



## **ISSUING UC50S**

### **A REPORT ON AN INVESTIGATION INTO SYSTEMIC PROBLEMS**

#### **AS UPDATED 01/09/2021**

**Please note that this is an update to the original report dated 05/08/2021. We have since received further information from the Department for Work and Pensions following our request for a review of their initial response to the freedom of information enquiries that we submitted. This has not changed our main recommendation, but an update is necessary for the sake of accuracy and completeness.**

In 2020, the Welfare Benefits team at Central England Law Centre noticed a trend in the form called the 'UC50' not being issued to claimants in cases where a UC50 would have been expected. They suspected it might not just be a local problem.

We have been investigating why this is happening and this note sets out in some detail the steps we have taken and what we have found out in the hope that it may be helpful to those trying to secure improvements. Unfortunately, it has been difficult to find clear and consistent information about the relevant processes, which is itself troubling, but we have drawn what we believe to be reasonable conclusions based on the balance of the evidence.

#### **WHY IS IT IMPORTANT?**

Claimants who are ill or disabled and cannot work but who do not receive a UC50 form are unlikely to know they should have done so. This means they are unlikely to contact the DWP ask why they have not received the form unless they have a benefits adviser who has explained the system to them. Many claimants do not have access to specialist advice.

The consequences for those affected could be serious. They may not receive all the benefits to which they are entitled. In particular, they may be subject to the benefit cap when they should not be.

#### **WHO WE ARE AND WHAT WE WERE ASKED TO DO**

This work has been undertaken by the Strategic Public Law Clinic, a collaboration between Warwick Law School and Central England Law Centre.

<https://warwick.ac.uk/fac/soc/law/applying/linc/strategic-public-law-clinic>

## OUR INVESTIGATION

Our investigation has been led by four main questions:

- Is this a local or more widespread problem? If widespread, this would suggest a problem in the system.
- When did the problem start? In particular, we were concerned to understand whether the problem was linked to the impact of the pandemic on DWP systems.
- What is the step-by-step process for issuing a UC50 and how did it change, if at all, during the pandemic? A detailed understanding of the process would assist in pinpointing what might be going wrong.
- What safeguards, if any, have been built into the system to guard against things going wrong or to ensure errors are corrected if they occur?

We have:

- undertaken internet research to find publicly available information;
- submitted requests under the Freedom of Information [FOI] Act for information from the DWP; and
- surveyed members of the National Association of Welfare Rights Advisers [NAWRA].

## OUR FINDINGS IN DETAIL

### How widespread is the problem?

We received 42 responses to our survey of NAWRA members undertaken in April 2021. 69% (29) reported that they had noticed an increase in the number of cases in which a UC50 had not been provided when they would have expected that to have been the case. No discernible geographical pattern could be found. The respondents were working in locations across the country.

15 NAWRA members who responded provided a percentage figure for the proportion of their relevant caseload which had been affected. 60% of these respondents said that the percentage affected was 50% or more.

### When did the problem start?

Of the 29 who reported an increase in the number of affected cases, 23 reported that the *increase* had started at some point after the start of the pandemic.

However, we noted that 5 respondents said that they had noticed the problem before the pandemic and 2 of these said that it had been a problem since UC was introduced. This prompted us to send a follow-up question to those who had not made any comment as to

when the problem had started, (as opposed to when they had noticed an increase in the problem), if they had confirmed they were happy to hear from us again. We received 13 additional responses to the specific question of whether they had noticed the problem before the pandemic and 9 of these (69%) said they had done so. Only 3 said they had not, and 1 answer was unclear. Many mentioned that they had noticed a worsening since the pandemic.

### **What is the process for sending out the UC50s?**

Although this appears to be straightforward question, it has been difficult to find out the step-by-step details of the process for sending out UC50s.

Using freedom of information rights, we asked the DWP for those details 'pre-pandemic' (i.e. before 17 March 2020) and for information about any changes. Our first request was refused on the ground of cost. We resubmitted it, refining it (using a list of topics suggested by the DWP) to two headings: "Dealing with a Health Condition" and "The Work Capability Assessment". We received a response to parts of this re-submitted request, but we then requested a review of that response. What follows is based on the total information provided by the end of that process.

We have been told that the DWP does not have anything which explains the step-by-step process in a format that can be shared but that an overview can be found in the documentation that was disclosed (see below).

The lack of clarity and detail about the process in the documents disclosed by the DWP in response to the FOI request is worrying. We asked that the information provided include staff training materials. As noted below, there is evidence that the staff responsible for relevant parts of the process has changed, and we understand that significant numbers of new staff have been recruited recently as a result of the pandemic. The most common answer from NAWRA members to our survey question about the cause of the UC50 problem was inadequate training/deployment of staff and the provision of inaccurate information by staff to claimants (25% of the 24 NAWRA respondents who identified what they believed to be a cause mentioned this issue).

