Benefits Bulletin
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General Election 2024

On 4th July 2024 the country went to the polls in a general election and by the following morning it was clear a new government was taking office.

Members of the previous government left by the back door and members of the new entered by the front.

On the afternoon of 5th July, as part of an announcement of the new cabinet, Liz Kendall was appointed Secretary of State for Work and Pensions. She shouldn't have too much difficulty learning the ropes as she has been the Shadow for this post since September 2023.

Following on from Liz's promotion, on 8th July the new government announced a series of ministerial appointments. These included Alison McGovern and Sir Stephen Timms who also joined the department.

Stephen's pennings as chair of the Social Security Advisory Committee have frequently appeared in the "Welfare Writes" section of this Bulletin.

So much for the new names – what about changes in the direction of policy?

In the middle of the circle is, of course, the future of the Work Capability Assessment. It's the main topic of the "Looking Forward To..." section of this Bulletin.

What will happen to the former government's plans for the WCA?

On 5th July 2024, and before she could even begin to arrange her new desk, Liz Kendall was reading an open letter from leading charities calling upon her to scrap the proposed changes to the WCA. Signatories to the letter included the Child Poverty Action Group, Disability Rights UK, and Save the Children.

The letter can be found here: https://z2k.org/wp-content/uploads/2024/07/Letter-to-new-SoS-2024.pdf

End of the Line for Bill Proposing to Allow Regular Checks on Claimant Bank Accounts

The Data Protection and Digital Information Bill is one of several Bills to fall due to 'prorogation" of Parliament. Prorogation is when a session of parliament is discontinued, in this instance it was discontinued due to the announcement of the general election.

Included in the Bill were powers for the DWP to carry out regular checks on the bank accounts of benefit claimants. When introducing the Bill, Secretary of State Mel Stride had stated that the amendments would allow:

'... regular checks to be carried out on the bank accounts held by benefit claimants to spot increases in their savings which push them over the benefit eligibility threshold, or when people spend more time overseas than the benefit rules allow for. This will help identify fraud [and] take action more quickly. To make sure that privacy concerns are at the heart of these new measures, only a minimum amount of data will be accessed and only in instances which show a potential risk of fraud and error.'

Without any further legislation, it remains the case that the government can only carry out checks on bank accounts where fraud is already suspected.

Other Bills to fall were the Renters (Reform) Bill, Criminal Justice Bill, Housing Act (Amendment) Bill, State Pension Age (Compensation) Bill, Employment and Trade Union Rights (Dismissal and Re-engagement) Bill and the Workforce (Information on Ethnicity) Bill.

Contents

EU Pre-settled Status and Risk of Destitution – Guidance for Decision Makers following 'AT'

Following the refusal of their application to appeal to the Supreme Court, the DWP have issued new guidance for decision makers following the decision of the Upper Tribunal in 'AT', as upheld by the Court of Appeal SSWP v AT [2023] EWCA Civ 1307

The case relates to a Romanian national with Pre-settled Status under the EU Settlement Scheme, but no other 'qualifying' right to reside. She had been subjected to domestic violence and her only reliable income was Child Benefit. The Court of Appeal decided that, before refusing Universal Credit to a claimant with Pre-settled Status, the DWP must carry out an individualised assessment as to whether refusal would breach the claimant's right to live in dignity, as required by the EU Charter on Fundamental Rights.

The new DWP guidance, DMG Memo 5/24 and ADM Memo 6/24, applies to claims for Universal Credit, Pension Credit and Housing Benefit from 12 December 2022. It confirms that the test as to whether refusal of benefit would prevent the claimant from living in dignified conditions relates to their most basic needs, including food, personal hygiene, clothing, housing and adequate heating. Whilst stating that this threshold is high, the guidance contains examples which may be useful in supporting a client's claim to benefit, in particular where they have vulnerabilities. Vulnerabilities, for example, relating to experience of domestic violence, ill health or disability.

See also item in our previous Spring 2024 Bulletin.

Overpayments of Carer's Allowance

Sometimes an unfairness in the welfare benefits system cuts through to the mainstream media. The problem of carers' overpayments has most definitely cut through the thick curtain that lies between complicated benefit rules and the media's understanding of them.

In April 2024 the BBC reported 'unpaid carers shocked at having to repay thousands'. A Guardian headline ran 'MPs call for Carer's Allowance review as numbers of overpaid soars'. It reported official figures showing 34,000 carers with overpayments in 2023, with more than 1000 carers owing more than £5,000.

Again, in April, the Chair of the Work and Pensions Committee, Stephen Timms, accused the DWP of doing nothing to prevent overpayments from building up. He pointed out that the real-time information system from HMRC could enable DWP to stop Carer's Allowance before an overpayment became too large. He asked the National Audit Office to investigate problems with the DWP's administration of Carer's Allowance and why it had failed to prevent overpayment build-up.

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On 17 May the National Audit Office agreed to do what it called 'further work' on this area. It described this work officially as 'DWP's Carer's Allowance, Verified Earnings and Pensions alerts service and overpayment levels', albeit that it had already carried out an investigation in 2019.

Looking back into the archive the question that Mr Timms raised this year was raised in 2019 by one of his predecessors, the late Frank Field MP. Something was done and an investigation by the National Audit Office followed. At that point 80,000 carers owed £150 million. The Auditor General recommended write-offs for smaller overpayments.

