



Public Accounts Committee Universal Credit inquiry

NAWRA Response

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The National Association of Welfare Rights Advisers

1. The National Association of Welfare Rights Advisers (NAWRA) was established in 1975 as the Welfare Rights Officers' Group, and then the National Welfare Rights Officers' Group before becoming NAWRA in 1992. It represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations that provide legal advice on social security and tax credits. NAWRA currently has more than 200 member organisations.
2. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.
3. NAWRA holds four conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.
4. Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.
5. NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public.

Executive summary

6. Due to the short response time on this consultation we did not have time to carry out a full survey of our members but this response is instead informed, in the main, from threads on the rightsnet discussion forum¹ which is contributed to by welfare rights advisers across the UK and so provides a valuable insight into problems that were occurring at the time and the action advisers were taking. Because of the longitudinal nature of the threads it is also possible to see where there were improvements in the service and where problems remained unresolved.
7. Examples of the difficulties claimants faced are looked at in the following areas –
 - Initial claims
 - Maintaining claims
 - Claimants with health issues
 - Claimants who are working
 - Housing issues
8. The examples give clear evidence of the wide range of operational problems that continues to persist in universal credit, and also the difficulty in resolving problems which

¹ <https://www.rightsnet.org.uk/forums>

is exacerbated by the difficulties put in place for third parties trying to negotiate on behalf of claimants, and a reluctance on the part of the DWP to engage with stakeholders.

Initial claims

9. There are considerable problems with claims being 'closed' incorrectly as demonstrated by the rightsnet discussion thread – “Closing” universal credit claims – the reason for refusing to make an award in 2/3 refusals of UC claims². Following the universal credit statistics in April 2018³ that showed more than a quarter of claims made to universal credit had failed to result in a start on the benefit, a FOI request⁴ was made by a NAWRA member to ascertain the reasons. The response highlighted that the main reason for rejecting claims was failing to book or attend an interview. NAWRA is concerned that claimants who would be entitled to universal credit are failing to see the claim through because of an administrative hurdle which they may not understand the importance of, or be able to manage on their own. Even if they subsequently claim successfully they may have missed out on a considerable amount of money if the claim is not backdated to the date of claim.
10. The universal credit system is unable to have repeat email addresses in it. This means each member of a couple needs a different address and currently claims managed by a corporate appointee are having to be dealt with clerically as the corporate appointee cannot manage hundreds of different email addresses (see rightsnet discussion thread 'Appointees without personal connection' – post 5 onwards⁵). It is also causing problems where a person makes a claim that is rejected (see paragraph 9 above) and then tries to make a new claim. Additionally, once a new claim is made the person has no access to the previous claim and may have considerable difficulty resolving the problem (see rightsnet discussion thread 'GDPR – UC and email addresses')⁶.
11. Disabled students are having considerable difficulty claiming universal credit. A full-time student is eligible for universal credit if they are in receipt of personal independence payment/disability living allowance (PIP/DLA) and have been assessed as having limited capability for work/work-related activity (LCW/LCWRA). However, often a student in receipt of PIP/DLA can only be assessed as having LCW/LCWRA by claiming universal credit. NAWRA members find that such claims are being turned down without a work capability assessment being carried out thus denying students the benefit (see rightsnet thread 'UC for a full-time disabled student'⁷). Commissioner's decision CG/1479/1999⁸ sets a precedent to say that it is unlawful to adjudicate on a claim to make a nil award in a case

² <https://www.rightsnet.org.uk/forums/viewthread/12811/>

³ <https://www.gov.uk/government/statistics/universal-credit-29-april-2013-to-8-march-2018>

⁴ https://www.whatdotheyknow.com/request/reasons_for_universal_credit_cla_-_incoming-1153572

⁵ <https://www.rightsnet.org.uk/forums/viewthread/8909/#55293/>

⁶ <https://www.rightsnet.org.uk/forums/viewthread/12968/>

⁷ <https://www.rightsnet.org.uk/forums/viewthread/11927/>

⁸ https://www.rightsnet.org.uk/pdfs/CG_1479_99.pdf

where entitlement depends on something else. NAWRA believes that for any claims made by disabled students in this situation, no decision should be made until a work capability assessment has been carried out.

