

## Transcript

### Benefits Newscast October 2023

**David Stickland:** [00:00:04] Today it's Sarah Batty, Will Hadwen and I, it's our October Newscast so we're here to discuss all things benefits of course, changes, developments, topical issues. Will, what's your first thing that you're bringing with us with you today, I wonder? I wonder if you could say.

**Will Hadwen:** [00:00:28] Well, who can guess? It's Universal Credit Managed Migration. Not that I'm obsessed with that or anything. So in particular, what has been topical recently is the fact that we've discovered, partly via guidance and partly via some real life examples, the DWP aren't calculating part of the transitional protection, the way the regs appear to indicate and what it looks like they're doing is when they, assess your Universal Credit, which they should do on the day before your UC entitlement starts. They're not taking into account all the things that you'd normally need to know to calculate Universal Credit. So that means that what's called your indicative Universal Credit might be missing something. For example, housing element. And that has the result that your indicative UC looks lower than it should be. You get a higher transition element. So it looks like people are being overpaid. Now it could work the other way around. It could be that income is missed, for example, and that could lead to people being underpaid. We haven't seen any examples of that yet, but it's certainly possible. The guidance itself is not consistent. It's really, really unclear exactly how it works. And so we're in a bit of a bind in some ways as to how we advise.

**Will Hadwen:** [00:01:52] Citizens Advice have taken the view not to calculate indicative UC and that advice is in the public domain and that's been sent out on expert advice emails anyone can subscribe to. So I think we're in a very interesting situation and we're trying to find out more from the DWP as we speak. I still think there's advice that you can give and very broadly that is the advice that you would give to anyone who is moving to UC, including under natural migration. You'd want to check their legacy benefits. You'd want to think about how income is going to affect UC. There are some other considerations as well, specific to managed migration. So for example, you might want to check they're not about to have another baby because you

wouldn't want to, if possible, claim UC, so they don't get any new elements of UC after they migrate and none of those things depend on you working out exactly what the transitional element is going to be. So I think that's okay, but just think it's something that we, we can't avoid mentioning this rather topical and annoying issue.

**David Stickland:** [00:03:08] Okay. Thanks. You've disappeared Will, I don't know if that's just your connection or whether your screen has gone on blank, but I'll carry on anyway. So, you mentioned that the issue is DWP not taking into account certain things when calculating the indicative Universal Credit. So you gave the example of the housing element might be missing, for those people who may be approaching this for the first time, can you say can you explain that again in terms of how it actually sort of manifests, how it comes about?

**Will Hadwen:** [00:03:43] Yeah. So the simple way that we'd normally explain this is that you shouldn't end up with less UC, than your legacy benefits, assuming that your income and your circumstances stay the same in your first assessment period. And what's happening is that people whose UC would be more than legacy benefits are getting more again, because they're still getting a transitional element, even though their UC would be more than legacy benefits without the transitional element. So that's how we know that there definitely is a problem showing up. It's not just the guidance that is unclear. It's what's actually happening in practice.

**David Stickland:** [00:04:21] Okay. Got it. And as I think you said, the worry for people is that this could lead to, well, both over and under payments. But I guess the worry is that it's going to lead to overpayments and the possibility of it being DWP seeking to recover it at some point in the future. That's part of the worry, right.

**Will Hadwen:** [00:04:40] I think both of those things are worrying and the overpayments because of the possibility of recovery in the future (excuse me) and the underpayments because people who don't come for advice might just think, oh, well, UC's less. I was worried about it. I've heard bad things about it. There's nothing I can do and not actually ever get that sorted, even though it's definitely challengeable. So I'm worried about both ways it might play out.

**David Stickland:** [00:05:08] And so I guess it's one of those watch this space kind of things. We're going to need to keep an eye on that and see what happens in practice over the coming period. Okay. Thank you. Sarah, let's turn to you. I wonder what's on top of your list.

**Sarah Batty:** [00:05:24] Well, I think the thing that's on the top of my list is these proposals that the government has announced to change the Work Capability Assessment, and they are consulting on their proposals. So this is something that we can respond to. We can tell them what we think. We can tell them if we agree or disagree with what they're suggesting. We can do that by the 30th of October. And the Work Capability Assessment, as we know, governs Universal Credit and ESA. And it's about whether you are fit for work or whether you come into the category of limited capability for work, limited capability for work related activity. And this latest proposal is different to the earlier announcement earlier this year where which was in the Health and Disability White Paper in March, where they are suggesting they're going to abolish the Work Capability Assessment altogether. That would require, I think primary legislation. So is going to be sometime in, into the future, possibly 2026/27 and also would depend on the current administration being in power after a general election. And that proposal is about sort of getting rid of the Work Capability Assessment and just using whether someone's on PIP or not to govern the amount of Universal Credit they get. Okay. And this latest proposal is about changes to specific activities within how you are assessed, the government's justification. So basically, they're trying to sort of stop quite as many people getting assessed as the higher level LCWRA which gives you the extra money, the £390.