So we are here again, and again 'something has to be done'.

Here at WBU we prefer to look at why this problem arose in the first place. Most of you will be aware that to be paid Carer's Allowance, currently £81.90 per week, you must not earn more than a certain threshold, currently £151.00 per week. The problem has become more acute because of recent increases in the National Minimum Wage, meaning that carers can work fewer hours than they have been used to.

In 2019 the earnings threshold equated to 15 hours a week and in 2022 13.9 hours a week at the level of the National Minimum Wage.

Now it equates to 13.2 hours.

Over the years this has made a difference to the amount of working hours a carer can do without causing an overpayment. Was it that in times gone by the DWP had a better system of informing carers who breached the earnings threshold earlier? Certainly in 2019 the answer to that would be 'no', given the numbers of claimants owing overpayments were higher then than they are now.

Perhaps it is simply time for another round of small overpayment write-offs – we will wait to see what the National Audit Office suggests.

Managed Migration Update

After accelerating the migration timetable and bringing forward the timeline for Employment and Support Allowance claimants from 2028 to 2025, the DWP have announced that they intend to begin notifying ESA claimants that they need to move to Universal Credit in September 2024.

'Our delivery approach and timelines will be informed by detailed planning and engagement with stakeholders, but our current planning assumption is that we would begin notifying this group in September 2024, with the aim of notifying everyone to make the move by December 2025.'

For more information, visit: www.gov.uk/government/publications/la-welfare-direct-bulletins-2024/la-welfare-direct-52024#latest-update-move-to-universal-credit

Updated migration timetable

2023–2024 – tax credit only claimants

April 2024 – Income Support claimants and those receiving both tax credits and Housing Benefit (recent reports indicate a current focus on Income Support with tax credits, with Income Support claimants who also receive Housing Benefit to follow slightly later)

June 2024 – Housing Benefit only claimants

July 2024 – claimants receiving both income-related Employment and Support Allowance and Child Tax Credit

July 2024 – State Pension age claimants in receipt of tax credits (directed to claim Pension Credit or Universal Credit depending on their circumstances)

September 2024 – income-based Jobseeker's Allowance claimants, income-related Employment and Support Allowance only, or income-related Employment and Support Allowance with Housing Benefit

This timetable is subject to change, particularly in view of the recent General Election.

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Managed migration issues

If you have clients with managed migration problems, CPAG have a number of tools and templates to help you: cpag.org.uk/welfare-rights/tools-templates/migration-universal-credit-tools-and-templates

Transitional protection breakdowns

If you have helped a client request a breakdown of their transitional protection, please let CPAG know how you got on but completing their survey: www.surveymonkey.com/r/6WC7GX5

Managed Migration for State Pension Age Tax Credit Claimants

There are around 15,500 pensioner households (single pensioners or couples where both are State Pension age) in receipt of tax credits.

With tax credits ending in April 2025, new regulations have been issued which provide for the migration of these claimants to either Universal Credit or Pension Credit, depending on their circumstances.

Who will be invited to claim Universal Credit?

Claimants receiving Working Tax Credit or Working Tax Credit and Child Tax Credit.

- From August 2024, these claimants will start receiving migration notices, informing them that their tax credits will end and inviting them to claim Universal Credit.
- A transitional element, which ensures no one is worse off at the point of transfer, will be considered for qualifying claims.

Who will be invited to claim Pension Credit?

Claimants receiving Child Tax Credit only, or those receiving either tax credit alongside Pension Credit.

- From July 2024, these claimants will start receiving tax credits closure notices which will direct them to claim Pension Credit.
- A new **transitional additional amount** will be introduced to Pension Credit to ensure no one is worse off at the point of transfer (for this cohort only).
- To be entitled to the transitional additional amount, you must have been issued with a tax credit closure notice, be in receipt of Child Tax Credit or either tax credit with Pension Credit on the migration day and make a claim within the relevant time limit. You will not be entitled if your couple/single status has changed between receiving your closure notice and claiming Pension Credit.
- The transitional additional amount erodes in the same way as the Universal Credit transitional element, for example, by the inclusion of other amounts (such as the carer additional amount) and by the annual uprating. It can be lost in some circumstances, including if there is a change to your single/couple status (including if one partner dies) or you stop being responsible for the child or qualifying young person that you received tax credits for. Once lost or eroded to nil, it cannot be included again.

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Changes to the normal rules

As Universal Credit is not designed as a State Pension age benefit and Pension Credit is not specifically designed as a benefit for those in work, the regulations make several changes to the normal rules for this cohort.

- The **age rules** for Universal Credit will be waived to allow State Pension age claims. The waiver can end in the same way that the transitional element ends, if earnings fall below the minimum earnings threshold, or if the claimant decides to claim Pension Credit. If the waiver ends, Universal Credit ends.
- To align with the Working Tax Credit minimum hours rule, a **minimum earnings threshold** of 16 hours per week at National Minimum Wage will be introduced in Universal Credit for these claimants. If earnings fall below this for 3 months after a grace period of 12 months, the Universal Credit claim will end.
- State Pension age claimants will be **exempt from the Benefit Cap**.
- Deferred private and State Pension income will be disregarded as **notional income** for 12 months for both Universal Credit and Pension Credit (or until claimed, if sooner).
- **Deferring State Pension** while in receipt of Universal Credit under these rules will not increase State Pension payable at a later date.

