Benefits Bulletin
Registered Charity 1164225
Autumn 2024

Winter Fuel Payments

From 16 September 2024, the eligibility rules for Winter Fuel Payments changed.

In what has proved to be a very controversial move, the qualifying conditions now require that a claimant, as well as being over State Pension age, must be in receipt of Pension Credit, Universal Credit, Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance to qualify for the additional help with heating and fuel costs.

This announcement has led to a huge increase in Pension Credit claims.

When advising clients, it should be remembered that there are some situations in which you are not entitled to a Winter Fuel Payment, including if you were living in a care home between 24 June to 22 September, or have been in hospital getting free treatment for more than a year. You may also receive a different amount depending on your circumstances.

If you advise clients who live in Scotland, the situation is slightly more complicated.

To receive a Winter Fuel Payment, you must live in England or Wales. However, the Scottish government has reached an arrangement with the DWP, and in Winter 2024/25, the DWP will pay Scottish residents an equivalent amount. The reason behind this difference is that Social Security Scotland intends to replace Winter Fuel Payments with a new benefit called Pension Age Winter Heating Payment. This was supposed to be introduced in Winter 2024. However, the changes to the funding have forced Social Security Scotland to delay until Winter 2025.

As part of the initial announcement about the changes to Winter Fuel Payments, Rachel Reeves announced that the government intends to accelerate the plans to bring together Pension Credit and State Pension age Housing Benefit, which was originally intended to take place in 2028.

The DWP have published new guidance about the Winter Fuel Payment changes, which can be found here: assets.publishing.service.gov.uk/media/66f41596a31f45a9c765ebe1/adm-chapter-l5-winter-fuel-payments.pdf

Extension of the Household Support Fund Until March 2025

The Household Support Fund was introduced in October 2021. It was due to come to an end on 30 September 2024 but the government has announced that the scheme is to be extended until the end of March 2025.

This is the sixth phase of the fund.

The fund is administered by local councils to help vulnerable people with energy, water, food and essential items.

North Yorkshire Council used the last phase of funding to provide £140 to eligible people via an e-voucher. It identified vulnerable people as those on a maximum discount under the Council Tax Reduction Scheme. Its website (as of 26 September 2024) says it is awaiting final details about funding before it can decide on eligibility criteria and payment amounts. To check for updates go to: Household Support Fund | North Yorkshire Council

The City of York Council, in the last phase, gave a credit on Council Tax and operated a discretionary scheme. It, too, says that it will provide information about phase 6 once it has received the necessary government guidance. To check for updates go to: Household Support Fund – City of York Council

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Fraud, Error and Debt Bill Brought Forward

The new government has announced the introduction of a new Fraud, Error and Debt Bill which is being brought in to "extend and modernise DWP's powers to stop fraud in its tracks, recover money lost to fraud and protect vulnerable customers from racking up debt."

This legislation will give the DWP powers to:

- investigate suspected fraud and new powers of search and seizure so the DWP can take greater control of investigations into criminal gangs defrauding the taxpayer;
- allow the Department to recover debts from individuals who can pay money back but have avoided doing so;
- require banks and financial institutions to share data that may show indications of potential benefit overpayments.

In addition to these new powers, the Bill includes some safeguards, including training staff "to the highest standards on the appropriate use of any new powers" and introducing "new oversight and reporting mechanisms, to monitor these new powers."

The Department confirmed that they will not have access to people's bank accounts and will not share their personal information with third parties.

The previous government had its own version of this bill, the Data Protection and Digital Information Bill, which would have allowed mass surveillance of claimant bank accounts.

Read the full announcement: www.gov.uk/government/news/new-laws-to-be-introduced-to-crack-down-on-fraud

Closure of Tax Credits for State Pension Age Claimants

Following on from our article in the summer edition of our Bulletin, this article deals with what happens to two types of State Pension age tax credit claimant when they are informed that their tax credit claims will close from September 2024 onwards.

In regular bulletins and circulars, the DWP lets local authority Housing Benefit staff know what it is doing, or planning to do at some point in the future. In the snappily titled LA Welfare Direct 8/24 Bulletin, at paragraph 21, the DWP informs Housing Benefit staff that:

"We have started issuing letters (referred to as the Tax Credit Closure Notice) to State Pension age tax credit claimants who have been identified to move to Pension Credit."

In LA Welfare Direct 4/24 the DWP had already told Housing Benefit staff that:

"State Pension age tax credit claimants in scope to move to Universal Credit will be issued a migration notice from September 2024."

Continued overleaf →

These bulletins therefore identify two types of State Pension age tax credit claimants affected by the closure of tax credits:

- those eligible for Pension Credit and
- those who need to claim Universal Credit.

The difference depends on their working status and whether they already receive Pension Credit.

