

March 2023 Benefits Newscast TRANSCRIPT

David: [00:00:04] Hello, welcome. It's our March Benefits Newscast, and this month it's Maria Solomon, who is bringing with her three items around benefits, news stories, developments, legislation, etc. Maria works for Engage Leeds, and she's a welfare benefits worker there, alongside myself and Will Hadwen, of course. So we'll kick off straight away, get underway. Maria, I wonder if you could share with us one of the items you've brought this month?

Maria: [00:00:33] Okay. Well, I was spoilt for choice, I have to say, this month, but I'm going to start with the revised Benefit Overpayment Recovery Guide (BORG). And the reason I'm starting with that is that the guide was revised following a High Court ruling. The ruling states that the DWP had acted unlawfully. It acted unlawfully because it hadn't waived recovery of a UC overpayment on an official error.

David: [00:01:09] Right.

Maria: [00:01:09] So the recovery guide has been revised in the sense that it gives us more detail about the process, factors that can be taken into account, evidence, etc. But interestingly, I found, you know, there's a specific paragraph that states that even when the overpayment is caused by official error, that in itself is not sufficient grounds to waive the recovery. So even if someone is going (like in the case that we had at the High Court), giving the correct information to Universal Credit - repeatedly giving them correct information - and UC still make a mistake, that in itself is still not enough for the waiver to apply. So they've still got to have those other factors, such as financial hardship, ill health, maybe domestic violence, all those other factors that are listed in the recovery guide.

David: [00:02:19] Okay. Okay. So in terms of how we should be approaching this then, I guess that, are you saying that the starting point is official error?

Maria: [00:02:38] No, I think no. Yeah, No, it's all those factors. It doesn't have to be official error. What I'm saying is, even for, you know, most claimants would reasonably believe that if they've told Universal Credit the correct thing and Universal Credit have made an error, that no overpayment should stand. Unfortunately, that's not the case. There has to be other factors as

well, Or, so it could be that it's not even official error. You know, the person could have given them the wrong information. It could have been found that they've been coerced to give that information due to domestic violence or something. You might be able to argue that for waiver.

David: [00:03:19] So claimants and advisors and staff might mistakenly believe that in cases where you've done everything right, you've given all of the right information, you've not failed to disclose anything or given any wrong information. And as a result of an error made by the DWP and an overpayment occurring, people will perhaps be surprised to learn that that in itself isn't grounds and (or by itself), and that we should be thinking about a broader approach. And the other factors that you've mentioned should be given just as much weight and consideration as some of those other things.

Maria: [00:03:59] Yeah, that's correct. And it's in this decision, the High Court ruling, it was also brought out how few overpayments the waiver's been used as well. And I think in the last financial year, I think there was 104 requests and only 25 times had the waiver been used as well. So it just seems like there's a really high bar in which claimants need to meet for this waiver to apply. Even when it's not their fault.

Will: [00:04:33] Although part of what the court was saying is that the bar has been too high in the past and it was too high in that case, and that the DWP weren't exercising their discretion properly, and there was a breach of the public sector equality duty as well. So there will be cases like that where they gave all the right information, they followed it up and said, I think I'm being overpaid, and maybe there was disability and hardship as well. It's still worth it. It's still absolutely worth having a go.

David: [00:05:03] So have a go. And bear in mind the factors that you've mentioned there, Maria. So not just the cause but also the wider circumstances of the claimant in terms of hardship, ill health, disability and other pressures in their situation, family life, etc.. And it's looking at the numbers, and I think we've known for a while, haven't we? Ever since the beginning of Universal Credit, because the way the rules are written, to give very few hard and fast sort of rights to people, it's perhaps not necessarily, it's not likely to be successful for most people, right? And it might be that there are other things that need to be done as well, looking at the rate of recovery and some of those other things.

Maria: [00:05:43] Yeah, and even getting debt advice as well, to see if a Debt Relief Order could be applied for. So other broader factors as well.

David: [00:05:53] Okay. Lovely. Thanks, Maria. Will, over to you for your first item this month. What have we got?