Protected mixed-age couples

Separate regulations have also been issued regarding protected mixed-age couples in receipt of tax credits. Protected mixed-age couples are those who are entitled to an award of State Pension age Housing Benefit or Pension Credit despite not both being State Pension age. For this to apply, specific conditions must be met.

Mixed-age couples in receipt of tax credits who are not protected under these rules will be contacted as part of the normal migration process.

Protected mixed-age couples in receipt of Working Tax Credit and State Pension age Housing Benefit will be invited to claim Universal Credit. Separate provisions allow that, after any Universal Credit claim has ended, these protected mixed-age couples will be able to reclaim State Pension age Housing Benefit and Pension Credit.

The regulations also allow a reclaim where a couple in this situation does not make a claim for Universal Credit or makes a claim but is not entitled.

For the regulations, visit: www.legislation.gov.uk/uksi/2024/611/made and www.legislation.gov.uk/uksi/2024/604/made

For the explanatory memorandum, visit: www.legislation.gov.uk/uksi/2024/611/memorandum/contents

Personal Independence Payment Administrative Review (another one)

The DWP have announced another PIP administrative review regarding claimants who are over State Pension age and entitled to the mobility component.

This review follows caselaw that identified a loophole in the PIP regulations which unintentionally allowed the mobility component to be increased from the standard to the enhanced rate for State Pension age claimants in certain circumstances.

Although the loophole has now closed, there may be arrears due for claimants who meet the following criteria:

- you had your PIP claim reviewed between 8 April 2013 and 29 November 2020
- you were over State Pension age
- you received the standard rate of the mobility component
- you did not report a change in your circumstances that affected your mobility needs
- you had a health professional assessment which recommended the enhanced rate of the mobility award
- you continued to receive the standard rate of the mobility award
- your decision letter told you DWP could not increase your mobility award because you were over State Pension age.

If you have a client in this situation, they need to contact the DWP and ask for a 'Regulation 27 administrative exercise review'. Note that unlike other administrative exercises, the DWP will not identify and contact claimants directly.

For more information, visit: www.gov.uk/guidance/apply-for-your-pip-claim-to-be-looked-at-if-your-mobility-award-was-not-increased-because-you-reached-state-pension-age

The Red and the Black

Renewal notices are being posted out to Tax Credit claimants from 2nd May 2024.

730,000 notices will be dropping through letter boxes between that date and 19 June 2024.

But firstly, an apology.

For those of you expecting an article on the Stendhal novel of 1830, *The Red and the Black*... you are in the wrong place. For the right place (unless you have an unusual, and, I must say, imperfectly paired passion for both tax credit notices and the Stendhal novel) you should, as a starting point, go to the wiki article, here: en.wikipedia.org/wiki/The_Red_and_the_Black

So – what's the connection between the two?

On 30th April 2024 HMRC issued a press release reminding tax credit claimants that it was that time of year – time to renew their tax credits award.

For the vast majority of these claimants, the process of renewal is automatic. These notices, once disgorged from their envelopes, have a black stripe.

Instructions for those receiving a notice with a black stripe can be found on the gov.uk website at www.gov.uk/renewing-your-tax-credits-claim. The instructions are, word for word, as follows:

"If your renewal pack has a black line and says 'check now'

You'll need to check your details. If they're correct, you do not need to do anything. Your tax credits will be automatically renewed.

Your renewal pack will say how much you'll be paid this year – this is your 'award notice'. You might need to show your award notice to get certain benefits."

For the black-stripers, the process should be straightforward.

However, there will be approximately 10,000 who receive a notice with a red stripe.

I'm not sure, having not seen one of these notices, how this red stripe is presenting itself. Whether it's a thick or thin line, whether it's placed vertically, left or right, or horizontally, top or bottom, or, to strike an eye-catching pose, like the famous Jamaican lager, thick, diagonal, and sweeping from top right to bottom left.

Because that's the name of the brand.

Either way, it's red, and should alert red-stripers to the following from the gov.uk website:

"If your renewal pack has a red line and says 'reply now'

You'll need to renew your tax credits by the date shown on your renewal pack. For most people, this is 31 July 2024.

You'll get estimated ('provisional') payments after 6 April until you renew. HMRC may pay you a different amount based on new information from your employer or pension provider."

Tax credit claimants with the red stripe will need to check their information against the information held by HMRC and do this by 31 July or payments may cease.

I asked at the beginning of this article what the connection was between tax credit renewal notices and Stendhal's great novel.

You've probably guessed by now that the connection is extremely tenuous... maybe even non-existent.

It's just the colours.

Welfare Writes

F.A.O:

From 13 May 2024 a set of regulations increased the Administrative Earnings Threshold (AET). The AET is a mechanism which allows the DWP to impose work search requirements on those Universal Credit claimants with earnings below a threshold – the Administrative Earnings Threshold.

The higher those thresholds are, the greater the number of claimants of UC that come within the swipe of the DWP. In fact, DWP analysts estimate that a further 180,000 claimants will have work-related requirements imposed upon them with the increase in the thresholds.

It took two sets of regulations to give the increase effect.