The two groups of claimants do not include mixed-age couples who have already been manage-migrated to Universal Credit.

Some State Pension age tax credit claimants will already be receiving Pension Credit and this will continue with the closure of tax credits. Those receiving Child Tax Credit only will be invited to claim Pension Credit.

Other tax credit claimants who are working (with Working Tax Credit, and whether with Child Tax Credit or not) will be issued with migration notices and need to claim Universal Credit to preserve their benefit income.

As always, it is important to advise those receiving such notices to make the claim within the deadline date to ensure eligibility for transitional protection.

Regulations deal with the various changes that need to be made to the usual Universal Credit rules to accommodate those working pensioners who need to claim Universal Credit to preserve their current level of income from tax credits. For those interested, please visit the Social Security (State Pension Age Claimants: Closure of Tax Credits) (Amendment) Regulations 2024 (SI.No.611/2024) and its accompanying explanatory memorandum.

Managed Migration from Tax Credits to Universal Credit – Support for Vulnerable Claimants

As you know, tax credits are due to close with no renewal claims possible from April 2025. See our Summer 2024 Bulletin for the latest migration timetable.

Whereas migration notices have previously been deferred for some, for example those that are terminally ill, the DWP have now confirmed that migration notices for tax credit claimants can no longer be cancelled or deferred. The Department is issuing them to enable migration and the closure of tax credits to proceed.

Claimants can, however, continue to ask for an extension.

Concern has been raised about the numbers of tax credit recipients failing to respond to a migration notice. Giving evidence to the DWP Select Committee, Universal Credit Senior Responsible Owner, Neil Couling, said that DWP research had not identified any systematic barriers to claiming Universal Credit.

Neil Couling subsequently issued a letter to local authorities: This letter lays out the specific nature of the Enhanced Customer Support.

In April 2024, the Public Accounts Committee issued a report which raises concern about the numbers of claimants failing to complete the migration process, calling on the DWP to monitor this.

In June, the DWP made information available to stakeholders in a presentation.

In their September edition of Touchbase, the DWP have stated that they are now in a position to support the most vulnerable claimants through the migration process.

The Touchbase item states: *"Throughout the Move to Universal Credit process, DWP has ensured the correct level of support is in place to safely move customers over to universal credit. In some instances DWP has either delayed the issue of a Migration Notice, or cancelled the Migration Notice until any needed support was in place. DWP is now ready to notify (and in some cases re-notify) households receiving tax credits that need to safely move to Universal Credit before tax credits close in April 2025."*

Clients should be alerted to the loss of potential benefit where, after receiving a migration notice, they fail to make a claim for Universal Credit by the final deadline. Where they do claim by the final deadline, they have access to transitional protection which can mean, for example, that the level of benefit is protected in the short-term and that excess capital is ignored for up to a year.

Lords Committee Raises Concerns About Increases in the Administrative Earnings Threshold

The administrative earnings threshold is a level set by the government for those on Universal Credit. If your earnings are above this threshold you are not expected to look for more work, or better paid work. If they are below this then work-related requirements are likely to be imposed in the form of free membership of the intensive work search group.

The AET has increased three times in recent years, September 2022, January 2023 and May 2024. Each increase placed more people into the intensive work search group. Claimants in this group are required to take active steps to move into work or increase their earnings.

Following these increases in the AET, the Lords Secondary Legislation Scrutiny Committee raised concerns about the previous government's lack of data in evaluating the first two increases before implementing a third. They raised these concerns in early September 2024.

The former Employment Minister, Jo Churchhill, responded to the Scrutiny Committee's concerns by referring it to unpublished research which compared the experiences of claimants who were just below and claimants who were just above, the AET. This would provide the next 'building block' in evidence as to the justification for increasing the AET.

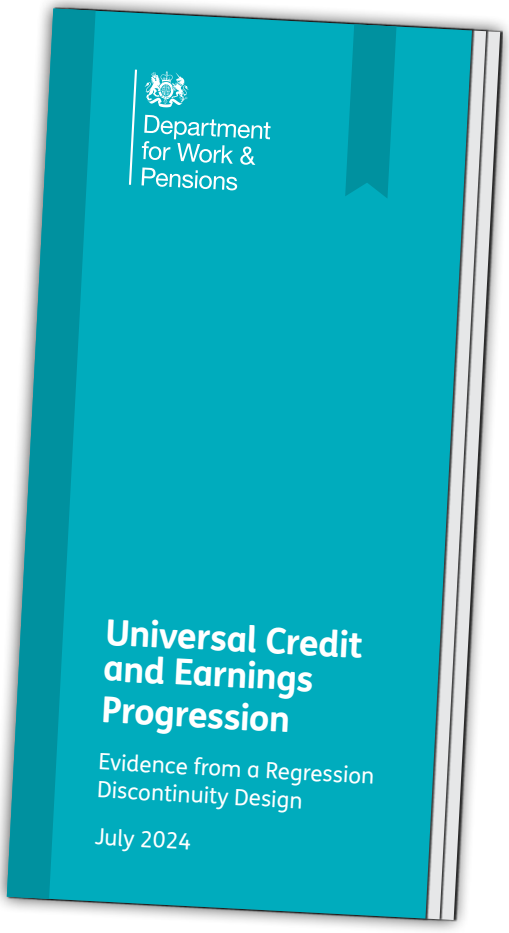
After failing to meet the expected publishing date in June this research was published in August 2024.

