



**Why not ask?**

**Why not tell?**

**A proposal for more proactive administration of  
social security claims**

**December 2024**

## Why not ask? Why not tell?

A proposal for more proactive administration of social security claims

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### At a glance

The social security system is designed to provide financial support to persons who can demonstrate their entitlement to it. Entitlement to social security benefits is determined through an application process.

The Law Centre NI (LCNI) has identified multiple instances where digital design problems within the application process are effectively excluding claimants from the benefits they are otherwise entitled to receive.

Two common threads emerge. First, the application process fails to elicit all the information necessary to establish if the claimant meets the conditions of benefit entitlement. Second, claimants are not provided with *all* relevant information they need to know before submitting a claim.

This short briefing paper outlines the design problems we have encountered in the application process and identifies what action is needed to remedy the issues.

We call on the relevant benefit providers to adopt a more proactive approach: **Why not ask? Why not tell?**

It is clear that relatively modest changes to the *administration* of benefits could make a significant difference. We invite DfC and LPS to make the discrete changes we propose.

# Why not ask? Why not tell?

## A proposal for more proactive administration of social security claims

### Introduction

The Department for Work and Pensions (DWP) has overall responsibility for much of the social security system in Britain whereas in Northern Ireland responsibility rests with the Department for Communities (DfC). However, DWP and DfC are not the only government departments that administer welfare provision: other departments including HMRC and Land and Property Services (LPS) have responsibility for aspects. This paper outlines issues that fall within the remit of DfC and LPS.

Determining entitlement to benefits can be complicated. Claim forms are designed to obtain the necessary information from a claimant to enable trained decision makers to determine if s/he is entitled to receive the social security benefit. But what happens if the benefit provider fails to:

- **ask** the claimant the relevant questions? *or*
- **tell** the claimant what options may be available?

With the introduction of Universal Credit and the move to digitisation, elements of automation have been introduced to the process of claiming benefits and determining entitlement. Unfortunately, we have seen that digital design failures can result in the systematic exclusion of people that the benefit was intended to support. As a result, LCNI is concerned that benefit claimants may be missing out on their full entitlement.

### Determining entitlement

The social security system can be complex. The general public cannot be expected to understand all the intricacies with regards how entitlement is determined.

In most cases, in order to receive a social security benefit it is first necessary to make a claim. This entails filling out a form, either on paper or online, or an application by telephone call. DfC has sought to devise plain language, user-friendly forms and has adopted a number of measures to ensure that support is available for vulnerable claimants to make claims. Examples of such measures include the *Make The Call* service and financial support for frontline welfare rights advisers.

Each benefit has its own application process. While the process can vary somewhat, overall the application is designed to elicit all the basic information from the claimant that a decision maker needs to determine entitlement. The role and duties of the individual claimant and those of the department administering the benefit was considered by the House of Lords in the case *Kerr vs DSD*:

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*What emerges from all this is a co-operative process of investigation in which both the claimant and the department play their part. The department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met.<sup>1</sup>*

Decision makers are thus under a clear duty to proactively explore entitlements and to identify the evidence necessary to make decisions on claims. Commenting on the Kerr judgement in 2004, Chairman of the Appeal Tribunals De Kenneth Mullan stated:

*The decision in Kerr outlines the extent of the duty imposed on Decision Makers with respect to the provision of information necessary to determine claims. The Department knows which questions need to be asked, and what information needs to be collated in order to determine whether the conditions of entitlement have been met.<sup>2</sup>*

Unfortunately, the Law Centre's experience of advising claimants is that NI decision makers do not always adequately discharge this duty. This causes financial detriment to claimants. We provide two particular examples: first, the Rate Rebate scheme and the interaction with Holiday Pay and Pay in Lieu of Notice; second, Universal Credit and the issue of advance and backdated claims. These are outlined below.

### Human rights law and positive obligations

Social security is a human right that is protected by a range of international human rights laws and standards including the International Covenant on Economic, Social and Cultural Rights, Article 9<sup>3</sup>. The UN Committee on Economic, Social and Cultural Rights General Comment 19 is clear that ICESCR places **positive obligations** on governments to respect, protect and **fulfil** the right to social security:<sup>4</sup>

*The obligation to fulfil requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed*

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<sup>1</sup> Lady Hale in *Kerr v DSD (NI)* [2004] UKHL 23 Paragraph 62 available [here](#).