We have considered the following documents which:

- have been disclosed by the DWP as part of the freedom of information (FOI) response;
- are documents to which reference was made in those disclosed documents; or
- are clearly relevant and which we located through internet research.

Our conclusion is that once a referral is made for a work capability assessment [WCA], which is done using a computer system called the Medical Services Referral Service (MSRS), that system, in some kind of 'automated' way, generates a letter which is sent out with the UC50 to the claimant. This conclusion is based on the following evidence.

a) **Capability for Work Assessment - undated (FOI response):**

This document says:

*“When a referral is made to the Centre for Health and Disability Assessments (CHDA), the **Medical Services Referral System (MSRS) will automatically send the claimant a capability for work questionnaire (UC50)** and a covering letter. More information about MSRS can be found in the Medical Services Referral System user guide.” [We have added the emphasis in bold.]*

Initially, we undertook internet research to try and find more information about MSRS. We located two documents, ‘Medical Services Referral System (MSRS) ESA User Guide’<sup>1</sup> and ‘Referring a claimant to a Work Capability Assessment’<sup>2</sup> which is a document about UC. Both are undated but were located on 9 June 2021. Following our request for a review of the FOI response, we were also sent a document called the MSRS User Guide which is about using MSRS in UC claims. It is also undated.

MSRS is a computer system that is used by the DWP to make electronic referrals for WCAs to the health assessors and for communication about that referral between the two. MSRS seems to have been developed for use with ESA and is now used for UC claims, but there are some relevant differences in how it operates in UC claims (see below). It appears that it is this software that sends out the UC50 in some kind of automated fashion.

Although the documents are undated, as we have been informed by the DWP there have been no changes to the process for sending out the UC50, we have assumed they provide information about how the process works in the relevant period i.e., immediately before the pandemic, throughout the pandemic and currently.

b) **UC18GEN Health - dated February 2020 (FOI response)**

We have been told that this is training material aimed at Work Coaches, Case Managers and Assisted Service Coaches. It is dated February 2020. It provides information about who was responsible for making the WCA referral using MSRS immediately before the pandemic hit. It says:

*The case manager refers the case to the CHDA using the Medical Services Referral System (MSRS).*

c) **Coventry DWP liaison meeting minutes - 4 June 2020**

The Welfare Benefits Team at CELC was informed in June 2020 that the responsibility for sending out UC50s was about to be transferred to local work coaches. The minutes say:

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<sup>1</sup><https://www.whatdotheyknow.com/cy/request/235163/response/596601/attach/html/3/5b%2011%20v%20066%20for%20foi.pdf.html>

<sup>2</sup><https://www.whatdotheyknow.com/cy/request/341853/response/841764/attach/5/1%20Referring%20a%20claimant%20to%20a%20Work%20Capability%20Assessment.pdf>

*“Responsibility for issuing UC50s switched from Case Managers to Work Coaches. Issuing by Work Coaches starting from “next week” i.e. w/c 15/06/20.”*

Although this clearly states that responsibility for sending out the UC50 was transferred to Work Coaches, we have been told in response to the FOI review that this has not happened. Given the information in the documents sent to us, one explanation is that the liaison manager meant that the responsibility for making the WCA referral has been transferred to Work Coaches. It is the MSRS system which then issues the UC50, and it is *this* that has not changed.

In response to the NAWRA survey, an experienced adviser confirmed that they were aware of the transfer of responsibility to local Work Coaches that took place last year i.e. this was not just a local transfer in Coventry. They understand that it was introduced as a response to a national problem (see below for more detail). We do not know whether it has yet been implemented in all local offices.

d) **Health Challenge - undated (FOI response)**

This appears to be a training quiz aimed at Work Coaches. This poses the following question:

*“At what point in a claimant journey must you consider a WCA referral?”*

This strongly implies that (at this point in time) it is the Work Coach that makes that WCA referral. This is consistent with what CELC benefits team was told about a transfer of responsibility from Case Managers to Work Coaches in local offices. But the document is undated and is not entirely explicit on the point.

e) **UC18 Health: work coach and assisted service coach - dated February 2021 (FOI response)**

Again, this seems to be training material for work coaches. This is the most recently dated material received from the DWP, but what it says appears to be somewhat inconsistent with the rest of the disclosed material.