The title of the first set of regulations is *The Universal Credit (Administrative Earnings Threshold) (Amendment) Regulations 2024 No. 529.*

And the title of the second set of regulations is *The Universal Credit (Administrative Earnings Threshold) (Amendment) (No. 2) Regulations 2024 No. 536.*

They've been attracting rather a lot of attention. And not just because there were two sets of them, each practically the same, published a week apart, the latter revoking the earlier and with a different start date.

The regulations – the second set, that is – caught the attention of the Secondary Legislation Scrutiny Committee of the House of Lords.

As if one set of regulations weren't enough to grab your attention, a second lot comes along to clinch it.

This particular Committee of the House of Lords examines, at close quarters, the policy content and intended outcome of statutory instruments and considers whether the regulations they consist of, including the explanatory memorandum, should receive not just their attention, but the special attention of the House.

With a big bold finger pointing at the text of the regulations, it did just that with these. The Committee decided that it should receive the special attention of the House.

And with the prospect of all that attention, the regulations – the second set, that is – like a naughty schoolboy, began to blush.

But why such reddened cheeks? And embarrassment?

It was because the secondary legislation in this instance came within the Committee's terms of reference.

A statutory instrument comes within the Committee's terms of reference if the explanatory material laid in support of the legislation provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

"For example", said the Committee, "the Explanatory Memo makes no reference to the outcome of the previous increase in the AET [this occurred in January 2023] nor how it contributes to the DWP's overarching policy goal".

"We intend" it continued, "to seek oral evidence from the Minister to provide more information on the wider impacts of this initiative, better to inform the House".

If you want to give any of the above matters your undivided attention, I suggest you start with the twenty-third report of the Committee, which can be found on the parliament.uk website, here: https://publications.parliament.uk/pa/ld5804/ldselect/ldsecleg/107/10703.htm

Social Media

We don't usually go plundering social media for welfare rights stories, but in one case, we had to, because that is where it all began.

But that's not strictly true. Rishi Sunak gave a vague hint of what was coming down the road at full speed in a speech he gave to the Centre for Social Justice, on 19th April 2024.

Continued overleaf →

He announced that, as far as the timetable for the roll-out of UC was concerned, the migration of ESA claimants to UC was being brought forward.

No further stuffing was provided until, a few hours later, fuller details followed in a post on X (formerly Twitter) by Neil Couling.

Here it is in full:

"The Prime Minister's welfare reform speech earlier today announced the acceleration of the Managed Migration of legacy ESA/ESA & HB cases to #UniversalCredit. All migration notices will now be sent by the end of December 2025. We will work with stakeholders on the detailed plans."

'Nuff to take yer breath away.

A few weeks later (plenty of time for them to have caught theirs, and exhaled), a letter, signed by Stephen Timms, Chair of the Work and Pensions Committee, and Meg Hillier, Chair of the Committee of Public Accounts, was sent to Jo Churchill.

Jo was then the Minister for Employment.

The two Chairs pointed out to Jo a major misdemeanour in parliamentary procedure.

This really was big news. Migration notices...sent to income-related ESA claimants...three years before the expected date. That would affect up to 600,000 households, many of whom, by the nature of the benefit involved, would be vulnerable claimants.

Such a major shift in policy should not be megaphoned from X. "As the Ministerial Code states", the letter says, "when Parliament is in session, the most important announcements of Government policy should be made, in the first instance, in Parliament".

The couple of Chairs then went on to request that Jo make some kind of statement to Parliament. Such a change might not seem news to Neil, but it certainly was to 600,000 ESA claimants.

That letter was written on 15 May 2024, and dear old Jo duly supplied the statement on the 21st.

SSWP v MA [2024] UKUT 131 (AAC) – meaning of "work" and "income" for ESA purposes

Once in a while an Upper Tribunal decision comes along that takes to its bosom some of the more fundamental questions of social security law, prompted by the case's peculiar set of facts.

And there's a further peculiarity – this time a procedural one.

The role of the participants in this Upper Tribunal case are reversed. Here's who's who, to avoid confusion from the start.

The appellant isn't the claimant. The appellant is, procedurally, the respondent, while the appellant is the Secretary of State. The claimant isn't the appellant. The reversal of roles came about because the Secretary of State appealed against a First-tier Tribunal's decision.

That's why, as a tribunal rep, I never walked out of a hearing after a favourable decision for the client, feeling entirely smug. The DWP can appeal a First-tier Tribunal's decision, in the same way a claimant can, within the appropriate time limits.

This case raises issues requiring clarification on the meaning of "work" and "income" for the purposes of an income-related Employment and Support Allowance claim. Judge Wikeley, of the Upper Tribunal, supplied that clarification on 8 May 2024.

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It might as well be said from the start that wise Wikeley's words will not come as good news to claimants of income-related ESA (and that benefit's close relatives) who are engaged in lucrative criminal activities.

I assume such activities wouldn't be engaged upon if they weren't.

Early on in the claim's history of the respondent (the ESA claimant), he turned up drunk for a meeting at his local jobcentre. At this early stage, he was claiming JSA – hence the visit. But prior to his exit from the Jobcentre, by persuasion or otherwise, the DWP member of staff dealing with his claim very thoughtfully referred him for a Work Capability Assessment. He had, after all, a long history of substance abuse.

The claimant was then transferred to income-related ESA.

Due to repeated relapses in his treatment regime the claimant got involved in the handling of stolen bicycles. He didn't steal them himself. He just bought them, handled them, and sold them on.