Will: [00:06:01] So, unsurprisingly, Maria, nicked one of mine, but I'll let you off because it's such an important one. My other top one was a Bereavement Support Payment, and couples who were not married or civilly partnered when one of them passes away. But they have children, have dependent children. Um, and this has been a very, very long running issue with two court cases - one in Northern Ireland and one here. But finally, from the 9th February, we have an order that says, yes, the law has changed and it is now possible for people in that situation to potentially get a Bereavement Support Payment. So because the court judgement takes effect from the 30th August 2018, you're not going to get any money from before that. But you might get some money if your partner died, either before the 6th April 2017 and you were still getting Child Benefit in 2018 (so you could get Widowed Parent's Allowance). Or your partner died on or after the 6th of April 2017, in which case you'd be in the Bereavement Support Payment regime. And again, you might be due some money from 30th of August 2018. So the headline really is, if you know anybody out there who might be in that situation, make them aware that they still need to apply, even if they applied before and were unsuccessful, they need to apply. And very broadly, you've got 12 months to do that from the 9th February. So that brings us to 8th February next year. But that's the window, we should be encouraging people. And I think it's important to remember, these people, they might not be our normal clients - they could be working, they could have too much savings, they could be anyone. They could be our low income clients as well. But they could be absolutely anyone who lost a partner when they had children.

David: [00:08:09] Okay, so I noticed, well, of course I noticed this because we've been we've talked about it a few times before, and it's been long overdue like you say. And I was I was trying to make some sense of it in terms of the implementation of it. I also picked up on some of the points that you made there, Will, including, you know, about it, it's almost like a sort of take up issue about sort of checking retrospectively and raising awareness for people to think

about a possible entitlement. But let me just check some of those points that you made. So you said it was 9th February of this year that the law was changed, but it takes effect from the 30th August 2018. So that was that was when the original court case was, is that right?

Will: [00:08:51] That's right, yeah. So it dates from the first level of the court case rather than the upper courts. Yeah.

David: [00:09:00] Okay.

Will: [00:09:01] Maria, correct me if that's wrong, as a solicitor.

David: [00:09:06] And there were some other key dates there. So for people that may be fairly new to benefits, I know on our Introduction to Benefits course, this comes up simply because it's in the definitions for Bereavement Support Payment, and we're always saying look out for developments. So I guess it would be helpful to lots of people to remind everyone that before April 2017 or up to 6th April 2017, it was Widowed Parent's Allowance. And then from that date it was, it became the Bereavement Support Payment. And it's about when the person died, right? So two different benefits effectively. But this judgement and this change in the law affects both regimes, both benefits.

Will: [00:09:46] That's right.

David: [00:09:47] I got confused. I have to say I spend some time with the guidance and maybe we can try and simplify it for people a little bit, in terms of the implementation. And correct me if I'm wrong, Will, I've split it into sort of three or four categories in terms of understanding. Moving forward, if you were to lose a partner as of now (so since the law was changed), then it's the usual time limits for making a claim, right? So I understand that to be, if you claim within three months you get the full entitlement, basically, the 18 payments - with the first one being a larger lump sum. If you miss that three month deadline but you claim within 12 months, you still get the lump sum, but your claim is backdated three months effectively. That's probably the most straightforward scenario, right? And then and then it could be that it's someone claiming in respect of a death that occurred previously. My second group is if the death occurred between the effective date going back to the 30th of the eighth 2018 and the date that the law

changed. And I think the really important thing that I think we should be stressing is to claim as soon as possible. But if you can claim within 12 months, there's this 12 month window, isn't there? I mean, I think this is the key message. Claim as soon as possible, but if you can claim within this 12 month window, then you're not going to miss out.

Will: [00:11:21] Exactly. You're not going to miss out. Yeah, that's the important message.

David: [00:11:25] And there are probably...

Will: [00:11:25] People who could still get something if they claimed later. But for everybody, if you were not able to get it when the death happened, you should claim now. And you're absolutely right, since the 9th February when the law changed, you simply fall under the normal rules of backdating. There is some brilliant information about this on the website 'Widowed and Young', and I really don't think I could beat it. I just think we should be referring everyone there. So I've put that link in the source.

David: [00:11:58] Oh great. I haven't looked at that, so that's great. Thank you. Right. Yeah, we'll definitely include that in our links. Just picking up on the 12 month issue, I also, I feel like I ought to say that if someone doesn't claim within 12 months, there could still be some entitlement. It gets complicated, doesn't it?

