

## Newscast Transcript January 2023

**David Stickland:** [00:00:03] Hello. It's our January Benefits Newscast, and this month it's myself and Will Hadwen and Sam Scarlett, who works for a London Citizens Advice Bureau. So if you know the format, we each bring three items with us benefits news, updates, things that have caught our eye. We don't know what the others have brought. So it's a surprise to us as much as it is to you and we'll have a conversation about it. So, Sam, can I ask you first for one of one of the things that you've brought today?

**Sam Scarlett:** [00:00:44] Sure. Thanks, David. The first item on my list is the news that universal credit deductions from benefit have reached 2 million, over 2 million, which is a pretty shocking statistic. I'm sure it's something we all see as benefits advisors. The average deduction every month is £62, which is again, quite shocking. Probably not a surprise to a lot of us. When we're looking at maximising income and the advice that we give, we often talk about the different kinds of benefits you can claim, but sometimes it's about looking at the amount and the deductions that we see and seeing if they can be negotiated at all. Some cannot, some definitely cannot. But it's worth having those conversations with universal credit with the Debt Management Centre to see if deductions are causing hardship and if so, can they be reduced in any way?

**David Stickland:** [00:01:34] Hmm. Okay, Thanks. So I'm not sure I've paid enough attention to this. Do you mean that there are 2 million people with deductions or...

**Sam Scarlett:** [00:01:43] Yeah. Yeah. Really? Yet over 2 million current universal credit claimants receive at least one deduction. And the average, it varies by different geographies. The average is £62 a month, and that could be for advances for hardship payments and any kinds of deductions at all.

**David Stickland:** [00:02:04] And in terms of you mentioned in terms of our approach, if someone out there is working with someone who comes to them with a deduction, how do we kind of tackle this? What would you suggest? Any kind of ways that we can help? I think you were saying before that sometimes they can be negotiated down.

**Sam Scarlett:** [00:02:26] Yes.

**David Stickland:** [00:02:27] Other times not, I guess.

**Sam Scarlett:** [00:02:28] Yes. So looking to see firstly if the deduction has actually been correctly applied. Is it a deduction for something that that they have, was an advance taken out? And often the statements themselves, universal credit statements only paint a part of the story. And when are the deductions due to end as well? Have they already ended and they're still actually being applied and then if the deductions are causing hardship, people are struggling for basics, food, essentials, bills, then they should really try to either approach universal credit or the Debt Management Centre to see what can be done. Often they're asked to provide a financial statement to provide reasons as to why they can't, why this deduction is unaffordable.

**Will Hadwen:** [00:03:11] It's just worth saying that Debt Management only going to deal with debts to the DWP advances overpayments, including overpayments of tax credits which have been passed to DWP. They won't be able to help with things like fuel arrears, rent arrears, etc. Those are much more difficult to negotiate down because they are set in law. So really that's not a huge amount that we can do about those, but we can still try and find out how much debt there is by approaching the creditor directly.

**David Stickland:** [00:03:41] Okay. Thanks both. So, yeah, so I mean, you mentioned income expenditure statements and so on. It's almost it's a form of debt advice as well, isn't it, in a way, for us. Okay. Thanks, Sam. Will, number one on your list this month?

**Will Hadwen:** [00:04:00] So number one on my list is again about people struggling, but in particular people who have pre-settled status, who have been denied universal credit because they don't have a qualifying right to reside. So we've seen lots of cases of this and we already knew that it was possible to argue that if you were destitute that was going to breach your fundamental rights under the European Charter of Fundamental Rights. So there's been a case called AT versus Secretary of State for Work and Pensions, which says, yeah, there are going to be situations where UC should pay you despite the fact you have no qualifying right to reside. That's subject to how much support would be available, for example, from social services. But

DWP, do have to demonstrate exactly what is available in a particular area? They can't generalise. So there's some onus on the claimant to actually have sought the additional support, but there's also some onus on the DWP to show whether it is sufficient to have life in dignity and to protect the rights of the child. So there's now quite a lot of information about this on the CPAG website, which I am not going to attempt to summarize, but I will put it in the notes.