**Sarah Batty:** [00:07:07] So they want fewer people to get to that level. And it also seems they want fewer people to get to the LCW level as well when you look at what they're suggesting. So they're tweaking sort of the points system. They say that the reasons for this change is the world of work is transformed. People can now work from home really easily. There's much more flexible working available. Employers are making loads of workplace adjustments and really open to doing that and also the usual things they say about how working will be better for people's health and like they're not languishing at home and all of that. It does seem like, does seem like the proposal would save them some money as well, doesn't it? If they were, if less people were going to get this. So they're definitely like responding into a real issue, which is the rise in ill health. So there is a real issue there in the population in terms, I mean I was looking at the Office of National Statistics and there is a rise in the number of people of working

age report in at least one long term health problem. There is a rise in the number of people reporting at least five long term health problems arise in the number of people who are economically inactive because of ill health and disability. So clearly, there's some government response is needed to this sort of crisis of health in our in our population. Whether this is whether this is the one.

**David Stickland:** [00:08:32] Take their benefits away.

**Sarah Batty:** [00:08:33] It's a policy matter. So yeah, there's been some sort of I mean, do you want me to talk about what the proposals are? It's sort of the four descriptors that four activities they're looking at.

**David Stickland:** [00:08:45] I think so. So let me just sort of check and confirm with you then. I think the sort of the main message that you're sharing is that the government originally was saying this is about sort of abolishing the Work Capability Assessment. But what we've got now is some more information and some detail which is which is about making more subtle changes is what you're saying. But really significant changes. But I guess we're still thinking that they're talking about abolishing this is the whole thing as well, right? This isn't just about these changes.

**Sarah Batty:** [00:09:22] Yeah, I think this is sort of a change that could be brought in earlier because it doesn't require the same level of legislation. It could just be regulations and it could be as early as 2025, I think. So they sort of trying to act to stem the numbers in some way by heightening the threshold at an earlier date than the date by which they're proposing to abolish the test altogether.

**David Stickland:** [00:09:50] Okay, great. Thanks. That's what I wanted to check. And I guess most people will be somewhat familiar with the criteria because I think we address it on on not just our Work Capability Assessment course, but on our Introduction to Benefits course. So I think people will be familiar with it. And I think it would be a good idea if you could sort of briefly just mention some of the sort of changes that we're potentially hearing about.

**Sarah Batty:** [00:10:09] Yeah. So there's four sort of activities that they're looking at, and these are sort of the activities that, where your functionality is sort of limited in some way. The mobilizing activity, which is usually about your walking distance, they're proposing to either remove it altogether for LCW and LCWRA, reduce the distance from 50m to 20m or reduce the number of points that you can score. The incontinence (bowel and bladder control ) activity either removing it altogether, making it so that you're sort of loss of control has to be daily rather than weekly or reducing the number of points you can score. And coping with social engagement, removing it altogether or reducing the points scores and then the getting about activity, which is about being able to sort of go places outside your home without being accompanied by someone or the need to be accompanied or being enabled to go out altogether, removing that or reducing the points. So they're definitely targeting people with sort of anxiety type mental health conditions, people with sort of walking restrictions, you know, musculoskeletal problems and people with bowel and bladder conditions and remember that the bowel and bladder one in order to score points in it, it has to be such a severe loss of control that you have to change your clothes. So if that happens to you at least once a week, you know, that's really a significant level of impairment, isn't it? And so I think advisers might be thinking, hang on a minute, if it's so easy to pass these thresholds, how come my caseload is full of people who have been found fit for work and are not significantly limited? How come my caseload is full of people who've been assessed as LCW and really actually meet the threshold for LCWRA, really are struggling to engage in work preparation and to engage with the Jobcentre and can't do it. You know. Sorry. I think Will's going to come in there, but you can see.

**David Stickland:** [00:12:27] I can see you agreeing, Will.

**Will Hadwen:** [00:12:30] I'm agreeing. But think isn't there's something further that they're seeking to do, which is to get rid of substantial risk.

**Sarah Batty:** [00:12:36] And yeah, that's the other thing. And yeah, one of the most alarming things probably for advisors, those of us who literally know those rules inside out, the substantial risk is like a catch all category that someone who doesn't score points through those

activities, but nevertheless their health would be at risk or the health of somebody else because as a result of their behaviour or would be would be at risk and especially for mental health and sort of conditions that are not always easy to understand or categorize, lots of people, that assists lots of people and keeps them safe from having to engage in things that are just not suitable for them at this at this point. I think that's a really significant change. It is probably the more significant proposal. So yeah, i'm glad Will reminded me of that one.

**David Stickland:** [00:13:28] Well, we've been aware of that for some time, haven't we? I think they mentioned that right at the beginning that they were looking at that but I think it's. Thank you. It's really helpful to have gone through some of those activity areas. Obviously, like, like always, we'll put those on our website as well in our links and sources documents so people can see them as well, because I think it's always nice to be able to actually see it for those people that are more visual. Right. Great. Thank you, Sarah. Will number two second up on your list. What's that?

