

Benefits Newscast Transcript June 2024

David Stickland: [00:00:04] Hello and welcome to our June Newscast. As we move into June, we've got some more tasty morsels to chew over. And I'm happy to say that as ever, I'm joined by Will Hadwen and, this month really happy to be joined by Sarah Batty. Sarah, I wonder if you can share with us your first item.

Sarah Batty: [00:00:31] Okay. Which one should I go for? I've got three things, and I think I might start with PIP, the PIP Green Paper Personal Independence Payment. So the government issued a consultation document on the 29th April, and it had some suggested policy changes in it, and it had a large number of questions in it as well that they want to ask people. And even though Parliament has dissolved, that consultation is still open until the 22nd July, so people can still respond to it if they wish. And the reason I'm mentioning it is because that those government announcements around that green paper actually led to frontline advice services seeing a spike in contacts from people who currently receive PIP, and who just felt really worried that their benefits were going to stop, or that they were imminently going to be reassessed under new criteria. So I think it's just important that we recognise that there has been no change in the law or in the criteria for PIP. And so people just need to, carry, just need to understand that they'll just be reassessed in the normal timescale they would expect to be reassessed and there hasn't been they should see no change to their, their current award. Some of the changes that were in that green paper are huge and would require Acts of Parliament, such as a proposal to replace PIP as a cash benefit with a voucher system. So we don't know how committed the government that's just dissolved, the existing government is to such a proposal. Sometimes they I think they propose quite drastic things in consultation documents in order to then sort of be seen to propose something a little bit less drastic to make it appear more acceptable, even though it's still really drastic. And we don't know what any incoming government's views are about the PIP criteria because they're not making specific policy announcements about those, about the qualifying criteria. But we do know that the bits of the criteria for PIP that the government had its sights on in terms of the activities and descriptors, which would only require regulations, wouldn't they, rather than an Act of Parliament, were the aids and appliances descriptors because you can score eight points reasonably commonly for, for needing aids and appliances for a range of daily living activities. And they did seem they do seem as well to have their eyes on the verbal prompting, which is

often needed by people with mental health problems. Then in order to avoid self-neglect, you'd have to have quite a severe mental health problem to require prompting to avoid self-neglect with a basic activities of daily living. So it doesn't match with this sort of the narrative that went with the announcement, which was people with very mild mental health conditions just need to manage them as part of the ups and downs of daily life. Those are not the people qualifying for PIP. This is a different group of people qualifying for PIP, which also includes people who need prompting because of learning disabilities and cognitive impairments and brain injuries and all sorts of things like that.

David Stickland: [00:03:52] Okay. Thanks. So, like you say potentially some important areas, aids and appliances, like you say, we might work hard to help people pick up points to help people get an award via some of those descriptors. Other things too. But like you say, we it's important that we reassure people that these are not imminent changes and that people shouldn't think that this is going to lead to an immediate change or you know, review of their award. And as you say that we can still contribute, so am I right that you said the date, the deadline is. Did you say 22nd July?

Sarah Batty: [00:04:35] Yeah, that's what I've noted down.

David Stickland: [00:04:37] Okay. Cool. And how would you know how people would go about doing that? Can we share a link with people? Perhaps we can put that on our website.

Sarah Batty: [00:04:44] Yeah, we can share the link. And there's a sort of a link you can go into where you answer the questions on a sort of questionnaire, or you can send them an email and attach another document that you've made, for example, or just include your comments in the body of the email. So if people have strong views about those qualifying criteria for PIP and can really understand the impact that changing those would have on people. Then this is a good opportunity.

David Stickland: [00:05:10] Great. Thanks, Sarah. That's really helpful. Will, what's top of your list this month?

Will Hadwen: [00:05:17] Well, I'm going to pick the topic that most, neatly leads off from Sarah's topic about what's happening and what's not happening. So similarly, people might remember there were some regulations to restrict Limited Capability for Work and Limited Capability for Work Related Activity. And in particular, to reduce the number of people who would qualify through the substantial risk route, substantial risk of being found capable of work related activity. So the good news is that those regulations were not laid before Parliament, before Parliament got dissolved. So once again, the general election has come to our aid in a way. Now, that doesn't mean they won't ever happen, but they might not happen. Depending on who forms the next government and what they decide to do. So again, it's just to emphasize, um, that nothing should change for the time being. Um, there aren't that many repeat work capability assessments happening. But if they do happen, you should be assessed under the current rules, not these tightened rules which have not come in and may never come in. A couple of other things, that people have been worried about. They've been really, really worried about DWP powers to look at bank accounts that Bill did not go through. Right. So again, that might not happen at all. Certainly not imminent and things that did happen for those affected by this, the bill to raise the Child Benefit High Income Tax Charge that did go through. And that means that instead of it being a 50,000 level, it's 60,000. That is per person. And the rate of the charge is halved so that is going to cut down the number of people who have to do self-assessment because of Child Benefit.