**David Stickland:** [00:05:15] Very good. Well, I had a look at this and it caught my eye. So I'm glad you've mentioned it. It was number one on my list. And I think as well as sort of understanding the key points, some of the the action points or the possible advice points that people who are listening or watching this might want to take away. So I'll try and sort of check some of those with you and ensure that I've understood that and everybody else out there, too. So we're looking out for European nationals with pre-settled status.

**Will Hadwen:** [00:05:48] Or their family members or.

**David Stickland:** [00:05:50] Or their family members.

**Will Hadwen:** [00:05:51] It's been confirmed this can apply to non EU family members.

**David Stickland:** [00:05:54] Very good. Glad i checked that, with pre-settled status and without another qualifying right to reside. And then looking at, I think the the judgment talked about cases needing to have an assessment done right? And the decision maker should assess whether it would infringe the claimant's dignity right? And and so in terms of action and you mentioned CPAG's website because I looked at some really useful stuff, isn't there that we can put on our website that we can sort of signpost to, which is around making the statement. And because as advisors, we want to help people ensure that this is being brought to the attention of the decision maker right? And also thinking about staying, you will have thought some about more about that, I'm sure.

**Will Hadwen:** [00:06:52] So if you've been refused universal credit and you want to challenge the decision on the basis of this judgment, there's quite a lot of advice about how to get around the fact that, first of all, DWP and then a tribunal might say, no, we're not going to make a

decision yet because this could go further. So if you're in that situation, I would definitely I would have a look at the CPAG advice, particularly just to give you an example, with a tribunal, you can argue this is too urgent to stay the appeal. Essentially, the person has nothing to live on.

**David Stickland:** [00:07:27] Okay. So so there might be arguments against staying, which you can also sort of look at the CPAG website to get some some help with. All right. So just to finish on this then and to summarise, it's European nationals. No, no qualifying right to reside, looking at other other resources, other support that might be available or not, as the case may be. And then still a possible route to getting universal credit despite there being no other qualifying right to reside. And I guess we also should remind people it's really important to check for all of the other possible right to resides as well, because they can be just as well, right?

**Will Hadwen:** [00:08:03] They can easily be missed. So don't go straight for this. Make sure that you have exhausted all other possible qualifying rights to reside.

**David Stickland:** [00:08:11] And this is a difficult area. We have a Benefits for European Nationals course which sort of lays it all out in terms of the different right to reside categories that need to be checked. Great. Thanks Will, so one of the one of the items that I had was around carer's allowance. I noticed that I think it's Carers UK have been have identified that whilst carer's allowance has been uprated in line with inflation, so from April it will be £76.25 per week. The earnings limit is only going up by 5.5%. So that takes the earnings limit to £139. And I often get asked on training about carer's allowance. And isn't it a means tested benefit? Well, no, it's not a means tested benefit. You can have capital, you can have other forms of income, but as the claimant, you're not allowed to earn above a set amount, which is going up to £139. So it's been identified that for those people that are seeing an increase in their national minimum wage, for example, it might be that you're going to actually have to reduce your hours to avoid a loss of carer's allowance. And that was one thing that I noted. But it also made me think a little bit because what's been coming up in my work quite a lot recently is people saying, well, should I bother claiming carer's allowance if I get universal credit anyway? Because carer's allowance only is taken off my universal credit as a form of income.

**David Stickland:** [00:09:38] So there's no financial advantage in doing so. Right. And I always get really sort of little bit nervous about that because as a benefits adviser, I'm always sort of stressing to people that you should claim everything that's available to you. And I was thinking about the sort of merits of claiming carer's allowance despite having a universal credit entitlement. And I think some of the things that I've sort of thought about and discovered as I was thinking about it was, well, what would happen if there's an interruption to your universal credit for whatever reason? It's good to have carer's allowance as a form of income that at least wouldn't be affected or you'd have some other income remaining in payment. And there's also an issue. It may be a relatively small issue, I guess, around National Insurance credits. And I think you're you're aware of this, Will we've spoken about it before. I think that carer's allowance credits are effectively a little bit better than credits just through universal credit. So so that's perhaps another reason for claiming carer's allowance.

