**SSC Implicit consent case studies**

Recent case studies provided to the Universal Credit ‘Test and Learn Team’ by advice organisations of the SSC consortium highlight how the removal of implicit consent has unnecessarily restricted vital support networks  from intervening to resolve benefit payment problems. Many of these cases have been posted, and continue to be posted, on Rightsnet (<https://www.rightsnet.org.uk/>).

We hope these case studies will improve your understanding as to why this change has created unnecessary delays as they highlight how this change has created unnecessary hardship for some of the most vulnerable people in our society including claimants who are terminally ill and who have severe mental ill health in some cases leaving them destitute and at risk of eviction and put unnecessary strain on the services who support these claimants to resolve their benefit issues. The case studies also highlight the lack of understanding of DWP staff around data protection and working with representatives and third parties.

**Case study 1**

*When clients have made a journal entry giving permission for our team to speak on their behalf, some UC helpline staff are insisting that a named adviser be specified in this journal entry.  This is not practical, we work in teams, and to my mind it should be enough to state the name of a ‘service’.*

*I have a case for a vulnerable man where they spoke to me on 28th April but will not speak to me today (11 May) based on the same consent.  Even though I am chasing up the same issue - i.e. the fact that his LCWRA component which should have carried through from ESA in December 16 is still not in pay 5 months later.  They say the customer must go on and put a different wording on.  It is simply unworkable to deliver advice this way for vulnerable people who would need an appointment with me to log such further less vague consent.*

**Case study 2**

*We rang UC to ask for an update on a client’s housing element problem, pointing out that she has previously put a note on her UC journal asking for us to help. They would only speak to us if we passed full security. As it happens our advisor could answer the first question but not the second. They were aware that the client was not present (she lives in a remote rural area, has health issues impeding travel to our office). DWP suggested we ring the client, ask her for the answer to question 2 (“What film did you first see at the cinema?”), and then ring them back with the answer, and they would speak to us.*

**Case study 3**

*I was trying to arrange an appointment related to UC for a client with very little English. He was with me. He did the security questions and then asked to pass the phone to me. The call centre worker said that if he couldn’t speak enough English to manage the claim himself, he wasn’t “really” eligible for Universal Credit. She was only supposed to talk to him and if he couldn’t understand what she said she was supposed to terminate the call.*

**Case study 4**

*Our clients are in and out of hospital and often taking heavy duty pain relief drugs.  Access to computers and remembering the log on details is often impossible.  We have in the past been unable to inform UC that a client can’t come to an appointment because they are in hospital, that housing costs are no longer relevant because they have left their tenancy and that clients are not in a position to read any notices posted online to them because they are semi-conscious. Monitoring whether any clients have been paid properly is a nightmare.  The journal note system does not work even when the client can access it, no-one seems to be able to answer any queries and certainly in any timely fashion.  In my view these claimants are being denied proper access to their benefits.*

*The only way to avoid this appears to be to hope people are well enough when I first see them to put explicit consent onto their journals no matter what just in-case we need it later.  This should be unnecessary.*

**Case study 5**

*My client copied and pasted the following authority form into his UC log (full service):*

***‘I (name) of (address and NIC no) give explicit consent for my welfare benefit adviser (reps details) to represent me in all aspect of my universal credit claim. I am currently in poor health and require independent representation for the advice service at… This includes but is not limited to:***

* ***My welfare rights adviser writing letters and making phone call on my behalf***
* ***My welfare rights adviser making complaints on my behalf***
* ***My welfare rights adviser putting together my UC WCA case and representing me at mandatory reconsideration and appeal stages if necessary***
* ***My welfare rights adviser communicating by any other means necessary with DWP in order to assist me with my UC claim.***

***You will be receiving communications from my welfare rights adviser in respect of my UC claim including my WCA appeal. Please provide her with the information she requires. Please record this authorisation on your systems.’***

*To this he received the following reply which failed to recognise the explicit consent, and the difference between a representative and appointee.*

***Hi ...
Whilst Universal Credit is happy to deal with a specified appointee on your behalf, you will need to follow the correct process and attend an appointment at the job centre with paperwork establishing and confirming this agreement. Please call 0345 600 4272 and explain the situation to the agent who answers the phone. They will be able to book an appointment for you.
Kind regards,***