The research compared two groups of claimants, one just above and one just below the AET between May 2017 and February 2019. At this time the AET was set at the equivalent of just under 9 hours work per week at the National Living Wage. The research showed that those who began their Universal Credit claim just under the threshold and therefore in the intensive work search group had on average £100 higher earnings progression after 12 months compared to those who were in the light touch regime. The DWP suggested that therefore "this suggests that regular support via the Jobcentre has positive effects on the future earnings outcomes of working claimants".

The DWP did, however, acknowledge some limitations of the study, saying that the "method provides local effects. That is, the larger any increase in the AET, the less confidence we can have in applying the results from this paper. It might also be that the impacts diminish for claimants who are already higher up the earnings distribution".

Despite the publication of this research, the Lords Committee continue to be concerned about the DWP's approach regarding the AET. Raising the AET "without proper evaluation, there is a risk of certain groups of claimants being disadvantaged, particularly those in part-time work who also claim benefits because they have health issues or caring responsibilities".

Their correspondence can be found in full here: House of Lords – Second Report – Secondary Legislation Scrutiny Committee (parliament.uk)



Welfare Writes

The DWP commissions research reports. The Department has been doing this for decades. The reports, once finished, are then sent to the government of the day, for publication. Policy determines that such research reports are published within 12 weeks of their receipt.

That was the case until 2018. From 2018, the government of the time increasingly failed to comply with the 12-week publication policy.

Production without publication led to a traffic jam, until, after July 2024, the new government had its own "Super Monday" – the equivalent of the publishing industry's "Super Thursday". Super Thursday is the day the publishing industry releases numerous new titles. This year, on 10th October, 1,900 titles were published, in time for the market for Christmas holiday reading.

Super Thursday for the DWP's reports was Monday 7th October 2024. On that day, 30 research reports were published, all at once – a bonanza for anyone interested in social security administration.

Concerning the reports, Liz Kendall, the Work and Pensions Secretary, had this to say:

"Mr Speaker, I'm determined to put transparency at the heart of the DWP, so I have published...reports that were sat on by the previous government."

Just imagine it, to give the issue a comic slant: a former government official sitting on a chair, in front of a desk, and between the seat of the chair and the former government official's bum is a stack of thirty unpublished DWP reports. Such is their thickness that the government official's legs dangle in mid-air and their head bumps against the office ceiling.

They are in danger of toppling over.

"Someone get me down from here!", they shout.

In respect of the now published reports, what might be on your list for Christmas holiday reading?

Here's a selection:

Not Started and Unfinished Claims to Universal Credit. This report looks at why claimants don't claim UC, or are unable to complete the claims process.

Take-up and Use of the Universal Credit Advance Payment. A report that tries to find out why claimants take out an advance payment, the make-up of the decision to do so, and how the claimant used the advanced payment.

Universal Credit and the Patterns of Rent Balances in the Social Rented Sector. Possibly a bit specialised for many of our advisers – apart from those working in housing associations and council housing departments. One for the Christmas stocking, perhaps.

Universal Credit Full Service 12 Months Plus. This one looks at the effect of UC on claimants views about work. The report seeks to find ways to improve the employment outcomes for claimants. This should definitely be every adviser's Christmas no. 1.

Understanding the Behavioural Response to the Universal Credit Support Offer. One for the psychologically curious.

You can find the full list of the 30 reports here.

DR v SSWP [2024] UKUT 196 (AAC) UA-2023-000712-USTA – injury to feelings, or personal injury?

The appellant brought proceedings against their employer. Before the matter got to an Employment Tribunal, ACAS got involved and, eventually, via a settlement agreement, amounts of money were agreed.

A sum of money was to be paid to the appellant; it consisted of three parts: an amount for loss of employment, an amount for statutory redundancy, and an amount for injury to feelings arising from alleged discrimination.

That would have been the end of the matter, had the appellant not gone on to claim Universal Credit.

At this point, she engaged in a process which, likely as not, would only add to her injured feelings.

A first claim for Universal Credit was made. This was unsuccessful, because the claimant had too much capital, a substantial amount of which was the ACAS settlement.

