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ADMINISTRATIVE FAIRNESS LAB

Administrative Fairness in the Digital Welfare State

Report #1: Procedural Legitimacy Logics within
the Digital Welfare State



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Executive summary

One of the most profound shifts seen in governments around the world in recent years is the emergence of the digital welfare state. This transformation has seen the welfare state increasingly dependent on digitalised, automated, and data-driven forms of public administration, which are altering the nature of welfare provision itself. This transition raises a fundamental question: what does a legitimate process look like in this new welfare state? This is the question at the centre of the ‘Administrative Fairness in the Digital Welfare State’ study being conducted by the Administrative Fairness Lab.

Using new qualitative datasets, this first report from the study explores how public officials, welfare claimants, and welfare rights advisors reason about the processes of the UK’s flagship social security programme, Universal Credit (‘UC’)—one of the most prominent digital welfare systems anywhere in the world. It shows that, while the new era of digital welfare is characterised by a paradigmatic, shared intention to make processes work for claimants, the logic of what constitutes an acceptable process for claimants diverges in important ways between officials, advisors and claimants:

- **Public officials** fundamentally view UC in terms of the provision of a personalised welfare service for claimants and assess process qualities according to what will enhance the usability, accuracy, and efficiency of the system;
- **Welfare rights advisors’** assessment of the UC system is driven by a fundamental concern that all claimants receive the benefits to which they are legally entitled. Process qualities thus serve a basic goal of the legality of decisions produced by the system; and
- **UC claimants** frame UC processes in terms of a relationship they have with the state, prioritising the importance of processes that will make interactions feel respectful and dignifying.

Our purpose is not to claim one of these logics is superior per se but that a greater appreciation of them, the perspectives from which they derive, and where and how they differ, can shed valuable light on emerging tensions within and disagreements about the digital welfare state. We also explain how they will form the basis for the next phase of the study.

About the authors

This part of the study was conducted by, and this report was written by, three members of the project team:

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Introduction

The welfare state, which came of age in the 20th Century, is evolving. It is now increasingly dependent on digitalised and data-driven forms of public administration, which are fundamentally altering the nature of welfare provision itself. The rise of this ‘digital welfare state’¹ can be seen as reflecting the technological progress witnessed in many domains of life, but it has also led to extensive critique.² However these developments are viewed are in the round, there is no serious prospect that the digital revolution will be undone.³ It is, therefore, imperative that we seek to comprehend what this change—one of the most profound shifts seen in governments around the world in recent years—represents.

Universal Credit (UC), developed and administered by the Department for Work and Pensions (DWP), is the UK’s flagship welfare programme. Introduced as part of wide-ranging changes to the UK social security system in the wake of the Welfare Reform Act 2012, UC sought to replace six existing means-tested benefits and tax credits with a single benefit, paid monthly in arrears.⁴ As UC nears completion of its roll-out, it is now by far the most commonly claimed working-age social security benefit in the UK, with over 6 million claimants accounting for a total spend of over £50 billion per year.⁵ In addition to its stated aims to ‘simplify’ the benefits system and ‘make work pay’ – ambitions which have been interrogated across the academic literature⁶ – it is also one of the most prominent and sophisticated digital welfare systems anywhere in the world. Although UC retains offline elements, such as a route for telephone claims for those unable to apply online, it is principally a digital system: the vast majority of claimants make their initial claim and manage their ongoing entitlement via an online interface, available on a phone app and/or in a web browser. These digital elements cover initial application processes, through to a

¹ We use this term broadly but note there have also been numerous definitions of the ‘digital welfare state’ advanced, see e.g. L van Zoonen, ‘Data governance and citizen participation in the digital welfare state’ (2020) 2 *Data & Policy* 1; M Kersing, L van Zoonen, K Putters, and L Oldenhof, ‘The changing roles of frontline bureaucrats in the digital welfare state’ (2022) 4 *Data & Policy* 1; D Garland, ‘The Welfare State: A Fundamental Dimension of Modern Government’ (2014) 55(3) *European Journal of Sociology* 327

² For high-profile examples, see UN Special Rapporteur on Extreme Poverty, *Digital welfare states and human rights* (A/74/493, 2019); Human Rights Watch, *Automated Hardship: How the Tech-Driven Overhaul of the UK’s Social Security System Worsens Poverty* (2020).

³ In the UK, for instance, both the Labour Party and the Conservative Party are committed to maintaining the Universal Credit system.

⁴ J Millar and F Bennett, ‘Universal Credit: Assumptions, Contradictions and Virtual Reality’ (2017) 16(2) *Social Policy and Society* 169–182.

⁵ Department for Work and Pensions, ‘Stats-Explore’ (2023) at: <https://stat-xplore.dwp.gov.uk/> [accessed 4th October 2023].

⁶ For a few examples of many, see B Lakhani, ‘Universal Credit: Will it work?’ (2012) 27(5) *Local Economy* 455; Millar and Bennett (n 4 above); S Wright and P Dwyer, ‘In-work Universal Credit: Claimant Experiences of Conditionality Mismatches and Counterproductive Benefit Sanctions’ (2022) 51(1) *Journal of Social Policy* 20.

‘UC journal’ chat interface for communicating and managing an ongoing claim with the DWP, and the automatic processing of earnings and payment data.⁷

In this first report from our wider study of ‘administrative fairness in the digital welfare state’, we examine how three groups at the centre of this system—public officials, welfare rights advisors and welfare claimants—evaluate, from their varying perspectives, the processes of the digital welfare state with which they are now engaged. Exploring the perspectives of public officials and claimants provides an end-to-end view of those who have designed the UC system and those that use it day-to-day. Including the perspectives of advisors is important as welfare benefits advisors are important—arguably increasingly important—actors in ‘mediating the claims-making process’, and the sector plays a central role in the broader welfare eco-system.⁸

Our central question is a simple one, but it is also at the heart of understanding administrative justice in the UK’s emerging digital welfare state: what process qualities do each of these three groups identify as important for the acceptability of the digitalised UC system?⁹ It is firmly established that views on what constitutes an acceptable administrative process involve a range of factors, which can also conflict and compete with each other.¹⁰ Our aim is to explore the various process logics that animate how these different groups assess the digital welfare state and explore the ways in which they might differ from each other. Our contention is that providing an account of these logics can illuminate important but often obscured underlying forms of reasoning, including points of tension.