**Will Hadwen:** [00:10:40] I think we have to also say that in Scotland it is almost always going to be worth claiming carer's allowance because only if you receive carer's allowance do you get the carer's allowance supplement which is disregarded for universal credit and is worth quite a lot. So very different in Scotland. In Scotland in a way it's easier to advise. It's worth seeing that deduction of your carer's allowance because you'll get the carer's allowance supplement and that won't come off your UC.

**David Stickland:** [00:11:06] Great. Will, thank you, because I'd completely fail to recognize that. So thanks for bringing that to the attention of everybody that's working, either in Scotland or just in Scotland or perhaps in various of the nations. And the other thing that I came across to add to this sort of to throw into the mix further is that the you might have seen that there's been a problem with the automatic system which links credits from universal credit to your actual national insurance record. So some people have found that when they're relying on credits from universal credit only, let's say, for their future state pension to count towards your 35 years, they haven't gone on to your sort of personalized account. And when you look online to check your record, you see that there's these gaps and you think, well, hang on, shouldn't I have had credits for that period? So I think there are some good reasons for claiming carer's allowance. What do you both think? Do you agree? Is there anything else that you can think of?

**Will Hadwen:** [00:12:00] There's another issue to do with budgeting, which is just that sometimes, particularly if you receive universal credit once a month, it's nice to have another pot and you can think of your carer's allowance as being one expense perhaps, and your UC for being for another. And just to come back to the credits issue very broadly, the carer's allowance credits will work for any contributory benefit, whereas the UC credits will only work for state pension. So it depends what's going to happen in your future. You expecting to come into a big fortune, you're going to win the lottery, you're going to get a really rich partner, then it's definitely worth having some credits for other contributory benefits.

**David Stickland:** [00:12:36] Just in case of all those things as well. Good. Right. Thanks. Sam, can we can we come back to your list and take, take, take another one from you?

**Sam Scarlett:** [00:12:46] Yes. So my number two was the judgement that you've just mentioned for pre-settled status.

**David Stickland:** [00:12:52] So we have a little bit of crossover there. Very good.

**Sam Scarlett:** [00:12:55] I'll move on to number three. So it was a judgment that I believe was released today on PIP and the PIP2 form, particularly the tick box questions. As we know, plenty of them within the PIP form, and I've only had a pretty quick read of this judgement, but basically what seemed to happen in this case I'm sure Will can explain further if needed. So the appellant had ticked the sometimes box I see sometimes can mean many different things to many different people. It's different between you and I. And I think the tribunal hadn't explored really what that sometimes meant. And obviously within regulation seven, looking at more than 50% of the time majority, the appeal was allowed at the Upper Tribunal. So the case has been remitted for a new hearing and a newly constituted panel. But it seems to me like it's broadened the definition of regulation 7 a bit more and been a bit clearer on what sometimes can mean different things and that the tribunals and indeed the health care professionals and the DWP need to look further at what those mean when someone has put sometimes is it or is it not the majority of the time there needs to be further exploration there. Would you would you agree there Will?

**Will Hadwen:** [00:14:14] I would, absolutely. I think that's an excellent explanation. I think what it reminds us of is that tribunals shouldn't be too quick to rely wholly on the PIP form the PIP2, because we know that claimants are not always advised when they fill it in, they filled in by themselves. There could be things missing. They could tick a box. But the tick box answer doesn't necessarily mean that something doesn't apply. Just a reminder to tribunals in particular to explore more closely, but also means that if we're arguing a case where the PIP2 doesn't look very strong, we can remind the decision maker that that is not all the evidence they should be relying on.

**David Stickland:** [00:14:52] Okay. And that box sometimes when I'm filling out PIP forms, I'm always a little bit wary of that box. And I kind of think if I'm going to tick that box, I've then got to make a really good case for how my client meets regulation 7. I think it is. Sam, you mentioned, which is the more than 50% of the time thing, which is a big part of PIP, isn't it, sort of recognising how fluctuate or where people have different circumstances on different days or fluctuating conditions, if you like. This word sometimes is really important, Yeah. How, how do you approach that when you're form filling? I'll be honest, I try to avoid sometimes as much as possible if the person I'm working with is clearly the majority of the time, then I tend to avoid the sometimes box.

