

## APPG on the Rule of Law

**Date:** Tuesday 12<sup>th</sup>  
March 2024  
**Time:** 10.00-11.30 am  
**Location:** Committee  
Room 4A, House of  
Lords

### Meeting of the APPG on the Rule of Law to discuss ‘Universal Credit, Digitalisation and the Rule of Law’

#### Attendance

**Panel providing expert presentations:** Baroness Lister of Burtersett CBE (chair), Dr. Natalie Byrom (researcher and policy adviser with expertise in justice system reform, data-driven technologies, and data governance), Sophie Howes (Child Poverty Action Group), Ravi Naik (AWO), Richard Pope (formerly at the UK Government Digital Service).

**Parliamentarians attending:** Lord Davies of Brixton; Rt Hon Sir Stephen Timms MP.

**Apologies received:** Lord Anderson of Ipswich KBE KC; Lord Bishop of Leeds; Lord Dubs; Lord McNally; Baroness Prashar CBE; Lord Sandhurst KC.

**Others attending:** Andrew Bocking, Office of Margaret Greenwood MP; Sue Christoforou (Parkinsons UK); Juliette Flach (Christians Against Poverty); Katherine Furlonger (Child Poverty Action Group); Oliver Garner (Bingham Centre); Will Knatchbull (Bingham Centre); Meagan Levin (Turn2Us); Siân McGibbon (UCL Laws and Landmark Chambers); Nandini Mitra (Bingham Centre); Lucy Moxham (Bingham Centre); Safia Sangster (Equality and Human Rights Commission); Jan van Zyl Smit (Bingham Centre); Sam Smith (Med Confidential); Prof Richard Whitaker (University of Leicester and Research Lead, UK Parliament); Dr. Janis Wong (The Law Society).



## Meeting Aims

- To discuss the Rule of Law issues arising from Child Poverty Action Group's ('CPAG') recent report ['You Reap What You Code: Universal Credit, Digitalisation and the Rule of Law'](#).
- To consider the linkages between the report's findings and the [Data Protection and Digital Information Bill](#), including the increased use of technology in the social security space and provisions in the Bill which will give DWP further access to claimant data (including data held by third parties such as banks).
- To consider any additional implications of the Bill as currently drafted.

## Summary of presentations

**Baroness Lister of Burtersett** (former Director and now Honorary President of CPAG) chaired the expert panel. She commented that the CPAG's recent report exemplified the value of a Rule of Law lens in analysing important areas of social policy, such as social security benefits. She also noted the timeliness of this discussion in light of the new clauses the Government has introduced in the Data Protection and Digital Information Bill, which raise further Rule of law concerns.

**Sophie Howes (Head of Policy at CPAG and co-author of the report)** introduced the Universal Credit regime. She reiterated the report's finding that Universal Credit is a 'digital by design' benefit – the vast majority of people apply for and receive this benefit via online processes. She identified that the Universal Credit regime currently has 6 million claimants, and is the main working age benefit replacing a number of old-style benefits which the Department for Work & Pensions ('DWP') is moving away from. She explained that by the time Universal Credit is fully rolled out, half of all children living in the United Kingdom will live in a household claiming the benefit, which illustrates the need to get Universal Credit right.

Sophie then outlined the methodology used in preparing the report. In examining the digital elements of this benefits regime, the CPAG considered thousands of case studies they received from individual claimants accessing the system; spoke with a number of welfare rights advisors to obtain their views on the system; conducted desk-based research; and submitted requests under the Freedom of Information Act. The report's authors sought to understand how this benefits regime functions and how it is experienced by claimants. The report's authors conducted their analysis through a Rule of Law lens, and specifically assessed the transparency of the system; the extent to which procedural fairness is upheld by the system; and the lawfulness of the Universal Credit regime. Their analysis covered the end-to-end process of claimants initially making contact with the system to the point of their challenging any decision(s) made. The report is the outcome of a three-year period of research and analysis.