The activity was highly lucrative: a DWP fraud investigator found in just over a year, monies amounting to just shy of thirty thousand quid had been deposited into several of the claimant's bank accounts.

He was later sentenced to four years in prison.

Following the conviction the DWP made the usual double decision on entitlement and overpayment. The claimant wasn't entitled to income-related ESA because he had surpassed, with flying colours, the permitted work earnings limit for the appropriate period. There was thus an overpayment amounting to approximately £9,500.

The claimant appealed to a First-tier Tribunal, who found in his favour. Buying and selling stolen bikes was not "work", in the scheme of things, and the income derived from it was not "income" in the normal sense of the word. It was linked to criminal activity; the claimant had already done time for this in prison.

It's at this point that the DWP stepped up, put the case on the penalty spot, and booted it straight into the net of the Upper Tribunal.

The Secretary of State advanced two grounds of appeal, relating to the issues we previously mentioned. The First-tier Tribunal erred in law in its interpretation of the meaning of the word "work" in regulation 40 of the ESA Regulations 2008. The claimant was engaged in "work" at the relevant time.

Secondly, the tribunal erred in law in its approach to the meaning of "income". Monies received in the course of buying and selling bikes should count as income in the calculation of income-related ESA.

Judge Wikeley, of the Upper Tribunal, found in favour of the Secretary of State in the following terms.

Regarding "work" he refers to the definition of "employment" in regulation 2(1) of the 2008 Regulations. "Employment" is defined *"in expansive terms, and certainly in far broader terms than salaried employment"*.

He goes on to say that *"Taken together, the various activities involved in sourcing bikes, negotiating prices for purchase and sales, carrying out any necessary repairs and dealing with customers all constitute "work" [as well as an impressive skill set]. Those activities are essentially the same irrespective of whether the bikes in question are stolen or lawfully acquired"*.

Furthermore, Judge Wikeley pointed to the general rule in regulation 40 of the ESA Regs: "a claimant is to be treated as not entitled to ESA in any week in which that claimant does work". Any work, and you're out. But there are exceptions to this general rule – there's a list of activities which do not count as "work". The one we all know about is permitted work. But there are others. For example: work as a councillor, or as a volunteer. What Wikeley notices, however, is that in that list of types of work that can be done while retaining limited capability for work, *"there is no exclusion…for work that involves criminal activity"*. It would appear mighty strange if there was.

For the question of the claimant's income, Judge Wikeley made the following comment: *"there is no warrant for reading in a qualification that "income" means "income acquired from legitimate sources". With this statement as his starting point, Wikeley went on to observe that money resources "are subject to a binary classification as being either capital or income – thus, there is nothing in between and so no "third way""*.

This left the DWP two ways of taking into account the claimant's cash receipts. Treat them as the earnings of a self-employed earner, or treat them as income other than earnings.

Judge Wikeley commented that the first option was the most advantageous to the claimant, as, despite the self-employment amounting to criminal activity, it would be his net earnings that counted after deductions for a number of things, including, while he was handling the stolen bikes, "expenses reasonably incurred".

You can find the full decision here: www.gov.uk/administrative-appeals-tribunal-decisions/secretary-of-state-for-work-and-pensions-appellant-v-m-dot-a-2024-ukut-131-aac

HS v SSWP [2024] UKUT 86 (AAC) – Documents can support a claimant's credibility: make sure the First-tier Tribunal sees them

Credibility in benefits claims is much discussed in the court of public opinion, but in the Upper Tribunal, less so. That is because the Upper Tribunal tells itself that it should tread very warily before disturbing a First-tier Tribunal's findings on credibility because it is usually based on the facts and that does not usually amount to an error of law.

But in *HS v The Secretary of State for Work and Pensions [2024] UKUT 86 (AAC)*, the Upper Tribunal does tread all over the First-tier Tribunal's finding on credibility. We'll discuss why in this article.

The moral of this case, as Judge Wikeley put it, *'... is that First-tier Tribunal panel needs to ensure they have sight of all the relevant documentation in the case'*. In a nutshell, he decided the finding of the First-tier Tribunal, that the claimant had 'overstated' her case, was an error of law because the First-tier Tribunal had not had all of the relevant documents, some of which could have affected that finding.

The claimant had been awarded 0 points in her Personal Independence Payment application for the mobility component. After a First-tier Tribunal adjournment at which a tribunal bundle had been prepared, the claimant sent through further supporting documents, most duplicates, but crucially she provided 200 odd pages of medical notes that the First-tier Tribunal did not see. For those interested in reform – and by reform we mean the HMCTS's move to electronic case management – the new documents had not been automatically 'stitched' into the original electronic bundle and were left languishing with a Judicial Case Manager, whatever that means.

One reason the tribunal had not believed the claimant was that it doubted that she had been stopped from driving for as long as she claimed. But the unseen medical notes supported her account. While Judge Wikeley acknowledged that, in the end, the decision on mobility depended on more than the ability to drive, he allowed the appeal because the tribunal might not have made such a strong finding on credibility if it had seen the supporting documents and that in turn could have made a difference as to how it assessed her evidence as a whole. The error of law here was making a finding on credibility without having read all of the relevant documents.

The lesson of the case for appeal representatives is always to make sure the First-tier Tribunal has the correct bundle and to draw to its attention any material in it that supports the claimant's account.