By examining the digital welfare state from this perspective, we observe that, while certain process qualities seem to be regarded as important by all three constituencies, the function such qualities fulfil may differ, being instrumental towards distinct foundational logics. Our qualitative interview data suggest that public officials fundamentally view UC in

⁷ See generally <<https://www.gov.uk/universal-credit>> (accessed 8 January 2024). For a detailed, critical analysis of the digital components of UC, see: R Mears and S Howes, *You Reap What You Code: Universal Credit, Digitalisation and the Rule of Law* (Child Poverty Action Group, 2023) at: https://cpag.org.uk/sites/default/files/files/policypost/You_Reap_What_You_Code.pdf [accessed 4th October 2023].

⁸ D Edmiston, D Robertshaw, D Young, J Ingold, A Gibbons, K Summers, L Scullion, B Baumberg Geiger and R de Vries, ‘Mediating the claim? How ‘local ecosystems of support’ shape the operation and experience of UK social security’ (2022) 56(5) *Social Policy & Administration* 693, 786-787.

⁹ The foundational text in the field of administrative justice, which was also built out of a study of social security provision, was based on what can be described as ‘pre-digital’ administration, see J Mashaw, *Bureaucratic Justice: Managing Social Security Disability Claims* (Yale University Press 1983).

¹⁰ Ibid. See also N. Harris, *Law in a Complex State: Complexity in the Law and Structure* (Hart 2013), 240-241.

terms of the provision of a personalised welfare service for claimants and assess process qualities according to what will enhance the usability, accuracy and efficiency of the system. Interviews with welfare rights advisors suggest that their assessment of the UC system is driven by a fundamental concern that all claimants receive the benefits to which they are legally entitled. Process qualities thus serve a basic goal of the legality of decisions produced by the system. Our claimant interviews suggest, however, that they may frame the UC system in terms of a relationship they have with the state, prioritising the importance of processes that will make interactions feel respectful and dignifying.

This report is structured into three main parts. First, we introduce our dataset and the method used to collect and analyse it. Second, we analyse three sets of process logics in turn: DWP officials involved in designing and developing UC, welfare benefits advisors, and UC claimants. We then consider the implications of our empirical data before concluding briefly.

Method

To explore the reasoning of the three groups with which we are concerned, we conducted a total of fifty interviews, which provided us with an extensive qualitative dataset to analyse for process logics of these groups.¹¹

First, we conducted semi-structured key informant interviews with twelve senior public officials in the period from January 2023 to April 2023. These officials occupied senior roles within the UC team at the DWP, and their roles covered a spectrum of functions, including policymaking, operations leadership, and research and analytics. Participants were recruited via internal calls for participants within the DWP, as well as ‘snowball’ sampling. They were asked to explain examples, from their own work and experience, of process features within UC that they deemed to have had positive effects on the claimant experience, and process features they viewed as creating more negative or problematic experiences for claimants.

Second, during March and April 2023 we conducted semi-structured interviews with nineteen welfare rights advisors who were experienced in assisting UC claimants, both in supporting initial claims and resolving problems arising out of broader UC processes. Invitations to participate in the project were issued through RightsNet, an online forum for welfare rights advisors. There was an almost even gender split within the interview sample (ten women and nine men) and interviewees were widely geographically spread throughout Great Britain. Participants were offered a £40 voucher as an incentive. The length of experience in welfare advice work ranged from one to twenty-eight years, with the average length of experience being twelve years. The interviews explored the nature of UC problems advisors encountered in advice work, and their perceptions of UC procedural qualities that they considered important for the acceptability of the UC system.

Finally, we conducted nineteen semi-structured interviews with current UC claimants. In order to secure as broad a range of experiences on UC as possible, we recruited the participants via public advertisements on social media, chiefly Facebook. This avoided recruiting only participants who had sought advice with their claim, as may have been the case if recruiting solely via third-sector organisations. Participants who expressed an interest in the study completed a screener questionnaire. Out of 308 people who

¹¹ All interviews were recorded, transcribed, and analysed. The research received full ethical approval from the Economics, Law, Management, Politics and Sociology ethics committee at the University of York.

completed the screener questionnaire, we invited thirty-eight to interview: these participants were selected to achieve a diverse sample across their age, gender, ethnicity, and engagement with UC (in particular, whether or not they had received a deduction, sanction, or third sector assistance with their claim). A total of nineteen claimants took up the offer – eleven women and eight men – with an average age of thirty-nine. Thirteen participants were white, and six from black and minority ethnic groups. A majority had been in receipt of UC for between one and two years (thirteen participants), with four having been in receipt for more than three years, and two for less than one year. Each were paid a £40 voucher for their participation. The interviews followed a similar structure to those for the advisors, exploring the claimant’s experiences of UC with open-ended questions about what procedural qualities they considered important.

We used a combination of inductive and deductive analysis. After reviewing the dataset for any references to process qualities, we created a coding scheme based on these references and then applied this systematically to the entire dataset. This approach revealed a significant number of process qualities that were seen as relevant. We set these out in full in Table 1 and return to them in more detail in our analysis below. A striking feature of our analysis was that, while a broad range of qualities were identified across the three groups as a whole, with some overlap in the qualities identified by each group, the qualities each group emphasised as being central or particularly important differed. Below, we set out the dominant procedural qualities that are featured in the reasoning of each group. By doing so, we do not seek to suggest that these groups are not interested in other procedural qualities, but rather that the qualities centred in the three groups’ reasoning about what good UC processes look like differs.

