

## 03-25: Identity of Claimants and Children - Effect of Upper Tribunal Decision

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### INTRODUCTION

1. This memo gives guidance on the decision of the UT in [PHC v SSWP \(UC\) \[2024\] UKUT 340 \(AAC\)](#).

## BACKGROUND

2. The claimant made an online claim for UC for herself and her four children. She subsequently attended an interview to establish her identity, but she failed to provide the evidence of identity that the DM expected, either during the interview or afterwards. Her claim was disallowed. On appeal, a FTT upheld the DM's disallowance. The claimant appealed to the UT.

## THE UT'S DECISION

3. The UT has considered five alternative decisions that in principle could be given where a claimant has failed to provide evidence of identity. Four of these have been found to be wrong in law, and one to be correct. The UT has also explained the consequences of failing to prove the identity of a child. The UT's findings about claimants apply equally to ESA, JSA and PIP.

## THE INCORRECT APPROACHES

### First incorrect approach: suspension and termination

4. Regulations allow payments to be suspended<sup>1</sup>. They also allow an award to be terminated afterwards if a claimant fails to provide information that has been requested<sup>2</sup>. The UT has held that these provisions do not apply where UC has been claimed but not awarded.

1. UC, PIP, JSA & ESA (D&A) Regs, [reg 44](#); 2 [reg 47](#)

### Second incorrect approach: disallowance as penalty for failing to comply with a request for evidence

5. A regulation requires a claimant to provide evidence and information in connection with an award<sup>1</sup>. The UT has held that this provision does not apply where UC has been claimed but not awarded.

1 UC, PIP, JSA & ESA (C&P) Regs, [reg 38](#)

6. A regulation requires a claimant to provide evidence and information in connection with a claim<sup>1</sup>. The UT has held that a failure to comply with a request made under this regulation is not, in and of itself, a sufficient reason for disallowing a claim.

1 UC, PIP, JSA & ESA (C&P) Regs, [reg 37](#)

### Third incorrect approach: disallowance for not claiming in the required manner

7. It is a condition of entitlement that a claim is made in the manner set out in regulations<sup>1</sup>. The UT has held that claimant was not required to provide evidence of identity as part of the required manner of making a claim. She went through all the steps in the official online UC claims process and was permitted to lodge her electronic claim without being asked to prove her identity. In these circumstances, a check on the claimant's identity is not part of the process of making a claim. It is rather part of the post-claim

procedure for assessing whether the UC conditions of entitlement are met.

1 SS A Act 92, [sec 1\(1\)](#)

### **Fourth incorrect approach: disallowance for not claiming in the required manner**

**8.** The UT has previously suggested that it is part of the process of claiming in the required manner that the claimant states their real name and date of birth<sup>1</sup>. The UT has now rejected this view. The factual accuracy of a claimant's statement of their identity is not relevant to whether a claim has been made in the required manner. Once the claimant has provided answers to the questions the claim process asks, a claim in the required manner has been made. The truthfulness of what the claimant has said is considered separately and subsequently by the DM as part of an outcome decision on the claimant's entitlement to benefit under the claim.

<sup>1</sup> [ED v Secretary of State for Work and Pensions \[2020\] UKUT 352 \(AAC\)](#)

## **THE CORRECT APPROACH**

### **The claimant**

**9.** The UT has held that the question of the claimant's identity must be approached by way of the condition of entitlement that relates to NINOs<sup>1</sup>. Guidance on this condition can be found below.

1 SS A Act 92, [secs 1\(1A\) and \(1B\)](#)

### **Children**

**10.** The UT has held that the NINO-related condition of entitlement does not apply to children. Instead, entitlement to the child element depends on the claimant proving the child's existence and identity on the balance of probabilities.

## **APPLYING THE UT'S DECISION**

### **Claims**

**11.** The identity of a claimant must be approached by way of the condition of entitlement that relates to NINOs. This sets out three alternative conditions:

- 1.** The claimant must provide a statement of their NINO and information or evidence that shows that that number has been allocated to them.
- 2.** The claimant must provide information or evidence that enables a NINO that has been allocated to them to be traced.
- 3.** The claimant must both apply for a NINO and provide information or evidence that enables one to be allocated to them. The test is ultimately whether the claimant has shown that they are who

they say they are to such a degree of confidence that a NINo can properly be allocated to them.