<sup>2</sup> Dr Kenneth Mullan, The provision of information necessary to determine claims to social security benefits – *Kerr v Department of Social Development for NI*, Northern Ireland Legal Quarterly [Vol.55, No.3]

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, Article 9. Other standards include: Council of Europe Code of Social Security; European Social Charter, Article 12; EU Charter of Fundamental Rights, Article 34; International Labour Organisation Convention No. 102. See: Scottish Human Rights Commission, available [here](#). See also, Dr Mark Simpson, 'Protecting dignity, fighting poverty and promoting social inclusion in devolved social security' NI Assembly, KESS 2017-18.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, General Comment No.19 The right to social security, 4 February 2008, E/C.12/GC/19, available [here](#).

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*towards the full realization of the right to social security. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.*<sup>5</sup>

In Northern Ireland, these positive obligations rest with DfC and other government departments that administer welfare provision including LPs. One of the positive obligations is the requirement to ensure the provision of quality information on social security for claimants:

*Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.*<sup>6</sup>

Further, whereas, the Committee notes that everyone has the right to social security, it emphasises that governments must give ‘special attention’ to individuals and groups to may face difficulties in exercising their right.<sup>7</sup> As we will see, this might require special attention to Care Leavers.

The recommendations we propose in this paper are consistent with the positive obligations that rest with benefit providers including DfC and LPS.

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<sup>5</sup> Committee on Economic, Social and Cultural Rights, General Comment No.19 The right to social security, 4 February 2008, E/C.12/GC/19, paragraph 47, available [here](#).

<sup>6</sup> Committee on Economic, Social and Cultural Rights, General Comment No.19 The right to social security, 4 February 2008, E/C.12/GC/19, paragraph 26, available [here](#).

<sup>7</sup> Committee on Economic, Social and Cultural Rights, General Comment No.19 The right to social security, 4 February 2008, E/C.12/GC/19, paragraph 31, available [here](#).

### RATE REBATE SCHEME

The Rate Rebate Scheme, which is administered by the Land and Property Service (LPS), is available for individuals entitled to Universal Credit and provides assistance with rates payments.<sup>8</sup> The LPS is an executive agency within the Department of Finance.

In order to access the Rate Rebate scheme, the individual must be entitled to Universal Credit. Entitlement to Rate Rebate is calculated in a different way than Universal Credit is calculated. For Rate Rebate, the calculation *should* disregard holiday pay and pay in lieu of notice. The automated procedure that calculates entitlement to Rate Rebate sources the claimant's income information directly from the Universal Credit system rather than asking the claimant. In practice, the automated income information obtained from Universal Credit *does not* disregard holiday pay and pay in lieu of notice. This results in incorrect determinations of entitlement.

#### How did we get here?

Rate Rebate is normally calculated for the entire year based on the income received in the first assessment period of Universal Credit. This gives rise to a situation where if a claimant's income drops in subsequent assessment periods, s/he is unable to avail of the Rate Rebate. In 2020, LCNi initiated judicial review proceedings on behalf of an affected client. We highlighted that the claimant's income in the first assessment period was effectively inflated by the one-off holiday pay and pay in lieu of notice. This income ruled her out of the Rate Rebate scheme. In response to our legal challenge, the Department of Finance agreed to amend the legislation with retrospective effect to disregard holiday pay and pay in lieu of notice when determining entitlement to Rate Rebate.<sup>9</sup> The NI Direct website was subsequently updated with the following information:

#### *Pay in lieu of notice or holiday pay*

*From Monday 4 January 2021, one-off payments such as pay in lieu of notice or holiday pay, can be excluded in the calculation of rate rebate entitlement.*

*If your Rate Rebate claim starts on or after 28 March 2020 and you had any of these one-off payments included in your assessment calculation then you can request your claim is looked at again.*

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<sup>8</sup> [The Rate Relief Regulations \(Northern Ireland\) 2017 \(legislation.gov.uk\)](#)

<sup>9</sup> [The Rate Relief \(Coronavirus\) \(Amendment\) Regulations \(Northern Ireland\) 2020](#)

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*You must supply all the relevant information listed below to Land and Property Services no later than 3 April 2021 [...]*<sup>10</sup>

It is therefore apparent that LPS is aware that there is a problem but has only agreed a remedy for a limited cohort of claimants who came forward with the requisite information between 4 January - 3 April 2021.