Sophie then discussed the major themes that emerged from this research. These included the view that the DWP's pursuit of a 'simple', easy-to-use, digital-first benefit means that the Rule of Law has been sidelined. Whilst the simplicity and accessibility of the benefit had received praise in the report, the Universal Credit system was found to be lacking where potentially vulnerable claimants, or those with more complex circumstances, sought to engage with the regime. Such claimants – who might include care leavers, carers, disabled people, and people coming out of the prison system for example – were found to face problems with the digital system and were often not getting their correct benefit entitlement. Sophie noted that this may be the outcome of the 'digital tail wagging the policy dog' i.e., the current circumstances in which the design and function of the digital systems, and the costs involved in designing those systems, dictate the policy. The report found that this state of play meant that claimants with vulnerabilities or complex needs were being underserved by the benefits regime. In her view, the benefits of digitalisation are still

not being fully shared by all claimants experiencing the system, as the DWP is focusing on deploying digitalisation capacity for resource management at the back end of the Universal Credit system.

Sophie then outlined three key findings/recommendations resulting from the research: First, she recommended that the Universal Credit digital claim form be amended, as in its current form it is not asking the questions needed to obtain the necessary information for the claimant to demonstrate their entitlement to the benefit. Second, Sophie noted that the Universal Credit regime fails to enquire about crucial information which impacts the calculation of entitlements. In this regard, she gave the example of carers, who are entitled to receive Carers' Allowance in addition to Universal Credit, but which the digital benefit system does not pick up on, instead placing the onus on claimants to raise this entitlement with the DWP after they have made a claim for Universal Credit. Third, Sophie emphasised the need for improvement of the appeals process, which currently fails to support claimants seeking to challenge any decisions made.

Finally, Sophie gave some reflections on the Data Protection and Digital Information Bill. She noted CPAG's serious concerns about the Bill's provisions which would allow the DWP to look at third party data. She highlighted that it is important to be aware that the DWP already have the power to request information from banks where there is reasonable suspicion of fraudulent activity. She argued that the Bill would give much more sweeping powers to carry out mass surveillance of people claiming benefits, without reasonable grounds. She shared CPAG's view that this is problematic and risky, because the consequences for claimants subject to investigation for fraud are high: their benefits are cut off, which, in the context of Universal Credit as effectively a package of entitlements, would mean that people would be pushed to destitution if their payments were suspended. Sophie also noted that the mass surveillance powers are not proportionate. Whilst accepting the need for the DWP to ensure that entitlements are

paid correctly, she suggested that this objective would be better met by improving Universal Credit for the people relying on it and accessing it, not increasing the surveillance of benefits claimants. Sophie ended her presentation by identifying that, on a broader level, the Universal Credit system poses risks to the Rule of Law principles of procedural fairness and transparency. She contended that further thought is needed to better protect these principles in the design and operation of the Universal Credit system.

**Richard Pope (formerly at the UK Government Digital Service)** began his presentation by confirming that he was part of the UK Government's Digital Service team in 2011 but is no longer a part of the civil service.

Richard began by commenting that the government's two goals when designing and deploying digital services provision seem to be: (1) prioritising user-centred design (which Richard defined as 'tested with real users before launch') and; (2) that such services be agile (which Richard defined as meaning the service being launched early and continually developed). Richard also noted the early history of problematic digital services provision, for example the DWP's launch of JobMatch in 2012. He noted that this did not work for users and had privacy issues, which did not foster trust amongst service users. Richard noted that the introduction of user-centred design in government was necessary, and now seems inevitable. The idea is that design should meet users' needs when accessing the service.