Maintaining claims

12. Advisers and claimants report problems with contacting the universal credit helpline. This includes long waits of over half an hour (see rightsnet thread 'Telephone calls to DWP – on hold waiting time increasing again'⁹ – although this thread covers various benefits some posts relate to universal credit). In 2015 Lord Freud said the target time for answering the phone for universal credit was 1 minute and 30 seconds.¹⁰ Additionally, advisers report that the customer service advisers on the helpline often have minimal universal credit knowledge which can make it difficult to resolve problems.
13. The quality of decision letters can be very poor (see rightsnet thread 'Quality of decision letters'¹¹). The first example letter on the thread advises that the person does not meet the requirements for the right to reside test but provides no explanation or reasoning. The second letter, which is a mandatory reconsideration notice, states both that the decision has been changed and that it has not been changed, and then has a blank space under the heading 'the reasons for this decision'.
14. Despite claimants being encouraged to use the online journal to request a mandatory reconsideration, and guidance clearly stating that this is a valid method¹², advisers are experiencing that this is a 'hit and miss' method which is not always effective. Often the mandatory reconsideration will be missed or not actioned, and the claimant has to ring the helpline in order for the reconsideration to be progressed (see rightsnet thread 'FSUC and mandatory reconsideration'¹³).
15. The refusal of the DWP to allow advisers to use implicit consent (as set out in 'Working with representatives: guidance for DWP staff'¹⁴) continues to cause considerable problems (see rightsnet thread 'Reasons we need implicit consent or signed consent in full service'¹⁵). While there is a process of explicit consent (writing consent in the journal) this does not work for some people¹⁶. Also explicit consent has an extremely short shelf

⁹ <https://www.rightsnet.org.uk/forums/viewthread/12966/>

¹⁰ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-09-07/HL2012>

¹¹ <https://www.rightsnet.org.uk/forums/viewthread/12638/>

¹² http://data.parliament.uk/DepositedPapers/Files/DEP2017-0556/79_Mandatory_Reconsideration_v1.0.pdf

¹³ <https://www.rightsnet.org.uk/forums/viewthread/12947/>

¹⁴ <https://www.gov.uk/government/publications/working-with-representatives-guidance-for-dwp-staff>

¹⁵ <https://www.rightsnet.org.uk/forums/viewthread/11063/>

¹⁶ <https://www.rightsnet.org.uk/forums/viewthread/11063/#51653>

life – it expires at the end of the assessment period after it is given¹⁷ which is often before the problem has been resolved. In addition, if a lot of information is written on the journal the consent can get difficult to find. NAWRA sees no reason why a system of implicit consent cannot operate within universal credit as it has done within all other benefits for many years. To insist on explicit consent is discriminating against individuals who are unable to give it eg because of disability. Where explicit consent has been given it should last until the issue has been resolved and be placed at the top of the journal where it can be seen easily (NAWRA understands that the DWP is currently looking at a way to ‘pin’ the consent to the top as a result of our interventions – see rightsnet discussion thread ‘UC journal – vulnerable clients’¹⁸).

Claimants with health issues

16. Claimants who are unable to work and in the assessment period before a work capability assessment is carried out have, by default, full work-related requirements placed upon them. Work coaches have discretion to lift those requirements under regulation 99 of the Universal Credit Regulations 2013¹⁹ or to apply easements but it is NAWRA’s experience that this discretion is not being exercised consistently (see rightsnet thread ‘UC WCA/sick conditionality’²⁰) causing unnecessary distress for claimants and often a deterioration in the health condition.
17. Where claimants have naturally migrated from employment and support allowance (ESA) to universal credit the status of limited capability for work/limited capability for work-related activity (LCW/LCWRA) should carry over into the universal credit award from the start of claim and the appropriate element included under regulation 19 of the Universal Credit (Transitional Provisions) Regulations 2014²¹. However, this is not happening consistently (see rightsnet thread ‘ESA transfers to UC due to natural migration’²²). FOI responses obtained by a NAWRA member²³ reveal that the process for ensuring this happens is via an MGP1 form being sent to the appropriate section and the information that is returned in the form being manually input into the universal credit system. This process is clearly not working effectively as claimants are being asked to submit fitnotes and are being sent inappropriately for work capability assessments. Even when the issue is flagged up on the journal and the legislation quoted there is a failure to

¹⁷ <https://www.gov.uk/government/publications/universal-credit-detailed-information-for-claimants/universal-credit-consent-and-disclosure-of-information>

¹⁸ <https://www.rightsnet.org.uk/forums/viewthread/12912/>

¹⁹ <http://www.legislation.gov.uk/ukxi/2013/376/contents>

²⁰ <https://www.rightsnet.org.uk/forums/viewthread/12269/>

²¹ <http://www.legislation.gov.uk/ukxi/2014/1230/contents>

²² <https://www.rightsnet.org.uk/forums/viewthread/11307>

²³ <https://www.rightsnet.org.uk/forums/viewthread/11307/P60/#59283>

resolve the situation.²⁴

18. Claimants who have been assessed as having limited capability for work are seeing journal entries informing them that they have a 'work search review' pending. This is inappropriate, and very stressful, for claimants who are not currently in a position to be seeking work (see rightsnet thread 'People with LCW being require to attend 'work search review' appointments²⁵). A query was sent asking if the wording was correct to Director General of Universal Credit Neil Couling, and was responded to by Complaints Resolution on his behalf saying that the wording was correct and –

'it is intended to make sure we are talking to the claimant about how we can help them, including their preparations for finding a job. It is not about requiring them to find work but encouraging people to take up work opportunities if they can. This can often be a good way to build their confidence, well-being and self-esteem. Universal Credit means you get support for your health condition and help to start work, if it is appropriate for you.'