**Sam Scarlett:** [00:15:43] As much as yeah, I would only ever use it where the client is completely unsure. So if it's definitely not all of the time and it's not none of the time, I will. But again, it requires so much clarification. You know, sometimes how often, how many days in a week, how many days and a month, how many weeks? And however you try and qualify, you have to then put a regularity on it. Yeah, it's really tough. I try to avoid it as much as possible and obviously the notes you can explain further and expand and put in, you know, more sheets if you run out of space as well. Certainly.

**David Stickland:** [00:16:21] Yeah. So yeah, describe it and explain. Thanks, Sam. Will, I think we've got time for at least one more from you. So what's next on your list?

**Will Hadwen:** [00:16:32] Okay. Well, I thought I would talk about something which is very topical, but might not affect that many clients. And it's to do with Ukrainian students. Oh, and I've had a few cases on and off over the past few months. It's to do with Ukrainian students

who are in the UK and they're here under one of the schemes that allows them to claim benefits, but they are studying in Ukraine online.

**David Stickland:** [00:16:59] Oh, right.

**Will Hadwen:** [00:16:59] So you can get all sorts of different variations of this. They might be studying advanced courses, they might be studying non advanced and usually there won't be any student funding and they can't get UK student funding, but they may also, unless an exception applies, not be able to claim universal credit. So my approach would always be to identify in what way are they receiving education? Is it full time? Is it part time? Is it advanced? Non advanced? Because sometimes it's possible to say, well, it's non advanced, there's no student funding and it's not going to prevent them from fulfilling their work related requirements. So sometimes you can use that instead of using one of the exceptions. However, sometimes there isn't a solution. Ministers are aware of this. It's been brought to their attention. We're still awaiting a solution, but it may not be a benefit solution.

**David Stickland:** [00:17:57] And not to do with Ukrainian nationals, I think. But we've had some we've had some other cases. I know that we as a group have discussed around education and students and the restrictions in universal credit. And I think for the cases that I've worked on, increasingly it's become apparent that the sort of route that you've just described there Will, which is to say that effectively they're not receiving education because it's not advanced. Like you say, there's no grant loans being paid. And it's a course which is not not compatible with your work requirements. It allows you to to claim a somebody that is not receiving education. And I think it's that two stage approach, isn't it, which I think is quite different to legacy benefits for those of us that have sort of been working in that quite different. Yeah. Kind of similar but different. Insofar as are they actually receiving education and if, if they are, is there an exception. And I think what you're saying here is that it's the former have I got that right?

**Will Hadwen:** [00:18:59] For many of these I'm looking at the former, if they fall into an exception, they're responsible for children, for example. And usually those cases won't cross my desk because those people can claim UC. So I'm talking about people who don't fall into an exception, including some disabled students who haven't got a limited capability for work decision before the course starts, but also including some people who just would have to be



available for work and looking for work in a normal way. But it might still be arguable that the course would be compatible with that depending on the expectations of the course. So yes, it is a case by case approach, as it so often is.

**David Stickland:** [00:19:38] Yeah, great. And we have a course in January which we're running for the first time, which has Benefits for Young People, which includes many of these issues. Okay, great. We're going to draw it to an end fairly soon. The last remaining thing that I had on my list was reforms to bereavement benefits, which it just seems to be taking forever to get sorted out. You'll see some links in our sources document for that. Was that before we finish, was there anything else that you want to mention?

**Will Hadwen:** [00:20:11] I was going to raise the very seasonal issue of earnings in an assessment period. Just to remind people that if you're paid regularly on a monthly basis and one of your payments is brought forward because of Christmas, the DWP can reallocate that. Again, there are lots of different variations of this issue. And if you're not paid monthly, it's more complicated and it may not be a solution. But for monthly paid people, it should be possible to reallocate.

**David Stickland:** [00:20:37] Yeah. Good point. All right. A quick reminder that we have our advice service, which of course, you're welcome to use if you've attended training with us in the last 12 months. We have our next quarterly webinar coming up, which we're just making arrangements for. You may have received an email inviting you to register for that, which is 10th January at 2 pm. So 2pm until 3pm it will be myself, Will and Marcin Brajta taking questions and if you'd like to come to that you can via our website or any other courses. Thank you, Sam. Thank you as ever Will. I hope you have a good break. over the holiday period and I'll see you in the New Year. Thanks, everybody. Good bye.