While our study provides a detailed analysis of different perspectives on UC process logics, it is not without limitations. In particular, the recruitment of claimants through social media means the participant pool will over-represent those with internet access and active social media accounts, omitting certain demographics that may face a greater level of digital exclusion and, therefore, greater challenges with digital processes in UC. Although we have ensured as diverse a sample as possible across these groups, the findings below should be read with this limitation in mind. We are also mindful that our study design does not provide an exhaustive range of stakeholders involved with the UC process. In particular, work coaches or other ‘frontline’ DWP staff may have a different perspective to the DWP civil servants involved in elements of the UC system design.

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PROCESS QUALITY	DEFINITION
Accessibility	The system makes it easy for making or updating applications
Assistance	Officials offer help to applicants who are struggling with a claim
Availability	It is easy to get hold of relevant officials
Consistency	Officers or offices give consistent advice and information
Correctability	It is easy for errors to be corrected
Decision discretion	Rules are applied flexibly to meet the circumstances of the claimant
Dependability	Officials follow through on any promises made
Dignifying treatment	Interactions and processes are dignifying for claimants
Efficiency	The system works effectively whilst minimising operational costs
Empathy	Officials have empathy for clients
Factual accuracy	Claimants' situations are fully understood
Intelligibility	Official communications are clear and easy to understand
Legality	Officials know their own rules and apply them competently
Margin of error	The system is forgiving of mistakes and gives the benefit of doubt
Neutrality	Officials and processes exhibit a lack of bias and discrimination
Personalisation	Communications are specific to claimant's circumstances
Respectful communication	Claimants are communicated with respectfully
Responsibility-taking	The burden of putting official errors right is taken by officials
Speed	Relevant actions are taken promptly
Transparency	It is easy to find out and/or show the basis for decisions
Trustworthiness	Officials act in a way that exhibits trustworthiness
Voice	Claimants can express themselves and feel listened to/understood

Table 1: Code of procedural qualities



Universal Credit as a service: the process logic of officials

Thus far, understanding of the emerging digital welfare state in the UK has largely been advanced through research on understanding the views and experiences of UC claimants. The perspective of claimants is, of course, vital. However, developing a richer account of the official perspective is also essential. Without it, nuanced and often unobvious reasoning underpinning the design of processes can be missed or misunderstood. As a result, good faith critical engagement can also miss the target, and fail to engage properly with important process questions as they exist in practice. What, then, do officials think of when considering what makes for acceptable processes in UC?

At the outset, it is important to note that DWP officials generally approached the evaluation of UC processes through a particular frame, which is characterised by several features. Officials were expressly concerned with the ‘user experience’ of claimants. Significant efforts are made to understand how claimants think and behave and to develop processes that work well. This is not merely a presentational device; it courses through the internal language of the Department and its work. However, officials were also naturally concerned, as managers of a public system, with the UC system as a whole and the entire cohort of welfare recipients. Thus, while process design and development work is undertaken within the rubric of ‘designing for users’, officials were always conscious that process changes have management-side implications. Their position naturally also involved considering factors in the design of processes that would typically not be priorities for individual users but were nonetheless important, including to the wider public. The risk of welfare fraud is an example—some process design choices may increase or decrease the risk of fraud, and this was a relevant consideration for officials in a way that was not for individual claimants. Perhaps the most striking feature of the official perspective in relation to UC, in particular, was that officials seemed to think far less about social security ‘decision-making’ and much more about the maintenance of a constructive relationship between the DWP and the claimant.

Six qualities were central to our DWP participants’ reasoning concerning what constitutes an acceptable process for claimants. Importantly, as per our observation above, officials saw these as both qualities of a UC decision-making process but also qualities of the wider service through which the DWP maintains relationships with claimants. The two were, in practice, difficult to distinguish, both generally and specifically in terms of how they sought to legitimise welfare decision-making. This marginalisation of ‘the decision’—

upon which much theory about the legitimacy of administration is built—is a key feature of the digital welfare state as a mode of public administration.

First, officials placed significant emphasis on intelligibility (*i.e.* making any communications with claimants clear and easy to understand) within UC processes and saw it as ‘essential to good design for people to understand what they’re doing’.¹² Officials spoke widely of this quality being important in both generic information (such as that in official guidance or on online forms) and also personalised, direct communications with claimants. As one official put it, ‘our focus is always: are we telling the claimants exactly what they need to do? Is it clear enough for them to understand what they need to do? And do they understand the consequences of not taking that action, where that might lead them?’¹³ Intelligibility is often seen as a process quality that is important in its own right, but there were also a number of practical benefits that were routinely recognised, including the reduction of ‘failure demand’ placed on the Department that results from confused claimants.¹⁴ While intelligibility was central to official reasoning about fair process, it was clear that there was scope for difference about how it is best implemented in practice. Specifically, some saw intelligibility served by providing claimants with detailed information, particularly so that ‘they understand whether their legal rights are being correctly reflected’,¹⁵ whereas others viewed claimants as being better served by the use of minimal text and communication being conducted in a style akin to ‘talking to somebody in the street’ to ensure the Department was not ‘blinding people with science’.¹⁶ This tension was aptly summarised in the following terms by one official: ‘it’s a fine line, because if you make it too simple then you miss something that’s important. If you explain it too much, it makes it complicated for people’.¹⁷ A secondary dimension of this tension was an official commitment to legality, with many framing this trade-off in terms of what demonstrating legality—that the Department knows its own rules and is applying them competently—demands of the substance and form of how information was to be communicated. It was also widely recognised that, even where process choices are made to promote intelligibility, there might be an irreducible amount of complexity produced by the underlying law and policy, which ‘itself is not straightforward’.¹⁸ While there were differences about how

¹² Official Interview 6.