A second claim was tapped into a computer seven months later. An award of Universal Credit was made, but at a reduced rate, due to the remaining capital producing a yield income. The reduced rate of Universal Credit prompted a request from the claimant for a mandatory reconsideration. And as sure as night follows day, the claimant's mandatory reconsideration was followed by an appeal.

Capital from the ACAS settlement agreement should be disregarded for Universal Credit purposes because it was not taxable. That was the appellant's main ground of appeal to the First-tier Tribunal.

However, the Tribunal judge endorsed the DWP decision-maker's view of the matter. Taxable or not – that wasn't the issue, as far as a Universal Credit claim was concerned. The proper thing to do was to look at each element of the employer's payout, and see if it could be disregarded under any appropriate regulations.

None of it could be, under any regulation, so the First-tier Tribunal dismissed the appeal. And as sure as night follows day, the appellant appealed to the Upper Tribunal, where their case landed on the desk of Judge Nicholas Wikeley.

Judge Nicholas Wikeley, it must be remembered, is one of the pre-eminent doyens of social security law.

He is co-author of many of the Sweet and Maxwell social security legislation books; and has been for many years.

He obligingly gave the appellant a pass in the following terms: *"I am giving permission to appeal as the grounds of appeal are in part arguable and the applicant's challenge to the FTT decision merits further consideration".*

What was at least in part arguable in the appellant's challenge, in Judge Wikeley's view, was that in calculating the appellant's capital the First-tier Tribunal is said to have erred in law by not disregarding the compensation payment made under the ACAS settlement agreement.

Taxable or not taxable – this issue was irrelevant, as I've said before.

But could the money be disregarded under regulation 75 of the Universal Credit Regulations 2013? This regulation provides for the disregard of amounts paid for compensation for personal injury.

Thus arose the central distinction in this case: injury to feelings, or personal injury.

Judge Wikeley, at paragraph 27 of his decision, concluded in the following manner:

"Regulation 75(1) provides that the regulation applies 'where a sum has been awarded to a person, or has been agreed by or on behalf of a person, in consequence of a personal injury to the that person. The term "personal injury" must be given its ordinary meaning, and so includes a disease and any injuries sustained as a result of disease... But as the FTT ruled, "damages paid to compensate injury to feelings is distinct from an award of damages for actual injury to physical or mental health..."

The First-tier Tribunal therefore revealed no material error of law, and the appellant's appeal was dismissed.

Find the decision in full here: www.gov.uk/administrative-appeals-tribunal-decisions/dr-v-secretary-of-state-for-work-and-pensions-universal-credit-2024-ukut-196-aac

JT v SSWP [2024] UKUT 211 (AAC) UA-2023-001449-PIP – tribunal conflates regulations 4 and 7 of the PIP Regulations 2013

Regulation 4(2A) of the Personal Independence Payment Regulations 2013 should, by now, be familiar to welfare rights advisers. It's the one that's all about doing things "reliably". By "things" I mean the activities listed in the schedule to the 2013 Regulations. By "reliably" I mean those four factors that constellate around each of the activities.

The four factors involve a consideration of whether each activity can be completed safely, to an acceptable standard, repeatedly, and within a reasonable time period. And if they can't, you're looking for points.

Then there's regulation 7 to the 2013 Regulations. This is the fifty percent test. A claimant scores points for an activity where a descriptor under that activity applies to the claimant on over 50 percent of days over a one-year period. It's of concern to advisers where a client has a condition whose effects fluctuate over time.

Those are the two regulations that got tangled up with one another in this particular Upper Tribunal case, like a knot in a shoe-lace.

The appellant went to their Personal Independence Payment appeal with four points awarded by a DWP decision maker for daily living activities. And none for mobility.

The First-tier Tribunal altered the decision, but this did not lead to an award, as the 4 points for daily living activities only went up to 6, and the zero points for mobility only went up to 4.

Worth taking the matter further then – to get those extra points – so long as a potential error of law could be found.

So, the case got to the Upper Tribunal – floating in through the window of the office of Judge Fitzpatrick. The Judge snatched it out of the air, gave it a quick glance, and, in respect of its contents, announced the following: *"I have provided full reasons [for the decision] as I consider it is merited…and it may be helpful in assisting Tribunals [and ourselves, as advisers] with the application of regulation 4…and how this is relevant to the consideration of regulation 7 of the 2013 Regulations…"*

The appellant suffered with muscle spasms and pain in his legs, plus stabbing pains and a feeling of weakness in all limbs. Also, his leg went dead when he is sat on the toilet, and for this reason a grab rail was due to be installed.

The issue of the dead leg on the loo will engage Activity 5 of the PIP schedule of activities: managing toilet needs or incontinence.

Judge Fitzpatrick observed that the first-tier tribunal had provided comprehensive written reasons for its decision. Errors of law, if present, would therefore be glaringly obvious to anyone with an eye for spotting them. And Judge Fitzpatrick certainly had such an eye.

