary of State with medical evidence that satisfies the Secretary of State that the claimant had an illness that prevented the claimant from making a claim;

(d) the claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 2 because the official computer system was inoperative;

(e) . . . . .

(f) where—

(i) the Secretary of State decides not to award universal credit to members of a couple jointly because one of the couple does not meet the basic condition in section 4(1)(e) of the 2012 Act;

(ii) they cease to be a couple; and

(iii) the person who did meet the basic condition in section 4(1)(e) makes a further claim as a single person;

(g) where—

(i) an award of universal credit to joint claimants has been terminated because one of the couple does not meet the basic condition in section 4(1)(e) of the 2012 Act;

(ii) they cease to be a couple; and

(iii) the person who did meet the basic condition in section 4(1)(e) makes a further claim as a single person.

(4) In the case of a claim for universal credit made by each of joint claimants, the prescribed time for claiming is not to be extended under paragraph (2) unless both claimants satisfy that paragraph.

(5) In the case of a claim for universal credit referred to in regulation 21(3C) of the Universal Credit Regulations (assessment period applied from a previous award within the last 6 months) the claim for universal credit must be made before the end of the assessment period in respect of which it is made.]

14. Potential issues with this rule are that it gives claimants in some cases a right to backdating but does not give claimants in effectively analogous cases such a right- this could be argued to be discriminatory and arguments brought that extra classes had to be read in to paragraph (3) or the provisions in paragraph (3) read more widely. Two cases which spring to mind are as follows:

- a. Regulation 26(3)(b) and (c) effectively allow people who could not claim earlier due to illness or disability to obtain a month's backdating. However, there is no such provision for someone who could not claim earlier due to late stage pregnancy etc. Thus a woman who first has a need to make a claim for UC only when her baby is born but who does not claim until after the baby is born cannot obtain backdating. Arguably that discriminates against women.
- b. Similarly, regulation 26(3)(a) allows for backdating where a claimant's JSA or ESA ends but the claimant was not notified of this until afterwards. However, there is no such equivalent provision for those in the same position but who had been claiming IS (more likely to be women claiming as lone parents). Again this arguably unlawfully discriminates against women.

15. A further striking issue with the restriction of universal credit backdating is the complete removal of any provision allowing backdating where a claim has not been made because the claimant has been advised by DWP (or CAB etc) that they would not be entitled. Claimants in this situation may wish to have reliance on the DWP Guidance on *Financial Redress for Maladministration*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/612329/financial-redress-for-maladministration-dwp-staff-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612329/financial-redress-for-maladministration-dwp-staff-guide.pdf)

## Universal Credit Journal

16. What you can do with it:

- a. Decision notices on ongoing awards are put on the journal and not posted (note – some of these are in the payments section and some in the journal part as attachments).
- b. Claimant can record work search.
- c. Claimant can give explicit consent for an adviser to help with a particular issue to do with their claim.
- d. Claimant can update their details/notify a change of circumstances.
- e. Claimant can challenge a decision (this is not an explicit option on the journal but you can query a payment).

17. What you cannot do with it:

- a. It does not appear possible for the claimant to upload a document to their journal.
- b. When an award is ended then new entries cannot be added to the journal. A letter is actually issued when an award is ended– any mandatory reconsideration challenge will need to be made over the phone or in writing.
- c. If a new claim for UC is made after a previous claim is ended then the old journal is no longer accessible. That is problematic as there may have been incorrect decisions on the old journal which the claimant does not have a copy of but would want to challenge (eg sanction decisions).

18. It is not possible to access claimant bank details without a special password.

## Implicit Consent and UC Full Service

19. The DWP have changed their long running policy of accepting that it is implicit an adviser has consent to act on behalf of a claimant so as to allow themselves to disclose information to claimant advisers/accept reconsideration requests and so on.

20. The official reasoning behind this is explained by Neil Couling here:

[https://www.rightsnet.org.uk/pdfs/UCFS Welfare Advisers 20 Jan 2017 rightsnet upload.pdf](https://www.rightsnet.org.uk/pdfs/UCFS_Welfare_Advisers_20_Jan_2017_rightsnet_upload.pdf)

## Wrong advice pushing people to claim UC?

21. We are coming across cases where people in full service areas who find their ESA has stopped and have started to take steps to challenge that decision (and who would eventually get ESA pending appeal etc) are pushed to claim UC. For some claimants that can lead to less money via UC than they would get via remaining on ESA (for example if there are SDP issues).
22. Various considerations arise here:
  - a. Article 4 of whichever is the relevant Commencement Order in a Full Service area provides that where a claim for UC is made then irESA is abolished with effect from the first date in respect of which that claim for UC is made. One can only determine the first date in respect of which the claim for UC is made once the UC claim is a valid and not a defective claim. Thus arguably a defective claim does not trigger the abolition of irESA.
  - b. Another issue is whether a claim for UC which is made but is then withdrawn prior to it being determined counts as one which triggers the abolition of irESA and other legacy benefits.
  - c. A final issue is whether a claimant who was wrongly induced to make a claim for UC (for example told they could not get back ESA in any event even if appeal succeeded) could attempt to argue that the claim for UC should not count as a claim- this is tricky- there is some caselaw on withdrawals from awards being wrongly induced by DWP where suggested claimant could argue the withdrawal should not operate but not clear that would transfer to this sort of context.
  - d. If none of the above arguments work and claimant has clearly been given wrong advice on claiming UC leading to an ongoing future loss of entitlement the DWP could be asked to issue compensation.