¹³ Official Interview 1.

¹⁴ Official Interview 2.

¹⁵ Official Interview 2.

¹⁶ Official Interview 3.

¹⁷ Official Interview 6.

¹⁸ Official Interview 2.

intelligibility is best implemented, the internal mantra was that ‘everything should be understandable to a nine-year-old child’.¹⁹

A second process quality central to official reasoning was accessibility—the idea that UC processes should make it easy for claimants to make applications and manage their benefits. This related to initial applications but there was also considerable focus on processes through which claimants can update the DWP about changing circumstances relevant to their benefit entitlement—a key tenet of UC is that it can respond quickly to a claimant’s changing circumstances, particularly in relation to their work and income. Once claimant information was within the system, emphasis was placed on the idea that the system does not ‘hide that information from them, so they can always go back and check’ and that claimants are, in this sense, ‘responsible for their own information in Universal Credit’.²⁰ This was often seen as an attempt by the Department to be ‘far more transparent’ and tell claimants ‘you are in control of your account’ in a way that ‘has been quite revolutionary’.²¹ Great emphasis was placed on innovating, including through technological solutions, so that ‘barriers’ to providing and updating information are removed.²² In some contexts, automation and data sharing, such as accessing ‘real-time’ tax data held by HMRC, were seen as key to advancing accessibility by removing entirely from the claimant the burden of updating information.²³

Personalisation—ensuring information and communications are specific to the claimant's circumstances—was also seen as important by officials. From this point of view, a good process would require officials to ask not only ‘how do we make it easy for the claimant to tell us about their situations?’ but also how systems ‘make it easy on the flipside then for the agents to see that information as well and do something with it’.²⁴ Officials widely saw this as enabling the DWP to bring a ‘personal touch’ to interactions with benefits recipients.²⁵ The use of asynchronous messaging was an obvious systemic embodiment of this as it allows claimants to communicate specific details of their

¹⁹ Official Interview 6. This is a well-established benchmark in user experience research. For instance, the Flesch-Kincaid formula—a widely adopted framework for testing the readability of text – provides scores that map onto US school grades. The highest score, indicating the easiest text to understand, is characterised as being accessible to fifth graders, which is equivalent to 9-year-olds. For analysis drawing on this practice in the context of digital government, see: D West, *Digital Government: Technology and Public Sector Performance* (Princeton University Press 2005), 54-56.

²⁰ Official Interview 3.

²¹ Official Interview 12.

²² Official Interview 6.

²³ Official Interview 10.

²⁴ Official Interview 11.

²⁵ Official Interview 11.

circumstances, including their wider life circumstances, which allows officials to be in a better position to be ‘acutely aware’ of such context.²⁶ As one official put it, UC processes are, in many respects, designed to create a sense that the ‘relationship carries on’.²⁷

Officials naturally also placed emphasis on factual accuracy—ensuring claimants’ situations are fully understood, both initially and over the course of their relationship with the UC service. The need to ‘understand people’s eligibility and entitlement’ remained central to the function of UC.²⁸ Process designs, therefore, strove to not only be intelligible generally but also particularly clear in any requests to claimants for information, and to, wherever possible, put the ‘hard work’ on officials instead of ‘asking the customer to do the... thinking in order to give us the right answer’.²⁹ It was broadly assumed that claimants are ‘not going to know what they need to tell us, we have to ask them the right thing’³⁰ and that processes need a ‘logical flow’ to help ‘people to put the right responses in there for us’.³¹ Again, automation and data-sharing within government was widely seen as a way to improve processes to deliver factual accuracy, while also removing the burden from claimants to supply information and evidence. It must also be mentioned that, from the official point of view, processes are designed to uncover objective factual accuracy, and this commitment, therefore, extends to designing processes which allowed the officials to detect fraud and error, ‘because we’ve got to protect the public purse and make sure that people get the money that they’re genuinely entitled to’.³²

Speed—that relevant actions are taken promptly—was seen as an essential process quality, because the Department paying claimants ‘on time and in full’ was the ‘most vital aspect’.³³ Here, once more, accessibility—and automation that can facilitate it—could be ‘wonderful’ in how ‘real-time’ information can be used to adjust awards in line with the rules.³⁴ Speed was seen not just important in relation to decisions but also in any processes, such as ensuring that, when people have questions, ‘they can get an answer fairly quickly’³⁵ and that use of online channels allowed for quicker interactions.³⁶

²⁶ Official Interview 5.

²⁷ Official Interview 10.

²⁸ Official Interview 10.

²⁹ Official Interview 3.

³⁰ Official Interview 4.

³¹ Official Interview 6.

³² Official Interview 10.

³³ Official Interview 9.

³⁴ Official Interview 2.

³⁵ Official Interview 9.

³⁶ Official Interview 7.

Closely related to a number of the process qualities discussed above, officials also emphasised availability—that it is easy to get hold of relevant officials. The UC service allows people to ‘go in 24/7’, particularly through adding information to their journals.³⁷ This platform-style design was seen to enhance availability in a way which was ‘innovative’³⁸ and ‘revolutionary’ in social security.³⁹ As one official put it, ‘you can put a message in your journal and you’ll get an answer’—though there was a need for ‘perception management’ as it is not ‘an instant messaging service’.⁴⁰ The prospect of using further technological innovation to provide Department officials with ‘early warning systems’ for vulnerability amongst claimants was widely discussed as a means of enhancing availability further through the prioritisation of resources.⁴¹

Overall, the prevailing reasoning about what is an acceptable UC process amongst officials can be characterised broadly as ‘welfare as service’. This is to say that the required relationship to be maintained between a claimant and the DWP is legitimised through UC operating principally and increasingly as a digital service that is intelligible, accessible, personalised, quick and available, enabling all relevant factual information to be gathered accurately.