In relation to Activity 5, for example, the Tribunal found that the claimant's leg did give way occasionally and a grab rail would definitely assist in that event. But the Tribunal also went on to state that the request for this aid didn't meet the legal test of being required for the majority of the time. On this basis, as far as Activity 5 was concerned, no points were awarded.

Judge Fitzpatrick noted several problems with this approach to Activity 5. The Tribunal's thinking was inconsistent with its approach to other descriptors, where points had been awarded.

For example, 2 points had been awarded for Activity 4 precisely due to the application of one of the Regulation 4 factors – the safety factor. These inconsistencies were only possible because of insufficient findings of fact as to Activity 5.

In essence, the First-tier Tribunal applied regulation 4 to Activity 4, awarding 2 points, and applied regulation 7 to Activity 5 when it should have applied regulation 4, awarding zero points.

At this stage of the decision, Judge Fitzpatrick began to expound upon the two regulations and why one of them (Regulation 7) had been applied to the wrong side of the toast. He refers us to the following case, the *RJ, GMcL and CS v Secretary of State for Work and Pensions*. More particularly, paragraphs 55 and 56 of that case.

In paragraph 55, it is stated, with regard to regulation 7, that it has *"no part to play in the construction of regulation 4(2A) and (4)...that if, for the majority of days, a claimant is unable to carry out an activity safely, or requires supervision to do so, then the relevant descriptor applies. On a correct analysis, as we have determined, that may be so* ***even though the harmful event or the event which triggers the risk actually occurs on less than 50 per cent of the days****"*

Furthermore, at paragraph 56, in relation to regulation 4(2A), it is stated that *"An assessment that an activity cannot be carried out safely does not require that the occurrence of harm is "more likely than not". In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. It follows that both the likelihood of the harm occurring, and the severity of the consequences are relevant"*

The Tribunal in this case, by focussing on the occasional nature of the appellant's muscle spasms, got mixed up between the two regulations "with the result" says Judge Fitzpatrick, *"that the incorrect test was applied in relation to regulation 4(2A)(a) safely and... priority was incorrectly accorded to regulation 7 (the 50% rule)"*

He therefore remitted the case to a First-tier Tribunal for re-determination, in accordance with the guidance above.

Find the decision in full here: www.gov.uk/administrative-appeals-tribunal-decisions/jt-v-secretary-of-state-for-work-and-pensions-2024-ukut-211-aac

JM vs SSWP [2024] UKUT 283 (AAC) UA-2024-000378-PIP – activities must be genuinely comparable to the activity being assessed

A claim for Personal Independence Payment was made in 2022 on the grounds that their autistic spectrum disorder impacted on various areas of their day-to-day life.

Following an assessment, 4 points were awarded for daily living and 0 points for mobility, leading to no entitlement. A mandatory reconsideration followed, with no change being made.

The claimant subsequently appealed to the First-tier Tribunal.

The First-tier Tribunal allowed the appeal, awarding 8 points for mobility, but leaving the daily living score at 4.

There was a general feeling that the Tribunal had failed in many ways, including, for example, not providing adequate reasons, not considering regulation 4 (the star feature of this edition of the Bulletin!) and not considering the totality of the evidence. On this basis, permission to appeal to the Upper Tribunal was sought, and although initially refused, was finally granted by Judge Fitzpatrick in April 2024.

There were a number of elements of the First-tier Tribunal's decision that the appellant had taken issue with, with Judge Fitzpatrick more or less agreeing with them. However, we will focus our attention on Activity 1 and consider whether passing GCSEs, playing video games or thinking about learning to drive in the future are activities that could be considered to be "genuinely comparable" to preparing a simple meal from fresh ingredients.

The Tribunal considered these activities to be a more appropriate gauge of the appellant's ability to complete Activity 1 than either the statement from the appellant's mum or the healthcare professional's report, both of which outlined the need for prompting and supervision in order to complete the activity safely, as per our favourite regulation, regulation 4.

However, Judge Fitzpatrick was not convinced:

"The FTT's reasoning in respect of the appellant's ability to do other activities and the somewhat strained extrapolatory exercise it has carried out in respect of the relevance of these activities to preparing food is also problematic. In my view the FTT has not adequately explained how passing "key" GCSEs, playing video games and driving lessons which will take place in the future demonstrates the appellant's ability to cook and prepare a simple meal."

The Judge went on further to state:

"In my respectful view, which again agrees with the respondent's submission, the FTT has not been mindful of the guidance set out by Commissioner Stockman in C25/18-19(PIP), paragraph 20: "It is legitimate for a tribunal to consider how the actions involved in driving a car may read across into the scheduled daily living and mobility activities. Nevertheless, that general principle is subject to the qualification that the activity in question is genuinely comparable and that it is done with the same level or regularity as the scheduled activity. The ability to perform daily living activities has to be addressed within the context of regulation 4 and regulation 7 of the PIP Regulations.""