Will: [00:12:18] It gets complicated. So there could still be some entitlement. For example, if you fell under the old Widowed Parents (Allowance) regime, you might still have a child who you get Child Benefit for or in the Bereavement Support Payment regime. You might still be able to get some of your eighteen months, so don't be put off. But here we are, well within the year, so we should be telling people to make in time claims.

David: [00:12:43] Great. Okay, thanks. Okay Maria, can I return to your list? What was second on your list this month?

Maria: [00:12:54] Well, it's something from work that I brought up for my second one. And it was following the theme that we seem to have a theme when we do these benefit news sessions of maximizing income as well and looking at that. And so what I've noticed is claims

with underlying entitlement that can be missed quite often, particularly with pensioners. And so what I found with the underlying entitlement, of course, it's about benefits where you satisfy the rules of entitlement, but you can't be paid that benefit because you're being paid another, for example, earnings replacement - earnings benefit replacement, such as State Pension. Right. So what I've found is that on face value you could have, for example, single person claimants.

David: [00:13:47] Is that your phone ringing?

Maria: [00:13:48] Oh yeah. It is yeah...

David: [00:13:53] Tell them you're on a newscast recording. Or if it's a member of your family, put it on on mute and take it if it's important.

Maria: [00:14:03] No, it's fine. Yeah, no I didn't realise it was on and it's on my computer now as well, sorry.

David: [00:14:10] That's okay. Well, I'll keep in mind what you've said so far whilst you're sorting that out. So, you've mentioned underlying entitlement and I think you're thinking particularly in relation to older people who might have another overlapping benefit, which is likely to be the State Pension, right?

Maria: [00:14:28] That's correct, yeah. And what I've found is that on face value, there may be no entitlement to Pension Credit because their State Pension is too high. But then you find, for example, that, you know, they're a carer for someone. So there is underlying entitlement to Carer's Allowance and that carer's premium could then mean that they're entitled to the Pension Credit, which then, it's not only extra income, it's passporting to other things which could include the Cost of Living Payment going forward now. And then more recently, I was reminded that people can claim both SDP and Carer's Element when you wouldn't think it would be the case. So for my example was a couple - again, both retirement age, both again let's say have got good pensions so they don't, their income's too high to get the Pension Credit, but then they find that they've got Attendance Allowance, and both of them...

David: [00:15:38] One is caring for the other, right? And they've got...

Maria: [00:15:42] Exactly. Yeah. So we've got Attendance Allowance. And so usually for that case, most welfare rights workers would drop on the Severe Disability Premium. And you'd think, therefore, they can't get the Carer's Premium as well, because that would exclude them. But of course SDP is about receipt of Carer's Allowance, so if it's only underlying entitlement, they can still get the Carer's Premium and the SDP (Severe Disability Premium), which is a massive amount of income to increase the claimant's Pension Credit by. And again, it's just that because I'm so used to UC having nothing like this that, you know, it was a real reminder to me to check for underlying entitlement. And always remember that with the SDP they could still get the Carer's Premium as well.

David: [00:16:37] Right. And it's so easy for this to sort of drop out of our consciousness, like you say, with working age benefits changing so much and this no longer being an issue in the same way for working age people. And maybe, and also because of some of the changes that were introduced in Universal Credit to stop the carer's element being paid at the same time as the limited.. which we tackle on some of our Universal Credit courses. And I'm glad you mentioned it as well, because last month we were talking about, or I mentioned, the State Pension in the context of the sort of changes that were made a few years ago to the new State Pension, which, like you say for lots of people will mean that you don't get Pension Credit. And then we forget about all those other situations where the inclusion of a carer's element or carer's premium can bring you into entitlement. And then there's further effects on Cost of Living payment, etc., etc..

Maria: [00:17:31] Or it could even mean for like housing, even if their State Pension is still too high to claim Pension Credit, it might mean that they get some, I don't know, other Housing Benefit or it might lead to other benefits as well.

Will: [00:17:46] Yeah, that's really common. Yeah, sometimes people stop when they see no Pension Credit, and they don't carry on looking at Housing Benefit and it's so often there is some entitlement.