Richard then gave a brief overview of the history of user-centred design, which emerged in the 1970s as a result of a human-computer interaction study which found that involving people in the design of services resulted in them working better. User-centred design is now standard across the design sector, and most central government departments implement this with the aim of designing better digital services. Richard noted that user-centred design is functional and utilitarian, with the priority being to get the

proximate task done and within the bounds of a particular service. User-centred design is also quite individualistic, with externalities remaining external. He noted that Steve Jobs' adage, "it works" comes through in the CPAG's report – simplicity and seamlessness being inbuilt values in user-centred design mean that the objective is for the service to just work, without users having to worry about the workings. Richard identified this as a prevailing view in government practice.

Richard then referenced recent work by the Administrative Fairness Lab, which has highlighted the varying attitudes amongst stakeholders in the digital welfare regime: public officials working in the DWP prioritise useability and efficiency; welfare rights advisors value claimants getting the entitlements they are owed; and claimants value that the relationship they have with the State be fair.

Richard noted that the digital design of the Universal Credit regime makes the welfare benefits team the most mature one in government, in terms of its proficiency in the digitalisation of public services. He raised the example of claimants' online journals as a model he would like to see other departments adopt, as the journal shows the claimants' interactions with the government. He noted that other areas of design need to address Rule of Law issues such as whether the digital service enables people to exercise their rights; enables society to hold the DWP to account; and maintains a quality relationship amongst stakeholders. In his view, the overarching question to address is not whether user-centred design is necessary for government services provision – it is in his view – but rather whether it is sufficient on its own. In his view, it is questionable whether user-centred design can meet other important objectives on its own.

Richard then discussed the government's consideration of automating services, the question of where it deploys such capacity, and whether it prioritises user-centred design around areas like the appeals process. In relation to the latter point, he was

of the view that there is no incentive for the government to do it, but noted that he would welcome an incoming government that prioritised systematically eliminating administrative burdens.

Richard then emphasised that digital services are different to analogue services in terms of their legibility. Digital services are highly mutable systems and so campaigners, lawmakers and other relevant stakeholders need to operate within the iterative design of these systems. Richard explained that the agile nature of digital systems means that they are delivered at a much faster rate than the cycle of law- and policymaking in Government. Digital systems are also continually designed, redesigned and updated in quicker and more frequent turnarounds. Richard expressed his view that, in light of the fast and iterative process of digital systems development, there needs to be systematic publication of information about how digital services work and how they are changing so that there is a 'ground truth' to understand policy gaps. He raised the example of the CPAG seeking screenshots of the user interface of the Universal Credit system, but facing difficulty when they sought further transparency of the digital service. Richard suggested that Select Committees could demand more screenshots of digital systems to enable greater transparency around these systems, which are opaque and difficult to understand. He explained that such information should be a matter for the public record, as we need to see the map between what service users see when engaging with such digital systems and the policies underpinning the provision of these services.

Richard noted that if democracy is government by explanation, then digitalisation needs to be explainable to the end user. It should always be possible for users to understand and have their rights explained, and to be able to access them at point of use, even if this means that the design of such digital systems is slightly less simple. He made a distinction between well-designed systems and seamless design – if the aim is to inform the end user of the rules underpinning their engagement with the service or the entitlement they are claiming, or to help them appeal a decision, they need a

well-designed system.

Richard ended his presentation by explaining that as digital moves from the periphery to the core of how public services are delivered, we need a broader coalition to develop what design means in the public sector, as seamless design is not enough to uphold rights and the Rule of Law.

**Ravi Naik (Legal Director at AWO)** delivered the final presentation. He began by explaining that a central tool of AWO's work is the General Data Protection Regulation ('GDPR'), which he contended is often seen as a compliance tool and not as a tool that gives people rights. He argued that it is actually a human rights framework providing for principles of fairness, lawfulness and transparency to be upheld in data processing. He identified these principles as central to the CPAG's report.

Ravi then discussed the various procedural rights that enable the exercise and upholding of the principles he identified. He gave the example of the right to make a data access request as being fundamental to understanding how data is processed and enabling access to a suite of other related information, which enables transparency. Ravi also noted the rights to erase and rectify inaccurate information, and the right against automated decision-making, as other examples of procedural rights upholding the Rule of Law principles that he identified.