³⁷ Official Interview 1.

³⁸ Official Interview 9.

³⁹ Official Interview 12.

⁴⁰ Official Interview 12.

⁴¹ Official Interview 5.

Universal Credit as an entitlement: the process logic of advisors

For welfare rights advisors, the most basic concern of a welfare system was that all claimants receive the benefits to which they are legally entitled. From their perspective, the process quality of ‘legality’ – officials knowing their own legal rules and applying them correctly – was fundamental to any legitimate process of welfare administration. Welfare benefits advisors were not blind to competing process logics and certainly appreciated, for example, the benefits of a customer-friendly and efficient service, or the risks of feelings of indignity faced by claimants in navigating a powerful state system. However, undoubtedly influenced by the nature of their work, they were particularly attuned to a process logic whereby the UC system must fulfil its mandate to ensure that all claimants receive their legal entitlements. And unlike the importance of system-wide thinking for public officials, the core unit of analysis for welfare rights advisors was the individual claimant. Advisors viewed the UC system through the experiences of the individuals who feel it has failed them. As one interviewee noted, ‘I deal with the problems that come up. People don’t come to me ... when they get a decision they like.’⁴²

Running in parallel to their focus on legality was a further basic concern with speed as a process quality. Yet, in contrast to the function of speed within the competing process logics, whereby it may be associated with system efficiency or respectful treatment, speed was valued by advisors according to the aphorism that ‘justice delayed is justice denied’. And because speed was valued for its justice dimension, legality can never be sacrificed for the sake of speed or efficiency – they must always run in parallel. Thus, from the advisors’ perspective, not only must the UC system ensure that entitled claimants receive their benefits, but it must also do so quickly. Failure in this regard is itself a form of injustice: for the duration of any unnecessary delay, the system is failing to fulfil its legal mandate: ‘Decisions have to be timely, they have to be done within a decent amount of time, and they have to be accurate. They have to be made by people who understand the law...’⁴³

Quite a large number of additional process qualities emerged from our interviews with welfare rights advisors, all serving in various ways the foundational norms of legality and speed. However, five values were particularly important to advisors’ accounts of procedural legitimacy. If we position ‘legality’ and ‘speed’ as foundational procedural qualities, we may think of the additional five as second and third order values: the second

⁴² Advisor Interview 13.

⁴³ Advisor Interview 8.

order values are instrumental towards the foundational values, and the third order values are instrumental towards the second order qualities.

The first of the second order process qualities was factual accuracy: in order to make a legally correct decision, the system must properly understand a claimant's circumstances. Advisors frequently encountered claimants with vulnerabilities, complex circumstances, or digital literacy problems, who felt misunderstood by the UC system. Consequently, they felt that incorrect decisions had been made: 'we get in touch with really vulnerable people, they might be homeless, they might be being exploited, there's abuse going on ... those people should get the face-to-face help.'⁴⁴

It is for the above reason that a further and linked second order quality was stressed: that of 'decision discretion', whereby UC rules can be applied flexibly to meet the particular circumstances of a claimant. For advisors, the digitisation of the UC system, whilst enhancing the convenience of the claiming process for many, and whilst promising efficiency gains for the DWP, nonetheless carried a risk of being insensitive to certain claimants whose circumstances were complex or, in other ways, ill-fitting for an automated system. The fear of many advisors was that the DWP had invested expertise in the automated UC system itself, at the expense of investment in human expertise. As one advisor put it, 'they need to trust their frontline staff more and see the IT as a tool rather than a dictator.'⁴⁵ For advisors, human expertise – specifically, the capacity to apply rules flexibly in a way that would accommodate individual circumstances – was essential for legally correct decision-making. And given that the core unit of analysis for advisors was the individual claimant, any system which cannot easily accommodate a minority of 'complex' claimants is a failed system: 'the process in the vast majority seems to work. But then you could say 99 planes landed safely at the airport today, so we don't have to worry about the one that didn't...'⁴⁶

The final second order process quality emphasised by advisors betrays their basic orientation towards the UC system: a diminished level of trust in its capacity to produce legally accurate decisions. Whereas for public officials, the legality of decisions was designed into the UC system and could, broadly speaking, be presumed, advisors approached UC decision with much greater scepticism. Consequently, they also emphasised

⁴⁴ Advisor Interview 4.

⁴⁵ Advisor Interview 16.

⁴⁶ Advisor Interview 19.

the process quality of ‘correctability’: the capacity within a system for errors to be easily amended: ‘It’s part of the fairness of the decision-making... the fair administration of benefits... that’s how the legislation is set up and that’s how people are allowed to get recourse to justice.’⁴⁷ Of course, given the nature of advisors’ work, most, if not all advisors, believed the current UC failed in this regard: the fact that their assistance and expertise was required demonstrated that some claimants found it impossible to have errors corrected by their own efforts.

The difficulties that advisors’ clients faced in having errors corrected point to the first third order process quality: that of intelligibility – information and communications being easy to understand. In this way, problems of intelligibility contributed to the importance of correctability as a process value. From the perspective of advisors, improvements in intelligibility would lead to more factual accuracy, which, in turn, would lead to a larger proportion of legally defensible decisions being made. Yet, as far as advisors were concerned, the intelligibility of public information and communications with claimants was a real challenge for the DWP, particularly for vulnerable clients or for those for whom English is a second language: ‘I think the main issues that crop up are just not understanding what the questions mean, or not quite knowing... We know what it means, they don’t know what it means.’⁴⁸ Problems of intelligibility, however, were also experienced by advisors themselves. Some interviewees expressed frustration with a perceived lack of clarity of official communications around UC decision-making: ‘it’s just that thing of really clear bullet points: ‘this is the decision, this is why we’ve made it, these are the facts we have’. And then you’d be able to pick out where the problem was. So, a lot of the time you can’t pick out where the problem is.’⁴⁹ In this way, intelligibility was important for the correctability of system errors. Advisors needed to understand communications around decisions in order to intervene effectively so that sound legal decisions could ultimately be made.