*This issue was escalated to a complaints manager however we were provided with a confused response (verbatim):*

***‘The conversations on the journal between the service centre and the representatives are pretty correct. The claimant has been explained that they can’t treat the Rep as appointees, as they aren’t so, unless he’s with them in the office, they can’t discuss it.’***

*There was no conversation on the journal between the service centre and the representative. Again, there is a failure to recognise the difference between representative and appointee. The lack of formal guidance and authorisation template provided by DWP may be contributing to this confusion.*

**Case study 6**

The following case highlights how UCFS unable to respond to changes required when claimant no longer able to manage an on line claim due to health deteriorating and 6 month delay in getting UC correctly into payment for claimant who was terminally ill when claim was made.

*DS1500 case (6 months life expectancy): Claim for UC made 14/10/16 - Client had No online access at home  - had made claim for UC at local library. Reason for contacting McMillan   - Client unsure of if and when payments for UC were to be made and how much would be paid – cl. Was very anxious about lack of income and concerned about possible delays in accessing money from their  UC claim – cl. reported on contacting McMillan that they were  unwell and unable to log onto personal account (DWP) as no computer at home and no smart phone and too unwell  to travel to the library  - client reported being unable to contact work coach as had not been given direct contact details.*

*December 2016: Client contacted McMillan again and was increasingly  anxious about whether they had  received any money from universal credit. Client tried to contact work coach (name client she had been  given was wrong). She reported the  assistance provided by service centre re trying to make contact with work coach was, was not very helpful. Client had been able to get a friend to take her to the library to access computer at local library and logged onto journal. All the boxes are ticked and there are no instructions for client to do anything. Cl was very anxious as there had been no correspondence from universal credit about how much would be paid and when and from what date.  Suggestion made by representative for client to check with bank to see if any money paid in by DWP but client unable to do this for at least week due to lack of transport was totally  reliant on others to drive her as she lacked funds to take a taxi.*

*3/1/17: McMillan adviser ( the rep.) made a Telephone call to the UC helpline to try and find out if client had been paid any money. Rep. explained that client not able to access her journal, also not able to get out and has no computer nor smart phone. UC service centre would not provide any info to rep. or provide any advice on how the issues could be taken forward. Call handler refused suggestion that  rep could forward a copy of the DS1500 to support correct assessment.*

*25/01/2017: Telephone call to DWP to make a complaint re delays and poor assessment   - UCFS called confirmed that DWP had not placed client in the limited capability for work and work related activity but  client has now received a payment into bank.*

*25/02/2017: Client has received some money, and has been informed by DWP that the amount has received will be the on going amount each month. Rep advised cl that UCFS award t is incorrect and should be twice amount UCFS quoted as her entitlement. Client given appt to see workcoach despite having health issues that make travelling very difficult.*

*07/03/2017: work coach at the DWP asked client to provide a DS1500 (proof of terminal illness) to have her money paid at the correct level.*

*22/03/2017: Rep called client as she reported that she had received  request for client to attend medical assessment despite having provided a DS1500. Client provided JCP with DS1500, and has been trying to contact medical assessment team, it is a long wait and client had not yet spoken to anyone. Rep contacted UC to explain that client is a DS1500 and should not be subjected to a medical. They have agreed and this will now be adjusted.*

*11/04/2017: Client again having problems with UC who have again requested client attend a medical even though DS1500 submitted. They have also asked her to give her consent for them to speak to her GP. Rep contacted UC and now been reassured that this is sorted.Cleint does not have to attend medical therefore does not need to give consent for the DWP to speak to GP and the additional premium that should be payable from the beginning should be added to her claim within the next 48 hours.*

*19/05/2017: Rep contacted client  - has still not received the additional money on UC (limited capability for work and work-related activity element). Rep called UC helpline who would not talk to rep as no consent would not apply implied consent. Rep explained that client has limited access to her journal and that client is DS 1500 and that this issue was supposed to be resolved within 48 hours from previous contact which was 11 April. Call back to rep from UC to inform that all the arrears were issued day previous and should now be in clients bank account.*

*23/05/2017: Rep call to client who reported that some money had been paid into bank account however unsure of the exact amount. Rep note to call again on 12/6/17 after next monthly payment should have been made (10/6/17).*