You can find the full decision here: www.gov.uk/administrative-appeals-tribunal-decisions/hs-v-the-secretary-of-state-for-work-and-pensions-2024-ukut-86-aac

Ipswich Borough Council vs TD and SSWP UA-2021-000630-HB [2024] UKUT 117 (AAC) – The meaning of being "on Universal Credit"

You will, no doubt, be familiar with the idea of a client being "on Universal Credit", but have you ever stopped to think what that might mean, and when being "on Universal Credit" might not actually mean receiving Universal Credit? That was the quandary facing Judge Wright in this case before the Upper Tribunal.

The claimant in this case had made a claim for Universal Credit in October 2019 and then found themselves homeless and in need of temporary accommodation in January 2020. This necessitated a claim for Housing Benefit for the specified accommodation, and if the claimant was in receipt of Universal Credit, they would be passported through to full Housing Benefit, which is indeed what happened in this case.

The local authority subsequently discovered that rather than being in receipt of Universal Credit, the claimant had in fact had five months of nil payments. They promptly decided that this meant they were not in receipt of Universal Credit and should not have been passported to full Housing Benefit. An overpayment was calculated and the claimant was notified.

Unhappy with this decision by the local authority, the claimant appealed to the First-tier Tribunal who duly agreed with the claimant that there had been no overpayment.

The tribunal stated that the claimant "was at all material times "on UC" for the purposes of the income disregard, even though she was paid nil... It was therefore incorrect for [the local authority] to regard her as "not entitled" or "not in receipt of" UC ..., the outcome is that [the claimant] was at all material times on UC."

The local authority, unhappy with this state of affairs, requested and received permission to appeal to the Upper Tribunal. Two hearings then followed, with the Secretary of State for Work and Pensions being invited to join for the second.

It was during these two hearings that Judge Wright wrestled with the concepts of being "on Universal Credit" and whether a claimant can be entitled to a "nil award".

Much of the confusion around these terms arises, it seems, from the language used by the DWP (deemed "confusing and potentially misleading" by the judge) when claimants have sufficient income to terminate their Universal Credit award, but the journal is kept open for up to six months to enable a swift reclaim should they become eligible again. In this case, the evidence from the DWP referred to a "current award, the payment of £0.00 started on 25 March 2020... The maximum amount of Universal that can be awarded is £1057.38 which has been adjusted to £0.00" and two "previous awards" of "£0.00".

Judge Wright worked through regulation after regulation and the above DWP statement before finally and unequivocally deciding that:
"The statutory provisions make clear in my judgment that there cannot be an entitlement to a nil/£0.00 amount or award of universal credit."

The Judge went on to say:

"I comment lastly on the concerns I raised about references to Universal Credit awards of £0.00 and being paid £0 for a month perhaps leading to claimants wrongly considering themselves eligible for, by way of example, free prescriptions, because they might think they are entitled to a nil award of Universal Credit.

Continued overleaf →

I have explained in paragraph 39 above why the language used by the DWP in its screen prints may potentially have been misleading. The notifications issued to the claimant were also in my view confusing and liable to mislead. A reference to "What you're entitled to" in such notices is, to my mind, entirely inapposite in circumstances where the true legal position is that the claimant was not entitled to Universal Credit. Given the real potential for confusion and claimants being materially misled, I cannot see any good reason why both in the screen prints and in letters or notices issued to claimants the true legal position cannot be set out. All that would have to be stated to do so would be language like: "You are not entitled to Universal Credit for this assessment period because, for the reasons we explain further below, your income is too high". Nor can I see why any focus group should be needed to arrive at simple and informative but legally accurate language."

So, to be (on UC) or not to be (on UC) might be the question, and the answer will depend on whether you receive at least the minimum amount of 1 penny.

You can find the full judgement here: www.gov.uk/administrative-appeals-tribunal-decisions/ipswich-borough-council-v-td-and-the-secretary-of-state-for-work-and-pensions-housing-benefit-2024-ukut-117-aac

SSWP v WV (UC) [2023] UKUT 112 (AAC) – Deciding claims for Universal Credit or Pension Credit where partner is self-sufficient but partly reliant on UK claimant's legacy benefit

Guidance for decision makers has been issued whilst everyone concerned waits for the Court of Appeal to make a decision in the "WV" case. It is an appeal by the Secretary of State against a decision of the Upper Tribunal.

We look at the WV case, and recent documents associated with it.

The case involves a Belgian national, C, with Pre-settled Status and married to a UK national, J. In summary, the Upper Tribunal decided that C had a right to reside as a self-sufficient EEA national with Pre-settled Status. They had their own income from Carer's Allowance, supplemented by the UK national partner's income-related Employment and Support Allowance, before the claim for Universal Credit was made. The income-related ESA payable to the UK partner decreased on becoming a couple with C.

Although entitlement via a subsequent claim for Universal Credit if paid as a couple would be higher than the single person rate, an increase of £347 per month, this did not amount to an "unreasonable burden" on the UK social assistance system and the EEA national continued to have a right to reside as a self-sufficient person. The Secretary of State has been granted permission to appeal to the Court of Appeal, with the case listed for hearing on 22 and 23 October 2024.