It says the *health assessors* (CDHA -Centre for Health and Disability Assessments) issue a UC50 to claimants. We checked the CDHA website. This said (as at 9 June 2021 when we accessed their site) that the *DWP* (and not CDHA) sends the UC50 out:

*The Department for Work and Pensions (DWP) will send you the [ESA50/UC50 questionnaire](#) when they have asked us to do a Work Capability Assessment.<sup>3</sup>*

Although both accounts are consistent with the information which says that the UC50 is sent out as a result of making a WCA referral, the inconsistency as to who is actually responsible for sending it out is troubling. The assertion that it is the CDHA is repeated in a standard letter sent to claimants (the UCD35 – see below). A copy of this letter was found on the internet which had been disclosed in response to a

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<sup>3</sup> <https://www.chdauk.co.uk/frequently-asked-questions>

freedom of information request made on 3 April 2019.<sup>4</sup> It is undated, and so it is unknown whether it is a current version. It says:

*The Health Assessment Advisory Service (working for us) will send you a questionnaire.*

(According to their website, The Health Assessment Advisory Service is part of the CDHA.)

### **How automated is the WCA referral and the production of the UC50?**

As explained above, the undated 'Capability for Work Assessment' document (provided in response to the freedom of information request) says that more information about MSRS can be found in the MSRS User Guide. A google search using these terms found an ESA (as opposed to a UC) guide entitled 'Medical Services Referral System (MSRS) ESA User Guide' (again undated). A search using the terms 'MSRS UC' found an undated document, 'Referring a claimant to a Work Capability Assessment' which deals with the process for UC claims. We have since been sent a document called MSRS User Guide which is specifically about using MSRS to make a referral in UC cases.

The MSRS user guide for ESA claims explains that the referral for the WCA assessment is *automatic*:

*"8. An automatic interface now operates between JSAPS [Job Seekers Allowance Payment System] and MSRS. The Interface allows for automatic WCA referrals to be made to the Assessment Provider. The majority of both WCA initial and re-referrals will be made via the automatic interface."*

The user guide calls this an '*auto push referral*'.

But the information about the MSRS process in UC claims in the document 'Referring a claimant to a Work Capability Assessment' says that this automated referral process is not in place in the UC system. This says:

*"There is no automatic interface between the Universal Credit Agent Portal and MSRS. Agents are required to enter data manually to MSRS."*

The reader of this UC guide is referred to the 'MSRS user guide' for details on how to use MSRS. This explains that a UC case has to be set up manually on MSRS if a work capability assessment referral is to be made.

In summary, although the sending out of the UC50 appears to be embedded in the WCA referral system, the evidence we have been able to find suggests that, in UC claims, the WCA referral request has to be entered manually. This opens up opportunities for human error. It is also unclear who is actually responsible for posting it out.

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<sup>4</sup> [https://www.whatdotheyknow.com/request/universal\\_credit\\_work\\_capability#incoming-1355469](https://www.whatdotheyknow.com/request/universal_credit_work_capability#incoming-1355469)

## What relevant safeguards are built into the system?

The material that has been provided to us suggests there are some safeguards built into the system. In particular, the 'Capability for Work Assessment' (FOI) document says that a UCD35 letter 'is added' to the claimant's journal to notify them that they have been referred for a WCA and to expect to receive a questionnaire. If the claimant does not have access to their journal, it is said that this information must be communicated by an alternative form of contact. No mention is made of who is actually responsible for adding the letter to the journal.

But there is a more fundamental problem. What if there is a failure in the making of the WCA referral? The claimant would have no reason for thinking that anything had gone wrong. Their claim would continue to be paid.

The February 2020 training material (FOI) said that automatic 'To dos' are generated for DWP staff by the UC system. These included, at day 29 after a declaration of unfitness for work, a message to the DWP staff member to 'Consider WCA referral to do'. The training material said this is for the Case Manager to implement. We do not know whether this is retained in the current system – the February 2021 training material (FOI) material does not provide any information on this.

In addition, it is not known whether this reminder just appears on screen once on the 29<sup>th</sup> day (and disappears whether or not it is actioned), or whether it continues to appear until it is switched off in some way. Even if a 'switch off' is required, if it is right that the MSRS and UC computer systems are not linked, the reminder in the UC system would not be switched off automatically when the MSRS system is used to make the WCA referral. This suggests that DWP staff must be able to switch the reminder off manually. If so, there is a risk that they may do so even if they have not made the WCA referral at that point. A busy staff member may have every intention of dealing with the referral process (with all its associated manual data entry) but may switch off the reminder and overlook returning to this task. This would mean that the referral is not made.