David: [00:17:55] Yeah. Good. And so for those people who are working with older people, it is a really tricky area and it's becoming more of a specialist area, I suppose. I'm glad to say I think

we cover all of these things on our Benefits for Older People's course, so it's a good reminder that we've got that as well. Thanks, Maria. Will, I think we've got time for one more from you.

Will: [00:18:16] Okay. So my one more is also not news as such. It's sort of both income maximisation and preventing overpayments. It's to do with several clients that I've had recently who were not living at home. And this is for various reasons, quite a lot of hospital stays, that kind of thing, and in some cases where properties needed repair, things like that. So it was a reminder that the UC Housing Element and Housing Benefit have very different rules about when you can be treated as occupying. And in Universal Credit, there's a general six month rule, but you must be expected to return within six months. There's a more generous rule for domestic violence. And there's a rule for people who are having essential repairs done as well. So it's always worth looking to see if your client falls into any of those. Then for housing benefit, quite different. Again, domestic violence is covered, repair is covered, and people who are having adaptations made for disability, that's another one to look out for. And in some cases you can even get Housing Benefit for two homes, or UC for two homes, but in fewer circumstances. And then finally, the other thing to say, which I think people really struggle with, is that sometimes your clients can get UC Housing Element for one home, which they are temporarily absent from and Housing Benefit for the other, because, for example, it's a hostel for people fleeing domestic violence, and you just simply apply the rule separately in each case. And it might feel a bit weird, but it's completely fine. Just a reminder of all of that, but also to make sure that you tell UC and Housing Benefit so you don't get overpaid.

David: [00:20:10] Right, that was the other bit, yeah. Okay, cool. Yeah. And for those of us that have worked in benefits for a long time, of course, we're familiar with the Housing Benefit rules and we've sort of learnt the Universal Credit rules on top. And, you know, we recognise the similarities and the differences. For people that are relatively new to benefits perhaps, or in the last few years, you're not going to have that foundation of Housing Benefit knowledge. So I think it is really important, like you say, to stress that some of these sorts of general principles; absences - you can be absent for a certain period, sometimes the reason is important. You can sometimes have two homes paid. But the same time there are going to be differences within the two benefits and some people may be working with Housing Benefit for people in supported housing, for example. So if you are and you're not sure, send them to our advice service, and not only will we help you with the principles, we'll help you with the detail, right?

Will: [00:21:10] Absolutely.

David: [00:21:12] Yeah, cool. Good. My other things were backdating of Universal Credit claims, really, to pick up on what you've mentioned before. Will, following the case, which requires the DWP to accept a backdating request, even if it's come after the claim was decided. They are applying to the Court of Appeal, aren't they. But they've said that they're going to not stay any cases in the meantime. So they will follow the judgement in the meantime.

Will: [00:21:44] Yeah, the guidance is worth a look if you've got time.

David: [00:21:46] Yeah, we'll add that. Yeah. My only other point that I've noticed was enhanced daily support for Universal Credit claimants. More of that having to come to the job centre more often, reintroducing league tables and rewards for DWP staff to, etc. etc. More of the same. We've talked about sanctions a lot. So that's rumbling on, isn't it? And seems like a bit of a return to the past in so many ways, but nonetheless it's something that we might be grappling with.

Will: [00:22:22] Definitely. I think watch this space for more of the same. So in the next few weeks we should be seeing more on the Health and Disability changes, possible changes to the Work Capability Assessment. And then we've got the budget, middle of March, and I fully expect there to be more conditionality in that because, both very broadly, both of the main parties accept or believe that work is the way out of poverty. And the administration we've got at the moment particularly believes that. So yeah, I'm afraid it's going to be a lot more of the same.

David: [00:23:00] Okay. Thanks, Will. Thanks, Maria, as ever, both of you. Just a reminder to everybody that we have our advice service. So if you've attended training in the last 12 months, you can send your questions, enquiries, case coaching requests, whatever it might be, to advice@benefitstraining.co.uk. If you haven't attended training for this recently, please do. You can find out details of all of our courses on our website. Thank you both again and to everybody who's listening. See you, goodbye.

Will: [00:23:33] Bye bye.