Child Poverty Action Group (CPAG), who were involved in the case, advise that:

'The judgment will be relevant where a UK national has been receiving legacy benefits and has an EEA national partner and the couple then need to claim UC. In most cases, the effect of the EEA partner on the legacy benefit award will have been to increase the amount of social assistance received and in those cases the judgment will not assist.

Continued overleaf →

However, in cases such as that of WV, where additional legacy benefits were not paid as a result of the presence of the EEA national partner then on transitioning to UC, a self-sufficiency right to reside can be asserted to obtain a couple award of UC.....'

The above extract can be found at:

https://cpag.org.uk/welfare-rights/test-cases/test-case-updates/right-reside-based-self-sufficiency

The recent DWP guidance advises that an EEA national may be considered as self-sufficient in line with the Upper Tribunal decision where they:

- have pre-settled status
- have no other right to reside
- rely on their UK national partner's legacy benefits, calculated at the couple rate, to be considered as self-sufficient, and
- then make a joint claim for Universal Credit

DMG Memo 03-24 applies to decisions relating to **Pension Credit**. In these cases:

Where the claim is made by the EEA national, decision makers should 'stay' (suspend) making a decision pending the outcome at Court of Appeal. Where the case has progressed to appeal, the DWP should invite the tribunal to stay proceedings.

Where the claim is made by the UK national, their EEA partner is not required to have a right to reside and so the Upper Tribunal decision does not apply, with the claim decided in the normal way.

ADM Memo 04-24 applies to decisions relating to **Universal Credit**. In those cases, to avoid denying benefit to the UK partner, rather than a stay, the claim and any mandatory reconsideration should be decided as if the EEA partner has no right to reside, with the EEA claimant notified that this will be reviewed following conclusion of the Court of Appeal hearing. Where the case has progressed to appeal, the DWP should invite the Tribunal to stay proceedings pending a decision by the Court of Appeal.

The full Upper Tribunal decision can be found here: www.gov.uk/administrative-appeals-tribunal-decisions/secretary-of-state-for-work-and-pensions-v-w-v-uc-2023-ukut-112-aac

CU v SSWP (UC) UA-2023-001084-USTA [2024] UKUT 32 (AAC) – Backdating a claim for Universal Credit – whether a disabled claimant could reasonably have been expected to make the claim earlier

In this case, a claim for Universal Credit was made on 25 February 2022 and was awarded from that date. On 17 May 2022, the claimant requested backdating to 1 November 2021, when their employment had ended. The claim for backdating was refused as it was made late. The claimant then appealed to First-tier Tribunal.

The First-tier Tribunal rejected the claimant's appeal. Whilst accepting that the claimant had a physical disability, the tribunal decided that he could reasonably have been expected to make an earlier claim by telephone.

The case then proceeded to the Upper Tribunal.

Continued overleaf →

Arguments for the claimant included that the tribunal wrongly restricted its consideration to physical factors that could have prevented an earlier claim for Universal Credit and failed to make proper investigations to establish whether the claimant could reasonably have been expected to make a telephone claim.

In deciding the case, Upper Tribunal Judge Jones applied the relevant law, regulation 26 of the Universal Credit etc (Claims and Payments) Regulations 2013. Regulation 26 allows the time for claiming to be extended by up to one month where a specified circumstance applies, as a result of which, the claimant could not reasonably have been expected to make the claim earlier. The circumstances include where the claimant has a disability.

In allowing the appeal, the Upper Tribunal decided that, although there must be a causal connection between the specified circumstances, in this case disability, and the inability to make the claim earlier, what is reasonably to be expected must take account of the claimant's wider circumstances. The test involves consideration of what could reasonably be expected of another person with the same disability and in the same wider circumstances. In this case, there was evidence that the claimant had limited prior knowledge of the benefit system and English was not their first language.

Judge Jones concludes that the First-tier Tribunal "failed to properly consider what a hypothetical person with the appellant's disability could reasonably have been expected to do, given his knowledge of the benefit system and the possibilities for acquiring information about benefit entitlements and procedures available to him."

The Upper Tribunal made no decision as to whether the claimant could reasonably have been expected to claim earlier. It was remitted back to be considered afresh by a First-tier Tribunal.

You can find the full decision here: www.gov.uk/administrative-appeals-tribunal-decisions/cu-v-the-secretary-of-state-for-work-and-pensions-2024-ukut-32-aac

Welcome!

WBU are pleased to welcome Abi Willis who joins us as our new Campaigns Coordinator. This post is part of a two-year project funded by the Lloyds Bank Foundation which is a collaboration between the Welfare Benefits Unit, Citizens Advice York, City of York Council, University of York, Peasholme Charity, Age UK and York Foodbank to understand the impact of local welfare support on claimants and influence the current and future design and take up of discretionary welfare provision.

Abi has come from Older Citizens Advocacy York where she was the Operations Manager for the charity. She has also worked with The Family Fund providing grants for children and is looking forward to working on this campaign improving access to benefits and services locally.

Abi will be contacting some of you over the next few weeks and months to discuss this exciting project.

Looking Forward To...
A Closer Look at the Work Capability Assessment

July was to be an eventful month for the Work Capability Assessment, until other events scheduled for 4th July stole the limelight.

But before looking at what was to happen in July, we must look back, for some context, to March 2023 and the publication of the Health and Disability White Paper.

A proposal contained within it foresaw, at some point in the future, the abolition of the Work Capability Assessment.