19. NAWRA submits that this is unhelpful in the extreme and is not conducive to setting up a supportive environment for someone whose health condition currently prevents them from working. Contrary to the response above, NAWRA believes it is likely to threaten a person's confidence, well-being and self-esteem, and the fact that the DWP fail to recognise that is hindering the support that might otherwise be available and of help.

Claimants who are working

20. There is a lack of flexibility in how the Minimum Income Floor is applied. One member reports a self-employed person who was sick and submitting fitnotes yet there was no easement on her expected earnings causing financial hardship (see rightsnet thread 'What happens to MIF when sick and unable to work'²⁶). An FOI request has revealed that the only option in this case is for them to cease to be self-employed.

Housing issues

21. A number of issues have been brought by members working for social landlords including –

- Housing costs being limited to 50% of liability when a couple splits up and one leaves even though there is full liability for the remaining tenant.
- Universal credit not accepting liability for housing costs where under 18 year olds have their rent guaranteed by a parent or guardian.

²⁴ <https://www.rightsnet.org.uk/forums/viewthread/11307/P60/#59409>

²⁵ <https://www.rightsnet.org.uk/forums/viewthread/12744/>

²⁶ <https://www.rightsnet.org.uk/forums/viewthread/12910/>

- Deductions for historic overpayments and third party deductions being taken at a level that causes extreme hardship and in priority and are also being prioritised ahead of housing costs contrary to DWP guidance.²⁷
- Delays in managed payments to landlord following conversion from live service to full service.

22. Housing cost contributions are also being applied incorrectly because the universal credit claim form does not ask about the circumstances of the non-dependant. No housing costs contributions should be applied if the non-dependant is in receipt of the daily living component of PIP, the middle or high rate of the care component of DLA, or attendance allowance. However, they are being applied incorrectly because the information is not collected. Even when advisers ring the helpline to get this corrected it is not always accepted (see rightsnet thread 'UC and housing cost contributions'²⁸).

23. Another issue has been raised where there are 'untidy tenancies' where a claimant has a joint tenancy but the other tenant no longer lives there due to relationship breakdown or similar. Although DWP guidance clearly states that a tenant can be treated as liable for the full rent²⁹ this is not always happening in practice – see rightsnet thread 'Ex-partner not in household but joint tenant – affecting UC'.³⁰

Conclusion

24. NAWRA believes that, while the universal credit system may work well for some, there are substantial and persistent problems for more vulnerable claimants, which currently the DWP is not open to addressing. NAWRA recommends that –

- No claims should be closed because of a failure to make or attend a first interview without making verbal contact with the claimant to ensure they fully understand the requirement.
- Provision must be made for corporate appointees to operate out of one email address and for couples to share an email address if they wish.
- Where a full-time student in receipt of PIP/DLA claims universal credit, no decision should be made until a work capability assessment is carried out and this should be fast-tracked.
- The helpline needs to be adequately staffed to ensure that calls are answered within the DWP's target time of 1 minute and 30 seconds. Also staff should be

²⁷ Paragraph D2043

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702962/admd2.pdf

²⁸ <https://www.rightsnet.org.uk/forums/viewthread/12415/>

²⁹ http://data.parliament.uk/DepositedPapers/Files/DEP2017-0556/68_Housing_Costs-joint_tenancies_v4.0.pdf

³⁰ <https://www.rightsnet.org.uk/forums/viewthread/13045>

fully trained either to deal with queries themselves or able to escalate queries to be resolved on the same or following day.

- The quality of decision letters needs to be reviewed so that they give clear explanations and an accessible route to get further explanation if needed.
- Requests for a mandatory reconsideration via the journal needs to be both acknowledged and acted upon within reasonable time scales.
- The ability for third party advice agencies and similar to operate with implicit consent (as used by MP caseworkers) should be reinstated immediately.
- Where explicit consent is used it should remain valid until the issue is resolved. Explicit consent should be pinned at the front of the journal.
- No conditionality should be applied during the assessment period prior to the work capability assessment being carried out.
- A foolproof system needs to be set up to ensure that any claimant migrating from ESA to universal credit have the appropriate LCW/LCWRA element applied and no work capability assessment is carried out until the normal review time.
- Claimants who have a LCW should not be submitted to 'work search reviews'. Sanctions are not appropriate for this group as they are likely to cause additional stress and be counterproductive to supporting people into work.
- NAWRA is opposed to the application of the Minimum Income Floor as it discriminates against self-employed people compared to employed people. However, if it is to be applied there must be flexibility as to its level (ie the equivalent number of hours at minimum wage) taking into account the claimant's circumstances in respect of health issues and caring at any particular time.
- DWP must make use of the landlord portal to resolve queries with social landlords effectively and efficiently.

This is a non-exhaustive list from the limited experiences of full service to date given that there are only about half a million people currently claiming under the full service many who have only started claiming recently. NAWRA believes it is imperative that the DWP takes note of these issues and works with stakeholders to resolve these problems as a matter of urgency before roll-out and managed migration are too far advanced.