*24/05/2017: Telephone call from DWP complaints team for Universal Credit. They will contact client to apologise for the delay in claim taking the amount of time it did to resolve and be paid at the correct amount. UC will also issue a special payment and complaint upheld.*

**Case study 6**

Customer had been issued a DS1500 form via GP  and PIP had been awarded at the enhanced rate under special rules ( something which claimant  did not know as not aware of prognosis as many people issued with DS1500 are not at time it is issues).  When they  made their claim for Universal Credit  DS1500 was  not correctly processed by UC . UC  stated the claimant had not put on their claim they were terminally ill . UCFS  would not use the information from  PIP’s system or engage with the rep despite climant’s rep confirming PIP claim had  had already been  processed  as a special rules claim. UCFS stated this information would have to be added by the claimant to their UC journal despite Mcmillan rep explaining  she didn’t know her prognosis so this was wholly inappropriate.

**Case study 7**

Customer lacked the ability to make the claim for UC because they were in the later stages of their terminal illness. They were  on a variety of drugs to help their condition l which left them often feeling confused and difficulty retaining more complex information .  Customers family were happy to do this on their behalf but UFSC refused to take the calls or explain who they could provide this support .  The DWP visiting service eventually sent a rep out to get paperwork verified but only after McMillan intervened to support the claimant and their family and the payment was delayed.

**Case study 8**

This case highlights how removal of implicit consent is causing delay for claimants who have doifficutlesi remembering passwords – this is a frequent problem reported and systems for requesting password resets is too time consuming.

*Client is an EU national (Portuguese) he has been diagnosed with schizophrenia and is living in supported accommodation.  He was on JSA but this ceased back in October. He was advised to claim UC as he was in a full service area. He claimed this but failed the right to reside test. He could not give any accurate information regarding how long he has been here or his work history because of his mental health issues. He cannot access his online UC account or contact UC by phone even with the help of his support worker because he does not know what his password is.*

*An MR for right to reside on 22/03/17 and it was initially directed to wrong department - it appears it was sent to the department who make decisions on right to reside for legacy benefits and they couldn’t deal with it because they had no access to the UC system. It should have been passed on to the correct team on the 28/4/17, however, to date  the represnetaive has had no decision or correspondence back from UC.*

*No helpful advice has been provided by UC contact centre  when the support worker called on how to request a password reset or note his details as a person who can access information to support him.We have no way of chasing this up with UC because of the lack of implicit consent and the client can’t because he can’t use his journal and doesn’t’ t know his password so we need some feedback on when a decision will be made.*

*Extract of text from the MR request letter  below*

*Dear  Sir / Madam*

*NINo. …………*

*We represent the above named please see their authority attached. We are writing to request a* ***Mandatory Reconsideration*** *of your decision that Mr G does not have a right to reside.*

*Mr G suffers from schizophrenia and at present is unable to provide any detailed information to us regarding his past employment because of his current mental health state, however, we have established with the inland revenue via the telephone that he has national insurance records in 2008 and it is possible that these records go back further, though, a more detailed search is required and was not available to us on the telephone. It would, however, be available to the DWP so we ask that you do a search of his National insurance contributions. We know that he has been in the UK from at least 2006 and possible before this date.*

*As there is clear evidence that Mr G has been a worker and paid national insurance. We submit that following:*

*That Mr G has worked in the UK for a period of 5 years and therefore has a permanent right to reside. Regulation 15 of the Immigration (European Economic Area) Regulations 2006. We ask that you check Mr G’s national insurance record in the UK prior to 2008 to obtain evidence of this.*

*That Mr G worked for 2 years in the UK and had to stop work due to a permanent health condition, namely his schizophrenia, see Regulation 5 (3) of the Immigration (European Economic Area) Regulations 2006.  Mr G did claim jobseekers after he stopped work in 2008, however, we would argue this was because he was inaccurately told he would not be entitled to ESA at this time, he therefore had to claim jobseekers because he had no other access to income.*

*Finally, we argue that Mr G worked in the UK, as is evidenced by the national insurance contributions in 2008, and he has been a work seeker, evidence by his JSA claim, and that since October 2016 when his JSA claim ceased he has been temporarily unable to work because of his permanent health condition, namely schizophrenia which fluctuates in severity CIS/3890/2005.*