Through subsequent casework and legal proceedings, it is clear that this failure on LPS to elicit the necessary information from claimants remains ongoing. Specifically, Rate Rebate applicants are not being asked to provide details of their income; rather LPS obtains data directly from the Universal Credit system (which does not disregard holiday pay and pay in lieu of notice). Critically, therefore, the LPS Rate Rebate form does not ask applicants if they received pay in lieu of notice or holiday pay *despite* this information being necessary to correctly determine entitlement.

Law Centre has established that there were 173,949 applications for Rate Rebate over a three-year period (April 2021 - August 2024). None of these applicants were asked on their claim form to outline holiday pay and pay in lieu of notice.<sup>11</sup> LPS does not record how many applicants have been affected. LCNI considers that *numerous* applicants will have lost out on entitlement as a result of this information not being elicited. The following case study illustrates the problem.

### **Erin (name changed)**

Following a referral from Community Advice Armagh, Banbridge and Craigavon, Law Centre issued pre-action correspondence on behalf of Erin, a client with learning difficulties and ASD. Erin was in receipt of Universal Credit (UC) and made a Rate Rebate application after being made redundant from her long term job.

Erin received her final payment from her employment *after* she made her claim for UC. As a result, her income during the first monthly assessment period for UC included her final pay.

LPS automatically calculated Erin's annual Rate Rebate entitlement based on the income reported in the first monthly AP for UC. Her final month's pay impacted her entitlement and precluded her from full rate relief. LCNI intervened and notified the LPS of our intention to challenge the calculation of Rate Rebate on the basis of income solely received in the first month.

LPS agreed that the claimant was entitled to full Rate Rebate after holiday pay and pay in lieu of notice was disregarded and revised its entitlement calculation. The client was refunded the rates she had paid and was awarded full Rate Rebate.

<sup>10</sup> [Homeowners and tenants applying for Rate Rebate | nidirect \(archive.org\)](#)

<sup>11</sup> Information received by Law Centre through FOI Ref: DOF/2024-0297.

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With the assistance of Law Centre, claimants like Erin succeed in obtaining a Rate Rebate. However, it does not address the problem for claimants who do not access specialist advice. We have no way of knowing how many claimants have had their entitlement miscalculated.

A further issue is that LPS calculates rate relief entitlement for the full year based solely on the income received in the *first* assessment period. There is no mechanism for this to be reviewed where earnings decrease in subsequent assessment periods. LCNI continues to seek to challenge this process and would welcome any appropriate referrals from advice agencies.

The Law Centre recommends:

Why not ask?	LPS should amend the Rate Rebate claim form to ask applicants in receipt of UC if income received in their first UC assessment period includes holiday pay and pay in lieu of notice.
Why not tell?	<p>The Rate Rebate claim form should be amended to make it clear that holiday pay and pay in lieu of notice is relevant to their calculation of Rate Rebate.</p> <p>NI Direct should be amended to make it clear that holiday pay and pay in lieu of notice can be disregarded for <i>any</i> claimant: not just those with claims dated 4 January – 3 April 2021.</p>

LCNI has discussed these issues with LPS, which subsequently agreed to revise the Rate Rebate factsheet.<sup>12</sup> The factsheet now communicates that holiday pay and pay in lieu of notice can be excluded when calculating Rate Rebate. This is a welcome first step.

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<sup>12</sup>Land and Property Service, Rate Rebate Factsheet' 2024 available [here](#)



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### Claiming Rate Rebate

You should make a claim for Rate Rebate as soon as possible after you are awarded Universal Credit.

If you don't claim within three months you may lose some of your Rate Rebate Award.

If entitled, your Rate Rebate award will be credited to the rate account of the property that you occupy.

One-off payments such as pay in lieu of notice or holiday pay for holidays not taken, can be excluded in the calculation of rate rebate entitlement.