Closely tied to the process quality of correctability is another third order value: transparency – the ease by which one can find out the basis for official decisions made. As the above quotation shows, the correctability of the UC system also depends on the reasoning of decisions being evident and transparent. Advisors frequently approached the DWP from an adversarial stance, acting as advocates for their clients. Their job, as they saw

⁴⁷ Advisor Interview 6.

⁴⁸ Advisor Interview 4.

⁴⁹ Advisor Interview 4.

it, was to show or persuade DWP officials that errors had been made and that entitlements had been unlawfully denied. The transparency of decision-making was essential to this work. The UC journal can aid transparency by providing access to a record of communications between the claimant and DWP staff – something that was difficult to assemble in the legacy benefits system. However, many felt the digitisation of the UC threatened transparency in some ways. They feared that a digital record of communications was vulnerable to deletion or amendment and would advise clients to take screen shots of online correspondence in order to create a permanent record of official reasoning behind decisions. In this way, while they recognised that online communications could be speedy, responsive and convenient for many claimants, it posed a risk for the correction of errors for other claimants. As one advisor put it: ‘sometimes, if they make a decision, they will retrospectively change all the statements on the journal... they literally rewrite history. It makes it very difficult.’⁵⁰

⁵⁰ Advisor Interview 12.

Universal Credit as a relationship: the process logic of claimants

In the course of making and sustaining a UC claim, claimants interact with a number of officials over time in a range of different formats: from face-to-face and over the telephone, to online message boards and letters. This is an ongoing relationship with a system and its staff that can stretch over many years. How claimants were treated in these interactions and how they were able to access these officials was the focus of their process logic. In particular, ‘dignifying treatment’ was the key foundational process quality that cut-across all of these involvements with officials and the UC system. This was characterized by the experience of being viewed and treated ‘like a human’,⁵¹ with unique challenges and circumstances, as opposed to ‘just a number’⁵² or impersonal interactions that could be likened to a ‘robot’.⁵³

This ‘dignified treatment’ was underpinned by three sets of other process qualities. Those that deal with interactions (‘empathy’, ‘voice’, and ‘respectful communication’), those that deal with the virtues of officials (‘dependability’, ‘consistency’, and ‘responsibility taking’) and those that deal with access to officials (‘availability’, ‘assistance’ and ‘speed’).

The first three deal with the tone and content of interactions with staff: ‘empathy’, ‘voice’ and ‘respectful communication’. Given the difficult circumstances applicants on low incomes can face, empathy was a particularly acute process value for claimants. As articulated by one participant, UC staff are ‘like their crisis team’ – they cannot turn elsewhere so they should ‘answer them with at least a bit of empathy’.⁵⁴ Being treated with empathy was closely related to a feeling that they had been listened to, that they had a voice in the process. In positive interactions, staff ‘actually took the time to listen...and didn’t just want to palm my call off’.⁵⁵ In negative interactions, staff adopted a dismissive tone, ‘like attitude in their voice towards you’⁵⁶, and tried to get claimants ‘off the phone as quick as possible’.⁵⁷

Concerns about empathy and voice were particularly important in face-to-face interactions (such as with work coaches) or when seeking support over the telephone.

⁵¹ Claimant Interview 1.

⁵² Claimant Interview 2.

⁵³ Claimant Interview 3.

⁵⁴ Claimant Interview 2.

⁵⁵ Claimant Interview 4.

⁵⁶ Claimant Interview 5.

⁵⁷ Claimant Interview 4.

These channels tended to be used at times when claimants were navigating more challenging elements of the UC process and where they had the most engagement with staff, such as disputes over their claimant commitment or seeking to appeal a decision. However, the process quality of ‘respectful communication’ was pronounced across all interactions, including the text-based UC journal. Here, the tone of communications was important. Claimants felt messages were sometimes ‘very blunt’⁵⁸ or ‘unprofessional, unhelpful and almost, not rude, but borderline impolite’.⁵⁹ Relatively small changes in tone could improve an interaction. For instance, one participant suggested that a ‘direct’ message they had received – characterised as ‘you’ve missed your appointment, you’re now going to probably get sanctioned’ – could be improved by re-writing it to: ‘we understand you’ve missed your appointment. Could you please provide us with a valid reason with the next three to five days, otherwise unfortunately you may get sanctioned’.⁶⁰

Claimants underscored not only the importance of how staff interacted with them, but also process qualities that characterised their behaviour or virtues outside of these interactions: that they were ‘dependable’, ‘consistent’ and ‘took responsibility’. Claimants wanted officials who would do what they said they would, give consistent advice, and shoulder the burden of putting errors right. On the process quality of ‘dependability’, claimants lamented occasions where they were ‘told something that never happens’⁶¹ or staff did not ‘stick to [their] word’.⁶² Even where the tone and content of interactions were consistent with the process values of ‘empathy’, ‘voice’, and ‘respectful communication’, a failure to be ‘dependable’ detracted from feeling like they had been treated with dignity. As one participant put it, ‘what’s the point in asking if you’re just going to be disappointed all the time?’⁶³

On the process quality of ‘consistency’, claimants underscored the importance of consistent information and guidance from officials. This mattered when engaging with the same staff member over time (i.e., that officials did not contradict themselves) and when taking advice from different staff (i.e., that officials were consistent with each other). Even where claimants felt they had experienced ‘dignified treatment’, this was undermined where there was inconsistency between interactions. This was a particularly acute process

⁵⁸ Claimant Interview 6.