**12.** A claim by a person who has failed to prove their identity can only be disallowed when **all three** conditions are found not to be satisfied. If a claimant fails to pass the first test, the second must be considered. If the claimant fails that test as well, then the third must be applied. Relevant operational procedures should be followed to refer the case to a specialist NINo allocation officer. The allocation officer will invite the claimant to make an application for a NINo and submit evidence in support of it. If an application for a NINo is made, they will also make the determination as to whether the available evidence properly allows a NINo to be allocated. This determination should be incorporated into the final outcome decision on the claimant's entitlement under the claim.

**13.** None of the three conditions requires the claimant to provide specific items of evidence of their identity as a condition of passing its test. In particular, an application for a NINo made by a person who requires one for benefit purposes is not subject to the list of acceptable forms of evidence that applies to applications for NINOs made by employed earners, self-employed earners, persons who wish to pay voluntary Class 3 contributions, and student loan applicants<sup>1</sup>. A CHB UT decision that said that the list applies to a benefit claim made by an employed earner should not be followed<sup>2</sup>. For a benefit claimant, the obligation to apply for a national insurance number is found in the condition of entitlement that relates to NINos itself. The application is not made under the regulation that imposes the prescriptive list of acceptable evidence<sup>3</sup>.

1 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001, [reg 9](#); 2 *OM v H.M. Revenue & Customs* [2018] UKUT 50 (AAC); 3 [CH/4085/2007](#)

**14.** In relation to each of the NINo-related conditions, the DM should consider all of the evidence provided by the claimant and decide on the balance of probabilities whether they have shown that they meet the particular test the condition imposes.

## **Appeals**

**15.** If a claimant appeals against a decision that has disallowed a claim because the NINo-related condition of entitlement is not met, the FTT should be provided with:

- 1.** copies of all information and evidence that the claimant submitted when claiming and during any subsequent investigations (including accounts of any interviews that have been conducted), **and**
- 2.** an informative summary of what information has been entered into what IT tools with what results.

**16.** On appeal, the FTT is not bound to follow in the Secretary of State's footsteps. It is up to it to decide for itself how to approach and apply the three NINo-related tests. It can take into account new evidence of the claimant's identity. It can also direct the DM to conduct further investigations for it.

## Restrictions on applying the UT's decision

**17.** The UT's decision followed the SofS's submissions. There are no restrictions on the period to which it applies. Any decisions that are inconsistent with it can be revised on the ground of official error<sup>1</sup>. They will not be shown to be mistaken by the UT's decision. They have been inconsistent with DWP's view all along and were already mistaken when they were made.

1 UC, PIP, JSA & ESA (D&A) Regs, [reg 9\(a\)](#)

## REVISION OF AN AWARD WHEN A FALSE IDENTITY WAS USED TO CLAIM

**18.** The UT's decision concerns claims. It does not provide guidance on cases where benefit has been awarded to a person whose purported identity is later found to be false. If benefit has been awarded to a person who is later shown to be an impostor, it is not necessary to consider the three NINo conditions of entitlement when revising the award made on the claim. The claim and award are for the person in whose name the claim was made<sup>1</sup>. If:

- 1.** The person in whose name the claim was made did not then exist (e.g. because they were dead or were a fiction), there was never any benefit entitlement in respect of them.
- 2.** The person in whose name the claim was made has had their identity hijacked and a claim made without their knowledge, then the claim was not properly made on their behalf. The stranger who took on their identity had no standing to make a claim for them. No benefit could properly be awarded on the claim.

1 R(S) 2/70 & [CP/1516/2004](#)

**19.** If the DM finds that an award has been made on a claim made by an impostor, the award should be revised on the ground that it was based on a mistake as to a material fact<sup>1</sup>. The mistake is as to the identity of the person who made the claim. The DM who made the award considered that the claim was made by the person in whose name it was made, but in fact it was made by the impostor.

1 UC, PIP, JSA & ESA (D&A) Regs, [reg 9\(b\)](#)

## ANNOTATIONS

Please annotate the number of this memo against the following ADM paragraphs: [A2019](#), [A2148](#), [A2112](#), [A2118](#), [A3106](#) and [A4630](#).

## CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo 7/19](#) Requesting case guidance from DMA Leeds for all benefits.