Further information can be found on NI Direct at [www.nidirect.gov.uk/articles/homeowners-and-tenants-applying-rate-rebate](http://www.nidirect.gov.uk/articles/homeowners-and-tenants-applying-rate-rebate)

### Notifying Changes

You **must** notify LPS of any changes relevant to your claim immediately, by logging into your online account. Failure to notify a change of circumstance may result in an overpayment which will need to be repaid. Information on changes that need to be reported can be found at:

[www.nidirect.gov.uk/rate-rebate-scheme](http://www.nidirect.gov.uk/rate-rebate-scheme)



Land & Property Services  
Seirbhísí Talún agus Maoine



### Additional recommendations

- LPS should conduct an administrative review to identify claimants that have missed out on entitlement to Rate Rebate. Claimants since April 2021 should be invited to report this information retrospectively so that all relevant decisions can be revised.
- LPS should develop a mechanism whereby claimants who experience a drop in income after the first UC assessment period can be reassessed for Rate Rebate.

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### UNIVERSAL CREDIT: BACKDATED AND ADVANCE CLAIMS

LCNI shares concerns outlined in a recent report by the Child Poverty Action Group (CPAG), which finds a number of digital design faults with the Universal Credit system that may breach rule-of-law principles.<sup>13</sup>

As the DWP Universal Credit system is adopted and used by the Department for Communities (DfC), this means that that the same systemic difficulties are experienced by claimants in Northern Ireland.

We focus on two issues: back dating and advance claims.

#### Backdating Universal Credit

In certain circumstances, the law permits a Universal Credit claim to be backdated.<sup>14</sup> However, the claim form as currently worded does not explicitly ask the claimant if she wishes to backdate her claim. A claim can only be backdated if the claimant seeks a revision of the decision to award UC *after* it is made. This is counterintuitive for claimants and indeed the process has recently been held to be unsatisfactory by the Court of Appeal in England and Wales:

*35. It is very unsatisfactory that the system for claiming UC does not offer claimants any opportunity to ask to have their claim backdated. I dare say, although we were given no figures, that the proportion of claimants entitled to backdating is quite small. But the absolute numbers will still be significant, and they are by definition people who could not reasonably have been expected to make their claim earlier and some of whom are specially vulnerable as a result of ill-health or disability; many will not have ready access to advice. Not all will have focused on the question of the date from which their entitlement will start; but even where they have, they may be unaware of, or uncertain about, the entitlement to backdate, and if the point is not raised as part of the online process they may well not pursue it. Even if they try to do so, the “Journal route” can hardly be described as obvious: inventive or well-advised claimants might take it, but it will certainly not occur to everyone.*<sup>15</sup>

Unfortunately, LCNI recognises this same occurrence in Northern Ireland. Unless claimants receive specialist welfare rights advice, they are unlikely to be aware that their UC claim can be backdated in certain circumstances. Nor are they aware of how to go about requesting same.

<sup>13</sup> Child Poverty Action Group, [You reap what you code.pdf](#).

<sup>14</sup> [Reg 25, The UC, PIP, JSA and ESA \(Claims and Payments\) Regulations \(NI\) 2016](#)

<sup>15</sup> [SSWP v Abdul Miah \(by his litigation friend Mashuq Miah\) \(Respondent\) \[2024\] EWCA Civ 186](#)

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LCNI urges DfC to ensure that claimants have adequate opportunity to ask to have their claim backdated.

Why not ask?	DfC and DWP should amend the UC claim form to ask all claimants if they require backdating or want to claim from an earlier date.
Why not tell?	The UC claim form and associated guidance should be amended to specify the circumstances in which backdating is possible and should outline how to make such request.

### Advance UC Claims

In certain circumstances, the law also permits a claim for Universal Credit to be made in advance of the claimant becoming entitled.<sup>16</sup> This is relevant for claimants including care leavers and prison leavers. For example, care leavers are permitted to submit a claim for UC in advance; this acknowledges that care leavers can be a vulnerable claimant group<sup>17</sup>, and that they may not have support available to make a UC claim on the day of their actual 18<sup>th</sup> birthday.

#### Susan / Ryan (names changed)

Susan is a Social Worker with responsibility for care leavers and has been working with Ryan in advance of him turning 18 years old. She is aware of the difficulties posed by the 5 week wait for Universal Credit and knows from previous experience that there is no option to make an advance claim on the UC claim form. She has everything ready to assist Ryan to apply as soon as he becomes eligible on his 18<sup>th</sup> birthday.