⁵⁹ Claimant Interview 7.

⁶⁰ Claimant Interview 8.

⁶¹ Claimant Interview 9.

⁶² Claimant Interview 10.

⁶³ Claimant Interview 10.



quality for claimants given the consequences of bad advice. As one participant noted, one official may say ‘don’t do it like this, do it like this’, then ‘you get sanctioned because someone else comes on and says, no, you’ve done that wrong.’⁶⁴

This ‘consistency’ was particularly adversely affected where claimants were routinely moved between contacts. Participants preferred having interactions with the same member of staff over time. One claimant described this as the importance of leaving an ‘imprint’ in the UC process – when you have one contact for months and ‘all of a sudden, you’ll have a new one who hasn’t got a clue’, there can be inconsistency in the advice they provide.⁶⁵

Finally, on the process quality of ‘responsibility-taking’, participants felt they had been treated poorly where there was a double-standard: they were punished for mistakes, whereas errors made by officials in the UC system went unaddressed. As our participants put it, ‘if I miss an appointment or whatever, you’re quick enough to take my money off me, aren’t you?’⁶⁶ Whereas, when the error was theirs, ‘they were very quiet about it.’⁶⁷ Having to point out and routinely challenge errors was a significant burden in the UC process; ‘that’s time out of my day to fix your mistake’.⁶⁸

These six process qualities all focus principally on how interactions with and the qualities of officials feed into a perception of ‘dignified treatment’. However, a further three process values were important mediators in how and in what form claimants could access staff: ‘availability’, ‘assistance’ and ‘speed’. The first of these qualities, ‘availability’, emphasises relevant officials being easy to get hold of. Claimants who had moved from the legacy benefits system noted how this process quality suffered under UC in comparison to the Job Seekers Allowance regime. It was now more difficult to ‘just go into the Job Centre for whatever information’; with the digital-first communication, ‘it just seems like they’ve put a barrier up’.⁶⁹ Others felt the 24/7 availability of the UC journal was a positive for this process quality, especially given the difficulties of getting hold of officials on the telephone.

⁶⁴ Claimant Interview 6.

⁶⁵ Claimant Interview 11.

⁶⁶ Claimant Interview 11.

⁶⁷ Claimant Interview 12.

⁶⁸ Claimant Interview 2.

⁶⁹ Claimant Interview 11.

As one participant notes, ‘at least if you write in your journal, you know the next day, [at the] latest, you’re going to get a reply and you can just speak to them’.⁷⁰

The process quality of ‘assistance’ focuses on the help that officials offer to claimants with the UC process. Less positive interactions were characterised as being passive, where the officials were seemingly simply ‘there to collect information to send over’ to other officials.⁷¹ In their interactions, claimants tended to find staff prioritised giving information rather than ‘explaining things, like putting stuff into context, or like giving you a bit more of an overall idea of what was going on, understanding the situation’.⁷²

Lastly, the significance of ‘speed’ in the UC process was emphasised by claimants. In contrast to the perspective of officials and advisors – who considered speed in the context of efficient administrative procedures – for claimants, speed took on a profoundly personal dimension. Slow decision-making processes directly translated to a sense of indignity in the eyes of the claimants, signalling a lack of priority, urgency, or importance attributed to their concerns and circumstances. Claimants lamented officials taking ‘weeks to get back to you’, when – in the meantime – a claimant has to ‘keep chasing and chasing and chasing them’.⁷³ It was clear that the interplay of speed, availability, and assistance created a cumulative effect on the claimants' perception of the UC process. A slow response, paired with limited access to officials and inadequate guidance, led to feelings of undignified treatment.

⁷⁰ Claimant Interview 1.

⁷¹ Claimant Interview 11.

⁷² Claimant Interview 3.

⁷³ Claimant Interview 10.

Implications of analysis

What should we make of these qualitative data? In this section, we draw out three main observations. Our first observation is that, in combination, this set of interviews has generated a list of process qualities that is more expansive than what we find in the existing administrative justice literature. Jerry Mashaw⁷⁴ and Mike Adler⁷⁵ have done the most within the field, we suggest, in terms of focusing on procedural qualities that speak to the legitimacy of the administrative process.

The seminal work of Mashaw, which addressed the question of how best to think about ‘those qualities of a decision process that provide arguments for the acceptability of its decisions’,⁷⁶ drew attention to a number of process qualities within his ‘models’ of administrative justice. Mashaw’s ‘bureaucratic rationality’ model of administrative justice focused on accuracy and efficiency; his ‘professional treatment’ model, in its emphasis on a therapeutic relationship, can be read as focusing on empathy and voice; his ‘moral judgment’ model, in its emphasis on the importance of claimants being afforded full and equal opportunities to obtain their entitlements, can be read as stressing the importance of correctability, decision-discretion and legality. Adler, who later supplemented Mashaw’s schema in light of new public management and the rise of consumerism, can be read as pointing to the significance of personalisation.

There is, then, some overlap between the suggestions of Mashaw and Adler and the findings from our qualitative interviews. Indeed, there is a degree of affinity, we would suggest, between the ‘models’ of administrative justice set out by Adler and Mashaw and the procedural logics suggested by our interviews with DWP officials and welfare advisors. The image of procedural legitimacy emphasised by our welfare advisor participants is akin to Mashaw’s ‘moral judgment’ model; and the image emphasised by our DWP official participants is best regarded, perhaps, as a hybrid of Mashaw’s ‘bureaucratic rationality’ model and Adler’s ‘consumerism’ model.

