



Rt Hon David Gauke MP
House of Commons
London
SW1A 0AA

November 1 2017

Dear Mr Gauke

Major problems within the operation of universal credit – failure by DWP to act within the legislation

We are writing to you as an organisation to bring to your attention three major problems within universal credit that are affecting our member's clients. I should stress that these are not policy issues but operational issues where the legislative processes within universal credit are not being correctly followed and are causing extreme hardship.

Both locally, and as members of the DWP Operational Stakeholders Forum, NAWRA members have been raising these issues with the DWP since full service began its rollout – over a year ago! - yet the DWP has failed to effect change despite it being a legislative requirement. NAWRA has been told that there is a backlog of problems awaiting resolution and, with the refusal to pause rollout so that these problems can be resolved, it is essential that action is taken urgently and this is why we are now writing to you as Secretary of State so that you can ensure that your Department is acting within the law.

We seek an urgent response to this letter within 14 days or we will be advising our members to seek advice to take judicial review action.

The three issues are –

1. **Claimants naturally migrating from Employment and Support Allowance (ESA)**
– Where a claimant has been on ESA including either the work-related activity component or the support component, but due to a change of circumstances has to claim universal credit, the universal credit award should include the limited capability for work (LCW) element or limited capability for work-related activity (LCWRA) element from the start of claim with no need for a work capability assessment (WCA) (regulation 19 of the [Universal Credit \(Transitional Provisions\) Regulations 2014](#)).

As NAWRA understands it, no information is collected at the point of claim to establish previous entitlement to ESA, and there is no interface between the legacy system and the universal credit system, so the IT system can not make the correct award as it does not have the required information. Following our intervention via the operational stakeholders forum, guidance has been issued to staff so that if a claimant rings up to query the lack of LCW/LCWRA element or imposition of a WCA, the situation should be corrected. But clearly this is insufficient. When a person claims, their entitlement should be awarded correctly and in line with the legislation.

This situation is causing extreme hardship due to –

- reduced money due to the correct element not being paid;
- mental stress of an unnecessary WCA;
- risk of ongoing loss of money as without the link to the ESA claim there is risk of a permanent loss of the LCW element as it no longer exists for new claims.

NAWRA therefore calls for urgent rectification of the situation by –

- ensuring that the necessary information is collected at the point of claim;
- ensuring that the IT system is amended to carry out the award calculation correctly;
- carrying out a trawl of all claimants who have migrated onto the full service from ESA to ensure that all payments are corrected and full backdating issued;
- considering an award of compensation due to the unnecessary suffering caused;

2. **Waiting days incorrectly applied** – As you will be aware the majority of claimants have to serve seven waiting days at the start of a universal credit claim with no entitlement to benefit. However, exemptions apply and these include where the claimant was in receipt of old style ESA or old style jobseeker's allowance within the last three months, or any of the other legacy benefits (housing benefit, income support or tax credits) with the last month (regulation 16A of the [Universal Credit \(Transitional Provisions\) Regulations 2014](#)). Again because information is not collected at the point of claim about legacy benefits this exemption is often missed meaning claimants miss out on a substantial amount of money.

NAWRA again calls for urgent rectification of the situation by –

- ensuring that the necessary information is collected at the point of claim;
- ensuring that the IT system is amended to carry out the award start of claim correctly;

- carrying out a trawl of all claimant who have migrated onto the full service from legacy benefits to ensure that all award dates are corrected and the backpayments paid.
3. **Failure to allow a third party to submit a DS1500 (confirmation of terminal illness)** – Within the DWP there has always been provision for a DS1500 form to be submitted by a third party without the claimant’s knowledge where they are unaware of the prognosis (see paragraph 2.7.5 of the [DWP Medical \(factual\) Reports – A guide to completion – May 2016](#)). As the LCWRA element is paid automatically and immediately to anyone with a terminal illness this is relevant under universal credit. However, advisers have been told that because implicit consent does not apply under universal credit a third party cannot submit a DS1500 without explicit consent being provided by the claimant – this is clearly unacceptable.

When NAWRA raised a query via the operational stakeholders forum the following response was received –

‘We do not, as yet, have a process in place for a third party to provide the DS1500 without permission from the claimant. In UC the claimant is responsible for their information. However should the claimant be happy/provide consent for the third party to liaise to discuss their health condition then this would be sufficient for us to be able to take accept the DS1500 and the fact that the claimant is unaware of the condition as it stands.’

Even if it were possible to get the explicit consent without distressing the claimant there is no assurance that information about the DS1500 would not then be disclosed on the journal.

This is an extremely sensitive issue and NAWRA calls for –

- Processes to be set up as a matter of urgency to ensure that DS1500s can be submitted by a third party and with complete confidentiality.

While there are a number of issues being raised with the Government concerning design and policy issues within universal credit, these stand outside of those. This is the Government failing to act legally and must be addressed urgently. We look forward to a response within two weeks.

Yours sincerely

Daphne Hall
Southwest Committee Member
On behalf of the National Association of Welfare Rights Advisers