Unfortunately, Susan is unable to contact Ryan on the day of his 18<sup>th</sup> birthday and he does not respond for some time. Ryan has lost out on entitlement when he finally makes a claim for Universal Credit. The form does not advise of the possibility of backdating so both Susan and Ryan are unaware, that in these circumstances, it may have been possible to backdate his claim.

As a young person who has just reached adulthood, Ryan immediately experiences financial hardship.

<sup>16</sup> [Reg 31, The UC, PIP, JSA and ESA \(Claims and Payments\) Regulations \(NI\) 2016](#)

<sup>17</sup> In 2021, the Departments of Health and Education published a joint strategy titled, 'A Life Deserved: "Caring" for Children and Young People in Northern Ireland'. This strategy identified numerous challenges impacting upon children within, on the edge of, or who have recently left the care system. Furthermore, the strategy made numerous commitments to improve outcomes for these children. Available [here](#).

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While the law permits advance claims, in practice the UC claim form does not actually facilitate such claims. As a potential workaround, provision should be made to enable care leavers to backdate their UC by up to one month. LCNI considers that this would be consistent with existing legislation which permits backdating in instances where:

*the claimant was unable to make a claim in writing by means of an electronic communication used in accordance with Schedule 1 because the official computer system was inoperative<sup>18</sup>*

By failing to make provision for a remedy available in legislation, arguably the claim form, which prevents the claimant from making an advanced claim, is 'inoperative'. Accordingly, we consider it would be reasonable to use the above provision to permit the backdating of claims for up to one month.

Why not ask?	DfC and DWP should amend the UC claim form to allow specified claimants to make an advance claim for Universal Credit.
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As an interim measure, we recommend:

Why not tell?	DfC should proactively notify claimant groups and relevant stakeholders (e.g. Social Workers supporting care leavers) that it is possible to backdate a claim for up to 1 month where a claimant has been unable to make an advanced claim.
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<sup>18</sup> [Reg 25\(3\)\(d\) The UC, PIP, JSA and ESA \(Claims and Payments\) Regulations \(NI\) 2016](#)

### Summary of recommendations

#### *The Rate Rebate Scheme:*

- LPS should amend the Rate Rebate claim form to ask applicants in receipt of UC if income received in their first UC assessment period includes holiday pay and pay in lieu of notice.
- The Rate Rebate claim form should be amended to make it clear that holiday pay and pay in lieu of notice is relevant to their calculation of Rate Rebate.
- NI Direct should be amended to make it clear that holiday pay and pay in lieu of notice can be disregarded for *any* claimant: not just those with claims dated 4 January – 3 April 2021.
- LPS should conduct an administrative review to identify claimants that have missed out on entitlement to Rate Rebate. Claimants since April 2021 should be invited to report this information retrospectively so that all relevant decisions can be revised.
- LPS should develop a mechanism whereby claimants who experience a drop in income after the first UC assessment period can be reassessed for Rate Rebate.

#### *Backdating Universal Credit Claims:*

- DfC and DWP should amend the UC claim form to ask all claimants if they require their claim to be backdated.
- The UC claim form and associated guidance should be amended to specify the circumstances in which backdating is possible and should outline how to make such request.

#### *Advance Universal Credit Claims:*

- DfC and DWP should amend the UC claim form to allow specified claimants to make an advance claim for Universal Credit.
- (Interim measure): DfC should proactively notify claimant groups and relevant stakeholders (e.g. Social Workers supporting care leavers) that it is possible to backdate a claim for up to 1 month where a claimant has been unable to make an advanced claim.

### Conclusion

LCNI requests that DfC and LPS implements these recommendations without delay to ensure that claimants receive the benefits to which they have lawful entitlement. LCNI welcomes further engagement with DfC, LPS and interested parties on these matters.

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### About Law Centre NI

LCNI provides free, independent and specialist legal advice, casework and representation in the areas of social security, employment and immigration. In addition to providing direct support to the public, we provide assistance, legal information, professional learning and quality assurance to the advice sector in Northern Ireland.

LCNI is the convener of the *Cliff Edge Coalition*, comprising over one hundred organisations across Northern Ireland campaigning to sustain and strengthen crucial welfare reform mitigations.

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