Ravi then explained that the GDPR contains obligations, not just rights provisions. For example, he noted that it imposes obligations on data controllers in relation to high-risk processing and data protection impact assessments. Ravi noted that these are important mechanisms, which can help users of technology to understand the impact such technology will have not just on their data protection rights but all of their fundamental rights. He reiterated the Court of Appeal's finding in [\*R \(on the application of Edward Bridges\) v Chief Constable of South Wales Police\* \[2020\]](#)



[EWCA Civ 1058](#) that data protection impact assessments are not just a tick-box exercise. In that case, the Court of Appeal overturned the High Court's decision in finding that South Wales Police had failed to conduct a lawful impact assessment in its deployment of facial recognition technology. Ravi also noted that no data protection impact assessment was done when NHS Test and Trace was rolled out. Having noted the importance of impact assessments, Ravi acknowledged that these safeguards to technology are not a panacea. Ravi then turned to the increased use of automated decision-making ('ADM') in public services, noting that now is the time to think about this development and bolster safeguards for the Rule of Law and rights protection. In his view, the UK is the sole country in the world that is trying to limit information rights in the context of increased automation of decision-making processes. In relation to the Data Protection and Digital Information Bill, Ravi identified three key issues: (1) the provisions for the DWP to access information relating to the bank accounts of benefits claimants; (2) the introduction of the concept of Recognised Legitimate Interests, which increases the permissible uses for data by functioning as an automatic gateway authorised by Ministerial diktat, where previously lawfulness had been the standard and guardrail for limited uses of data; and (3) decreasing the scope of the definition and application of personal data. Ravi noted that the Bill also proposes to increase the time and costs spent by data subjects seeking to exercise their fundamental rights, with a research study on the Bill estimating it will take a minimum of 20 months for an outcome to be obtained from the ICO where data rights are breached (according to an analysis undertaken by AWO). The current GDPR timeframe is for an "outcome" from the ICO within 3 months of the complaint being filed.

Ravi noted that the Bill introduces these new powers and administrative hurdles, yet in his view, the Bill makes no improvement to the existing regime. He raised the possibility of super-complaints or representative complaints as examples of what could have been introduced to reduce the burden for

individuals seeking to uphold their data rights. More ambitiously, the Bill could have provided for a new data protection ombudsman.

Ravi concluded by noting that the Bill is to go to Committee Stage in the Lords in a few weeks, and that AWO and the Social Market Foundation are due to release a paper with their consideration of the Bill as currently drafted.

**The meeting concluded with a Q&A session chaired by Baroness Lister.**

## Further Reading

- Alex Lawrence-Archer and Ravi Naik, AWO, [‘The Data Protection and Digital Information Bill: A threat to fair markets and open public services’](#) (Social Market Foundation, Briefing Paper March 2024).
- AWO, [‘Data Protection and Digital Information Bill: Impact on data rights’](#) (updated to take account of the version of the Bill published March 2023).
- Professor Joe Tomlinson, Professor Simon Halliday and Dr. Jed Meers, [‘Administrative Fairness in the Digital Welfare State: Report #1: Procedural Legitimacy Logics within the Digital Welfare State’](#) (University of York, University of Strathclyde Glasgow and the Nuffield Foundation, February 2024).
- Big Brother Watch, [‘Big Brother Watch’s briefing on benefits and financial mass surveillance powers in the Data Protection and Digital Information Bill’](#) (January 2024).
- Michael Cross, [‘AI hallucinates nine ‘helpful’ case authorities’](#) (The Law Society Gazette, 11 December 2023).
- Rosie Mears and Sophie Howes, [‘You Reap What You Code: Universal credit, digitalisation and the rule of law’](#) (Child Poverty Action Group and The Legal Education Foundation, June 2023).

**Please note that this report summarises the views of the panellists and does not represent the views of the All-Party Parliamentary Group on the Rule of Law.**