Following on from the publication of the White Paper, a Freedom of Information request (FOI) was sent to the DWP, in September 2023, asking the Department to provide evidence of what it had done to take into account section 149 of the Equality Act in relation to the abolition proposal.

Section 149 of this Act is the public sector equality duty.

The Department refused to hand over the evidence on the basis that such information was exempt as it related to the ongoing formulation or development of government policy.

The ICO's view was that the exemption on the grounds of the ongoing formulation of government policy was not engaged because the government had already made up its mind about the fate of the WCA before the FOI request was submitted to them. They were not persuaded that ongoing policy developments outweighed the strong public interest in disclosure.

The Commissioner went on to request that the DWP hand over the document within a month of 12th June.

That would bring us to the middle of the eventful month of July. By the morning of 5th July, however, the government's "ongoing formulation" of policy had been completely stymied, because they'd lost the election.

In addition to the correspondence between the two parties above (the ICO and the DWP), the Social Security Advisory Committee has, after a careful read of the proposals contained in the Health and Disability White Paper, and in spite of the events of 4th July, *"decided to take a closer look at some aspects [of the WCA] over the summer".*

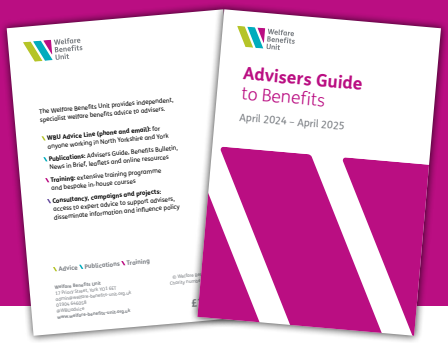
They will invite the views of interested parties as a part of that closer look, consider these carefully, and produce a report. We look forward to the outcome.

Advisers Guide to Benefits 2024/25

"The advisors guide is indispensable especially when doing outreach work, it is very portable yet contains all the basic rules and rates"

Our Advisers Guide to Benefits is written for people who give information and advice as part of their work. This concise annual guide provides an overview of benefit criteria including Universal Credit, disability benefits and additional help available. Its clear format makes it ideal for quick reference, and the compact style is handy to use, whether in the office, out and about, or for home working.

The 2024/25 Guide is available to order online at www.welfare-benefits-unit.org.uk/publications/advisers-guide



Training Programme September 2024 to March 2025

"Really great combination of delivered information and practice exercises made complex information easy to learn"

Are you new to welfare benefits, in need of a refresher, or looking to expand your knowledge? Whatever your level of experience or particular interest, take a look at our upcoming courses and come and join our *"friendly supportive and extremely knowledgeable"* tutors.

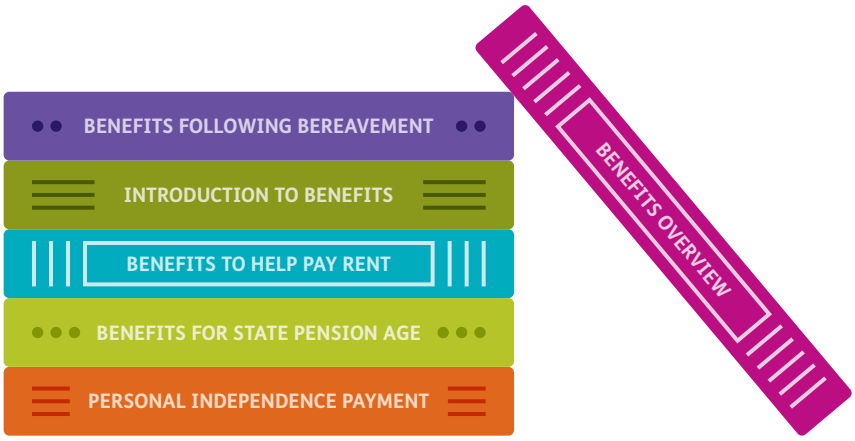
Book your course today at: www.welfare-benefits-unit.org.uk/training

Upcoming Training

Benefits Following a Bereavement: Wednesday 4 September 2024, 10am to 12:30pm

Universal Credit – Income and Capital: Thursday 12 September 2024, 10am to 12:30pm

Introduction to Benefits: Thursday 19 and 29 September 2024 and 3 October, 10am to 4pm ***new dates***



Personal Independence Payment – How to Get the Right Decision: Tuesday 24 September 2024, 10am to 4pm ***course full, contact us for alternative dates***

Introduction to Benefits: Wednesday and Thursday 9, 10, 16, 17, 23 and 24 October 2024, 10am to 12.30pm

Benefits for Disabled Young People Including Students: Tuesday 5 November 2024, 10am to 4pm

Benefits for State Pension Age: Wednesday 13 November 2024, 10am to 4pm

Introduction to Benefits: Thursday 16, 23 and 30 Jan 2025, 10am to 4pm

Benefits to Help Pay Rent: Wednesday 5 February 2025, 10am to 4pm

Benefits Overview – Working Age: Thursday 13 February 2025, 10am to 4pm

Welfare Benefits Unit

Welfare Benefits Unit Advice Line 01904 642512
advice@welfare-benefits-unit.org.uk

Monday – Thursday, 9am – 5pm | Friday, 9am – 4.30pm
Available to advisers in North Yorkshire and York
Please do not give our contact details to members of the public

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