We have all seen Personal Independence Payment decisions which state that because a claimant can complete X activity, it follows that they can also complete Y, however, this case is a reminder that where that assertion is made, care must be taken to ensure that the activities are indeed sufficiently similar and that apples are not in fact being compared to pears...

Find the decision in full here: www.gov.uk/administrative-appeals-tribunal-decisions/jm-v-secretary-of-state-for-work-and-pensions-2024-ukut-283-aac

NH v SSWP [2024] UKUT 173 (AAC) UA-2024-000182-PIP – another perverse application of regulation 4

This is another case (along with the *JT* case, reported elsewhere in this Bulletin) of an error of law growing out of a Tribunal's misuse of definitions from regulation 4 of the Personal Independence Payment Regulations 2013.

That wasn't the only error of law. Another one arose from a selective reading of information found on the internet.

The appellant had visual difficulties and associated anxiety and depression. She applied for Personal Independence Payment, but did not score sufficient points for an award. Just two, at the claim stage, for the daily living activity of reading, for which the appellant needed an aid.

And nothing for the mobility component.

So, the claimant appealed. The First-tier Tribunal hearing the case went significantly wrong in its reasoning, to the extent that the Secretary of State for Work and Pensions supported the appeal to the Upper Tribunal.

Firstly, there were discrepancies between the decision notice issued by the Tribunal, and its Statement of Reasons – particularly as to the number of points scored. These were errors of law, but were not material as, on their own, the points scored were still insufficient for an award of Personal Independence Payment.

What was material were the two other grounds of appeal: the first relating to the failure to make adequate findings of fact with regard to the nature and extent of the appellant's visual ability, and the second relating to the Tribunal's reasoning in connection with the application of regulation 4(4)(a) – carrying out an activity "safely".

There were three parts to the first ground of appeal. The Tribunal resorted to the use of information taken from the RNIB website; however, it did not put this information to the appellant. Also, the Tribunal was selective in the information it used from the website. Lastly, due to its avid reading of the RNIB information, the Tribunal failed to make adequate findings of fact as to how the appellant's condition actually affected them.

"It is well established" said Judge Stout, overseeing the case *"that where a Tribunal uses its specialist knowledge or expertise to decide an issue, fairness will normally require it to give the parties an opportunity to comment on its thinking and to challenge it".*

The second ground of appeal saw regulation 4 taking a turn upon the stage. The Tribunal juggled with it, then dropped everything.

Or almost everything. They found it particularly difficult keeping an eye on regulation 4(4)(a) – the definition of "safely". "Safely" means in a manner unlikely to cause harm to [the appellant] or to another person, either during or after completion of the activity.

The First-tier Tribunal reasoned the matter in the following way. There was no evidence of accidents occurring while preparing food, therefore the appellant could undertake the activity safely. However, the reason there was no evidence of accidents was because the appellant had not been carrying out the activity due to her visual difficulties.

As Judge Stout noted, *"If she had been doing these activities without recent incident, there would be nothing wrong with the Tribunal's reasoning, but as she has not it is perverse for it to have relied on the absence of accidents as evidence that she could do the activities safely".*

On this basis, Judge Stout allowed the appeal, then sent the case downstairs to be heard afresh by a First-tier Tribunal.

Find the decision in full here: www.gov.uk/administrative-appeals-tribunal-decisions/nh-v-sswp-2024-ukut-173-aac

TC v Department for Communities (PIP) [2024] NICom30 C9/24-25 (PIP) – activity 9: making friends

This Northern Ireland case gave Judge Paul Gray an opportunity to review case law relating to Activity 9 of the Personal Independence Payment Regulations 2013.

Please note, before we begin, that although cases from Northern Ireland do not set binding precedent outside the six counties, they will be persuasive in appropriate cases.

The meaning of Activity 9 – engaging socially – consists of three parts. To engage socially means:

a) to interact with others in a contextually and socially appropriate manner

b) to understand body language

c) to establish relationships.

The first two are kindred – they're all the behaviours you'd find described in a famous book called "The Psychology of Interpersonal Behaviour" by Michael Argyle. It's been around for years. I remember reading it as a teenager, as a sort of primer to improving my interactions with others.

I'm not sure I learnt much from it, given the persistence of my abominable manners, forty years on.

Part (c) of the definition is of a different nature, and this is what Judge Gray reviews in this case.

The two parties to the case – the appellant and the respondent (the Department for Communities) – agreed with one another amicably. None of the antics of opposition, albeit inquisitorial, from either. The appellant argued that the First-tier Tribunal erred in its consideration of Activity 9 by using a restrictive definition; the respondent agreed with the appellant, and Judge Gray agreed with both the appellant and the respondent.