There is reason to believe that the automated reminder to consider a WCA referral at day 29 has not proved itself to be sufficient safeguard. The experienced adviser identified above told us it was their understanding that the reason for the transfer of responsibility for making WCA referrals from Case Managers to Work Coaches in local offices was that WCA referrals were not being made by Case Managers when they should have been. Therefore, UC50s were not being sent out in those cases. It was thought that this was because Work Coaches were not communicating information to Case Managers about fit notes. Problems in this part of the process could have resulted in a decision not to make a referral (because of an apparent lack of evidence) or could have interfered with the reminder system working as it should (because of inaccurate information about dates of unfitness). The training material dated February 2020 (FOI) does suggest that there was a worrying lack of systematisation in the checking and recording of fit note information which could have been contributing to this problem. It says:

*"If a claimant gets a fit note, they input the dates into their online account. This generates a Check Medical Evidence to-do. **This to-do would be completed by whoever sees the fit note**, this is normally the work coach."* [Our emphasis added in bold.]

Whatever the cause of the problem with making WCA referrals, the experienced adviser's understanding is that the solution was to transfer all parts of the system to Work Coaches in local offices. We do not know if this has yet been implemented in every local office. This adviser's understanding is consistent with the reports by other advisers that the non-receipt of the UC50 had been a problem before the pandemic (see above).

But there is no evidence that the transfer of the WCA referral process to local offices (if it has happened) has resolved the problem. None of the NAWRA advisers reported noticing any recent improvement. This suggests that, even if the original cause of the problem may have been resolved by the transfer to local offices, system failures (possibly new) are still occurring on a significant scale.

Although the material produced by the DWP tends to speak of the automated nature of the process for issuing a UC50 as if it is failsafe, the evidence we have seen points to the need for significant levels of human action before any automated step activates to send a standard letter. It is of interest that one of the NAWRA respondents to the survey indicated that the ESA equivalent document (ESA50) is sent out promptly in the ESA system which, based on the information in the above documents, appears to have a greater level of automation.

## **OUR CONCLUSIONS AND RECOMMENDATIONS**

### **Performance monitoring**

The DWP should reduce the risk of systems failure by addressing the weaknesses in the system for making WCA referrals and sending out UC50s. A performance monitoring system focused on this issue would identify problems and check whether solutions were working.

The freedom of information questions that we asked included whether there is a performance monitoring system in relation to the issuing of UC50s, but no clear answer was given. It is right to say that we did not ask about performance monitoring in respect of the making of a WCA referral, which is the essential process step in the sending out of the UC50, and we linked our question to what we had understood to be the transfer of responsibility for sending UC50s, rather than for the making of the WCA referral, to local offices. This may account for the failure of the response to answer the underlying substance of the question.

The DWP has confirmed that it has a record of the total number of UC50s returned by month, but not the totals that were sent out. It would be of serious concern if, having identified a problem in making WCA referrals (the essential step in the process leading to the sending out of the UC50), the DWP had not introduced a system to monitor the making of these referrals. This would help identify not only the existence of a problem but causes which could then be addressed.

### **Claimant information**

However, it is probably inevitable that, whatever systems are used, they can fail. If they fail in such a way that the UC50 is not sent out, the consequences for those who are victims of the failure are significant.

The issuing of the UC50 alerts the claimant to the fact that a WCA has been made, a critical gateway for most claimants who are unfit for work to secure their correct benefit entitlement. And yet they are unlikely to know, in the absence of specialist advice, that they



should have received this key document. If the failure is at the point of making the WCA referral, there appears to be nothing in the system to alert them to the system failure in their case. They will continue to receive payments. They are not told about the existence of the form or the need to complete it unless the system has worked as it should i.e. when the WCA referral has been made, the UCD35 is *then* sent out.

This has all the hallmarks of a systemic unfairness. In order to be paid the level of UC to which the person is entitled, they must provide information using a particular form of which they have no knowledge and where the system itself does not enable the claimant to identify the problem if the DWP process for providing that form were to fail. This could be remedied with an appropriate safeguard.

**The claimant is required to enter dates of their fit notes in their UC journal. If the system were to generate a standard letter at that point which explained the 'unfit for work' process, including the referral for a WCA and the issuing of a UC50, the claimant would be more likely to know to expect to receive the UC50, and when, if they remained unfit for work.**

It appears that the UC system can generate automated reminders (such as the 'day 29' reminder) . Furthermore, one experienced adviser has told us that (in response to a query as to why a letter had been sent unsigned) they were informed by a member of DWP staff that some standard letters (in another context) were generated automatically by the UC system. In any event, it would be surprising if it were difficult to introduce the UC50 safeguard proposed here, and it would be a proportionate process reform to address the unfairness inherent in the current system.

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