But what of the image of procedural legitimacy emphasised by our claimants? It certainly shares some elements of Mashaw’s ‘professional treatment’ model, given its stress on empathy and voice. Yet, the sense of procedural legitimacy seems broader, and

⁷⁴ Mashaw (n 10 above).

⁷⁵ M Adler ‘Understanding and Analysing Administrative Justice’ in M Adler (ed) *Administrative Justice in Context* (Hart 2010).

⁷⁶ Mashaw (n 10 above), 26.

some of the process qualities identified by claimants are not yet well considered within the administrative justice literature. Indeed, given our claimants' stress on dignified treatment, the vision of procedural legitimacy is closer to Tyler's model of procedural justice,⁷⁷ we suggest, and his insights about what citizens care about in their interactions with police.⁷⁸ The fact that UC claimants are engaged in a relationship with the DWP that extends over time points towards process qualities that relate to the quality of ongoing interactions. Process qualities that speak to relational dynamics—such as respectful communication, dependability, consistency and responsibility-taking—have been under-examined in administrative justice scholarship. Our data suggest that we must now turn our attention to them.

Our second observation is that, whilst procedural qualities may form elements of more than one process logic, they may well perform quite distinct functions within those logics. The process quality of 'speed' is a good example. For DWP officials, speed was part of a concern for the efficiency of the system, whilst for claimants, it was an element of dignified treatment, whilst for advisors, it was a corollary of justice and legality. Likewise, with intelligibility, whilst for our DWP participants intelligibility was important for an efficient and personalised service, for the advisors it was instrumental towards correctability. An important consequent insight here is that, in having different functions within distinct process logics, process qualities may be of varying orders of importance. Thus, while speed may lie towards the core of a DWP vision of administrative justice (as part of their concern for an efficient and personalised service), it may not have the same level of importance for claimants (as part of their concern for dignified treatment). Thus, if, in the development of administrative justice theory, we are to include empirical insights regarding different constituencies' senses of legitimate process, not only must we expand the list of potentially relevant procedural qualities, but we must also recognise that specific qualities may have varying functions according to the procedural logic in question.

Our third observation is that the digitalisation of the welfare state gives rise to particular process puzzles—novel policy challenges that sit at the interface of digitalised public administration and administrative justice. One such example can be seen in the operationalisation of the process quality of intelligibility—the idea that official communications should be clear and easy to understand. Some actors, such as welfare

⁷⁷ T Tyler, *Why People Obey the Law* (Princeton University Press 2006).

⁷⁸ T Tyler, 'Procedural Justice and Policing: A Rush to Judgement?' (2017) 13(1) *Annual Review of Law and Social Science* 29.

advisors (but also some officers within the DWP), may view this idea as requiring full and detailed information to be given in online processes, particularly where there is a concern for legality and correctability. Yet others, including claimants themselves, may think that intelligibility is best served by keeping online information short and simple. What is the best way to resolve this tension? This can too easily be thought about simply as a question of usability or accessibility. Yet it is also a question of legitimacy. A second example concerns the process quality of accessibility. One of the key insights from our interviews with claimants is that, when things go wrong, a sense of officials being accessible—so that problems can be resolved—is very important for the perception that one is being treated with dignity. Yet, the digitalisation of social security is premised on the idea that a service can largely be delivered remotely through online interfaces. Third, and relatedly, our interviews with advisors suggest that the digitalisation of Universal Credit, with its use of automated systems, may create problems for some clients with complex circumstances. In such situations, where personal histories or circumstances are more complex than an algorithm's capacity, then issues of accessibility and decision discretion come to the fore.

Following from the above, more generally, the pursuit of an efficient and personalised service for welfare clients through digitalisation, whilst appreciated by many, may operate to make the system less accessible and more complex for a particular minority of claimants. As some of our interviews with advisors suggested, certain claimants, for a variety of reasons, may find a digitalised service especially challenging. Indeed, there is a sense in which a digitalised service may render some claimants more vulnerable to administrative injustice than others. And whilst such claimants may be in a minority, this dynamic nonetheless raises the question of who sits at the heart of a system designed to deliver social security benefits: the mainstream who will benefit from greater efficiency and personalisation, or the particularly 'vulnerable' whose circumstances warrant exceptional treatment. Such is a particularly thorny process puzzle.



Conclusion

In this report, we have observed that different process logics shaped assessments of which process qualities were regarded as important in the digital welfare state and that the function such qualities fulfil may differ, often being instrumental towards distinct foundational logics, between groups. Public officials fundamentally viewed UC in terms of the provision of a personalised welfare service for claimants and assessed process qualities according to what would enhance the usability, accuracy and efficiency of the system. For welfare rights advisors, the assessment of UC processes was driven by a fundamental concern that all claimants receive the benefits to which they are legally entitled. Process qualities thus served a basic goal of the legality of decisions produced by the system. Claimants, however, framed the UC system in terms of a relationship they have with the state, and prioritised the importance of processes that would make interactions feel respectful and dignifying.

By illuminating these important but often obscured underlying forms of reasoning, we hope to have provided a firmer basis for meaningful analysis of this new mode of welfare government. Our analysis also points to how these competing logics give rise to a wide range of modern puzzles of procedural legitimacy—some of which are familiar questions concerning welfare implementation, but some of which are novel or have become far more prominent in the era of the digital welfare state. There is ample scope, once these underlying procedural legitimacy logics are properly grasped, to tease out these process puzzles and interrogate their underlying legitimacy claims and to explore them further, including empirically. Given the range of process qualities we have demonstrated are relevant, and the complexity of public processes, this opens a new pathway to rethink public process legitimacy in the modern welfare state.

The next stage of this study will test the three models we have presented in this report through a quantitative survey of UC recipients. We will report the findings of that survey, in a second open-access report, in due course.