But in what way was the First-tier Tribunal's use of the definition of "engaging socially" restrictive?

Judge Gray says that it ignored part (c) of the definition.

The appellant visited shopping centres, on their own. Shopping centres – they're full of people. Everywhere you look. The mirrors multiply them...into infinity!

The First-tier Tribunal seized on this fact to find that neither (a), (b) nor (c) of the definition of "engaging socially" came into play.

Judge Gray disagreed in the following terms: *"there would appear to be a great deal drawn from the fact that the appellant went alone to shopping centres, where she would inevitably have encountered, and, at some level, had to deal with others. To assume that this level of engagement is sufficient to engage the zero-scoring descriptor "can engage with other people unaided" is to misunderstand the nature of the difficulties that the other descriptors are aimed at identifying"*

Of the several cases reviewed by Judge Gray, the RC case was the most notable.

From this case Judge Gray quoted some remarks by Judge Jacobs on part (c) of the definition of "engaging socially": *"I do not accept that establishing a relationship means no more than the ability to reciprocate exchanges. There is more to it than that. A brief conversation with a stranger about the weather while waiting for a bus does not involve establishing a relationship in the normal sense of the word. Nor does buying a burger or an ice cream, although both involve reciprocating exchanges"*

The appellant in Judge Gray's case, could, therefore, nip to the local shopping centre to take advantage of the January sales without jeopardising the points she might get for Activity 9 – engaging socially.

For this reason, Judge Gray allowed the appeal and remitted the case to a new First-tier Tribunal, where arguments could be put forward in a feistier fashion than previously.

Find the full judgment here: www.bailii.org/nie/cases/NISSCSC/2024/30.html

Looking Forward To...
A Text-messaging Service for Working Carers

In the Spring and Summer of 2024, the media carried repeated news stories of the plight of carers who found themselves owing money back to the DWP. Some of the amounts were considerable.

The overpayments arose due to working carers going over the earnings limit for Carer's Allowance. They only had to go over the limit by a couple of pennies for that week's Carer's Allowance to be overpaid. Some carers ended up owing thousands.

But why was that the case when, for the proper functioning of Universal Credit, something really quite amazing had been invented years earlier: *Real Time Information.*

This is exactly the question the Work and Pensions Committee asked, in April 2024.

Real Time Information – no lag.

In the same month, it came to light that the DWP had issued almost 100,000 civil penalties in connection with overpaid Carer's Allowance, the total amount of these reaching almost £5 million.

What does it take for an issue to acquire scandal status? Sex and drugs and rock and roll, in addition to an overpaid benefit?

No. All it takes is for a government minister to take time out of a day in July 2024 to meet with a representative of a national carers organisation, and for both of them to agree in a public arena: "This state of affairs is a scandal!"

The government minister was Sir Stephen Timms, the carers representative Helen Walker, chief executive of Carers UK.

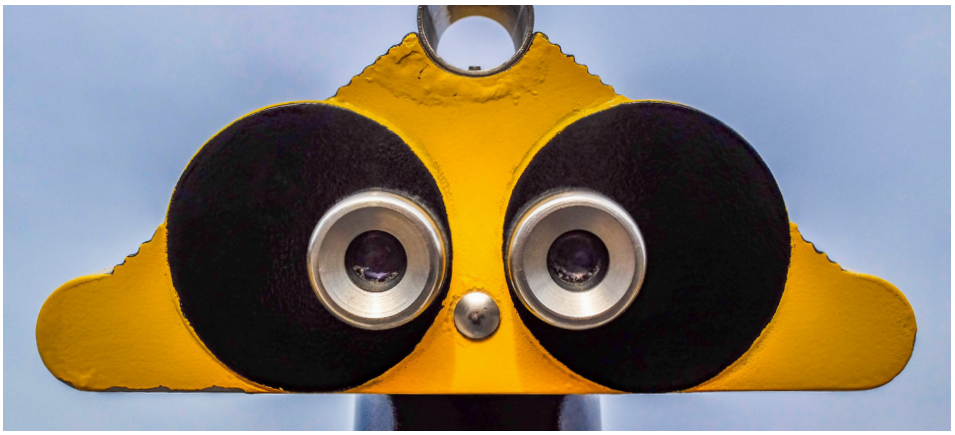
It was the former who, in response to an oral questionin the House of Commons on 7th October 2024, announced the piloting of a new text-messaging service for working carers. The text message alerts a claimant to a breach in the earnings limit for Carer's Allowance.

That earnings limit is currently £151 per week.

The pilot has involved 3,500 Carer's Allowance claimants and, while it may not prevent an initial overpayment, it will prevent larger overpayments building up without the claimant's knowledge.