**Will Hadwen:** [00:13:59] So it's a piece of unexpected good news. Which is a Housing Benefit case about student loans. And the claimant was a devout Muslim and felt that taking a loan would be in conflict with their religion. Effectively, they would be sinning. And the judge decided, contrary to some earlier case law, that this meant that they could take reasonable steps. And one of those reasonable steps was to decide that the loan was not for them. And so that is really, really great news for anybody who's in that situation. It may also be possible that that expands to other situations, but not I think, if you don't want to take the loan because you've got to pay it back and it's got to be something other than that, such a very strong religious or moral objection to interest, for example. And I certainly wasn't expecting it because I knew about the earlier case law, although it's a Housing Benefit case, there's no reason why it wouldn't also apply in Universal Credit, because it's about that assumption. Even if you don't take out a loan, you're treated as if you had done so.

**David Stickland:** [00:15:15] That was going to be my question. Whether it's specific to Housing Benefit only or whether it might extend to other benefits, because, of course, in most cases it's going to or more often it's going to be Universal Credit, isn't it? So you think you could apply the same principle? Right.

**Will Hadwen:** [00:15:29] Yeah. The law isn't worded in exactly the same way, but it's the same issue that you're treated as having something that you have decided not to take out.

**David Stickland:** [00:15:39] Right. Great. Thank you. And of course, that will also be on our website. Good, Sarah. So, number two, what's second on your list?

**Sarah Batty:** [00:15:52] Second on my list. It's just about the Cost of Living payments. So the second instalment of the Cost of Living has just been announced. The one that's for people in receipt of a means tested benefit. So across the whole year, it amounts to £900, but it's paid in three instalments, and they've announced that that second instalment is going to be paid. I've just lost the dates of it and had it in front of me between.

**David Stickland:** [00:16:22] We can confirm later.

**Will Hadwen:** [00:16:23] October, late October to mid-November is what I vaguely remember.

**Sarah Batty:** [00:16:29] Yeah. It's going to be issued from the 31st of October onwards and the, the qualifying period has been announced. So it's for Universal Credit, it's with an assessment period that ended between the 18th of August and the 17th of September. And then for the other means tested benefits, it's, I think it's entitled to those benefits on the 17th of September. Okay.

**David Stickland:** [00:16:58] So as always, key thing is to check entitlement for the people that we're working with, check people are getting their correct benefits as we would always do, but with an extra eye on this particular payment, thinking about those qualifying periods in order to get the extra cost of living payment. Great. Thanks. Okay. We've got a couple of minutes, so not very long. Briefly, I think, Will I wonder if you can share with us your final issue?

**Will Hadwen:** [00:17:32] So it's some Freedom of Information guidance that's come out recently, guidance that's come out via a Freedom of Information request. And it's about deciding cases for claimants who've got pre-settled status and they don't have any other qualifying right to reside. So, for example, they've not working or working in the UK, have never worked in the UK, that sort of thing. Right. And they're usually trying to get Universal Credit,

although it could also be Pension Credit. And there's a test case which says it may be unlawful to refuse people benefit in certain situations if it would breach their right to live in dignity. And what's happening is because that test case is being appealed, the DWP are often staying cases. Okay. Arguably they shouldn't stay cases without considering hardship first, but the guidance is useful despite not being clear on that point. And a few other points, um, it gives some examples of when somebody might be at risk of having their, their right to live in dignity breached. And very broadly, a lot of it is to do with whether they can work or not. So if somebody can work, they've got that route to get some money for their basic necessities. It's well worth a look, if you have a lot of EU national clients, some of whom have just got pre-settled status and may never have worked here and not have a route via family members. I've put all the links in the sources document so you can see some of the problems with the guidance as well.

**David Stickland:** [00:18:59] Great. Thank you. And just in terms of helping people recognize possible cases, especially for those people who may not be benefits specialists, let's be clear. Can I check with you? We're talking about people with pre-settled status and without qualifying right to reside. So also not with settled status. So people that have lived in the UK for less than five years and without a qualifying right to reside, which is often derived from some kind of work or former work or linked to somebody else who has work. Right?

**Will Hadwen:** [00:19:35] Yeah, all of that. Also we've seen a couple of cases recently I think there's been a few where someone who does have a qualifying right to reside or we think they do, are still having the UC decision stayed. In other words, the claim gets closed and they're told there's no actual decision to challenge. And that's because the DWP either haven't spotted their qualifying right to reside or they don't think there is strong enough evidence. So watch out for those as well, right?

**David Stickland:** [00:20:05] Definitely. Thank you. Yeah. Always worth I suppose we should encourage people to check with us if they're working with an EEA/EU national, someone that's been told they don't qualify. They've had a decision. It's always worth checking, isn't it? And people can check that with us. Of course, we'll consider this case along with everything else. Great our time is up, I think. Thank you both for your contributions. I'll remind everybody that our advice service is available if you've attended training with us recently. If not, you can book a course with us online. Thanks to you both again. And thanks, everybody, for listening. See you.

**Will Hadwen:** [00:20:44] Bye Bye.

**Sarah Batty:** [00:20:45] Bye.