Here's what Sir Stephen Timms says about it: *"there is a good deal of anxiety about these overpayment problems. We hope that the alert service will at least inform people when they run into a problem so that they do not then develop a large overpayment, which has happened all too often in the past, but we also need to look at the other arrangements relating to Carer's Allowance in order to provide the reassurance [needed]."*

The full transcript of the discussion is available here: hansard.parliament.uk/Commons/2024-10-07/debates/4C6A7AC8-650E-44DC-85F4-8FD954399702/Carer%E2%80%99SAllowanceOverpayments



Advisers Guide Updates

Page 24

Under the Age section, add a sentence at the end:

If you are over State Pension age, you may receive Universal Credit if you were migrated from tax credits.

Page 31

Under Transitional Severe Disability Premium element, after the first sentence, add:

Included if you naturally migrate to Universal Credit, or if you claim as part of the managed migration process and are not entitled to the transitional element.

Page 37

Under Managed migration, replace existing second sentence with: *This process is expected to be completed by the end of 2025.* Delete third sentence (For income-related Employment and Support...2028).

Page 38

At end of Managed migration section, insert new section:

Managed Migration of State Pension age tax credit claimants

State Pension age claimants (and some mixed-age couples) in receipt of Working Tax Credit or Working Tax Credit and Child Tax Credit have been migrated to Universal Credit.

Several new rules have been introduced to Universal Credit for this cohort, including:

- *an age waiver allowing Universal Credit claims from those over State Pension age (this waiver can be lost in some circumstances – Universal Credit ends if it is lost);*
- *a minimum earnings threshold requiring claimants to earn at least 16 hours per week at the National Minimum Wage. A grace period of 12 months applies, after this, Universal Credit will end if earnings drop below this figure for three months;*
- *exemption from the Benefit Cap;*
- *a disregard of notional occupational and State Pension which applies for up to 12 months;*
- *the ability for protected mixed-age couples to reclaim State Pension age Housing Benefit after the end of a Universal Credit claim, or if they didn't claim Universal Credit or were not entitled.*

Page 41

After the child addition box, add:

Transitional additional amount

A transitional additional amount may be included in your Pension Credit award if you were in receipt of tax credits and received a tax credit closure notice which invited you to claim Pension Credit. The transitional additional amount has been introduced for qualifying claims to ensure that you are not worse off at the point of claim. The transitional additional amount can be eroded by increases to your award, including the annual uprating. It can also be lost in the following circumstances:

- *your single/couple status changes (including if one partner dies);*
- *you are no longer responsible for the child that you were receiving Child Tax Credit for;*
- *if entitlement to Pension Credit ends. The transitional addition will not be included in any subsequent claim.*

Page 96

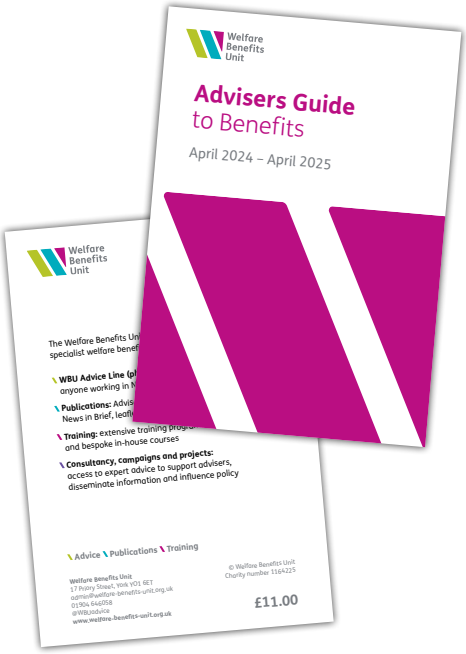
Disability benefits, after terminally ill, insert: *and are in a hospice*

Page 99

Winter Fuel Payment, replace existing paragraph with the following:

*A **Winter Fuel Payment** is an annual payment made to households where someone is at least State Pension age (visit page 89) or over in the qualifying week (late September). You must also receive a specified means-tested benefit. The amount payable depends on who you live with. If you live in a care home or have previously lived in a care home, different rules apply. For details of amounts, see gov.uk. People in receipt of most benefits, including State Pension, are paid automatically. Check your eligibility at www.gov.uk*

Note: Pension Age Winter Heating Payment is due to replace Winter Fuel Payment for Scottish residents in 2025/26. For details, visit www.mygov.scot



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

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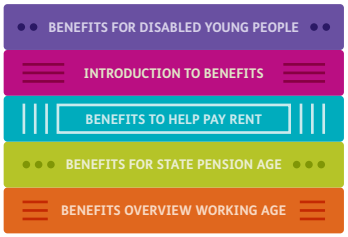

Upcoming Training

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 ***FULL – ask us about our waiting list***

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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