David Stickland: [00:07:09] Okay. Got it. So some good news for people there then, as you say, by virtue of the election being called. Just to check I've got it right... so the good news for the Child Benefit High Income Charge is that that's going up. You said from 50,000 to 60,000. So more people can keep their Child Benefit without having to pay it back through the tax system and make a self-assessment declaration, etc., etc.. Good news for people who are concerned about the Data Protection and Digital Information Bill and the sort of surveillance side of things which people we've been talking about, that's not going to go ahead at least without any sort of significant further developments and depending on the outcome of the election, like you say. Yeah. And again, all of those things we've been thinking about worries and concerns for people about the Work Capability Assessment. For the time being. We can kind of put that to one side. Yeah.

Will Hadwen: [00:08:12] And what I would say again, this goes back to Sarah's point about the PIP consultation is that we don't really know in detail Labour's plans, but we do know that it has a huge emphasis on work and people getting back to work. So please respond to the consultation. There won't be allowed to advertise it because of the general election. But just make your views known because whichever party forms the next government, our views are still important.

David Stickland: [00:08:38] Yeah, we really want to encourage people to do that. So we will share that link with people. Great thanks. Will. Sarah let's turn back to you. What's up next?

Sarah Batty: [00:08:48] Well Carer's Allowance has been in the news as well because there's been some stories about Carer's Allowance overpayments and how the clawing back of these by the DWP has affected people and it's also come to the attention of House of Commons committees as well, and the National Audit Office. And what's happening is that people's earnings are going over the earnings limit for Carer's Allowance without them necessarily realising it and the earnings limit is £151 a week at the moment. And it's what's known as a cliff edge. So even if you go one pence over, then you're not entitled to any Carer's Allowance for that particular week. You lose all of your entitlement, and tens of thousands of people a year are affected, with amounts of up to 20,000 being claimed back, causing in some cases severe mental health problems, homelessness and even prosecution for fraud. And these are people unpaid carers, caring for family members and really doing a massive service to society. And one of the problems that the National Audit Office identified is that actually the DWP knows that earnings have gone over the limit for these people because it has the technology, it has the real time earnings system which sends notifications to Carer's Allowance staff, but seemingly they don't have time to act on them and or quickly enough. They eventually act on them and find out, thereby raising an overpayment. So the DWP position is that it's a responsibility of carers to notify of the change. And you know that is true within the law, but it's also very unfair. So we can think about this situation from, from two angles. What can you do if you're in this situation or how can we as advisors help people and, and also what is problematic about the policy itself. And in terms of the policy campaigners want the earnings limit itself to change because, it hasn't risen at the same rate as the National Minimum Wage. So it's really difficult for carers to sort of know and understand and keep track of what the earnings limit is. So at the moment, the £151 a week earnings limit is the equivalent of only 13 hours of work at the National

Minimum Wage. Right. But back in 2015, what the limit was then and what the National Minimum Wage was then, it equated to you could do 16 hours work a week. And like that, 16 hours is a rule that it's often used in benefits, isn't it? So it might be that that's in people's heads. So one way to fix Carer's Allowance is to, is to raise the earnings limit to a decent level so that people could combine work a decent amount of work with caring and sort of stay within the limits. Another way to fix it would be to remove the earnings limit and just make it a universal benefit. You know, the same way as the disability benefits are, you know, regardless of income. But, I guess, um, our concern as advisers is what you can actually do about it as it is now. So you need to understand how earnings are calculated so you can try and avoid an overpayment or challenge a decision which is incorrect. Calculation of earnings per Carer's Allowance is quite complex in terms of which earnings affect which week of entitlement, in terms of the period over which earnings might be averaged, if they fluctuate at all. And there are sometimes amounts of your earnings that can be disregarded in some situations. So it's a really good idea for advisers to get familiar with those rules and really make sure they've studied them so that they can help people stay within the limits and challenge the DWP where they've got it wrong. Yeah. And then the other thing, the second thing you can do is that if you've been overpaid, ask the DWP to waive the recovery of it. This means ask them for you not to have to pay it back, and you need to do that in quite a specific way, because it's not an appeal, because it involves the DWP using their discretion. Okay. So you need to write to Debt Management, the Debt Management section of DWP, and specifically ask for a waiver of the recovery and include all of the details, the circumstances, how it arose, and point out the fact that DWP knew about the earnings through its own systems. And advisers can refer to the DWP's overpayment recovery guidance. Chapter eight sets out the factors to be taken into account, we can share a link for that can't we David? Yeah, we'll do um, and the factors to be taken into account include the DWP's conduct and the circumstances in which the overpayment occurred. They include the impact of recovery on the debtor's health and their finances and any other factor - i love it when rules say any other, any other factor which indicates that the recovery would not be in the public interest. And the public interest includes the DWP's reputation. Okay. And it says as well that although usually financial hardship would be looked for, any one of the factors alone can be used to justify a waiver. So if I was dealing with one of these, I probably do quite a detailed letter and address all my points to the DWP's own guidance. In a similar way you would do is if you were lodging an appeal, don't expect to just

phone up debt management, say please, will you waiver this overpayment and they expect them to do it. You have to put like it could be helpful to put a detailed argument.

David Stickland: [00:14:26] So it could well be that people come across such cases and like you say, there's a lot that we can do to help people. It may not be straightforward. £151 per week sounds quite straightforward, but like you say, the way that's worked out and can be averaged and offset against amounts that can be disregarded, etc., that can be quite tricky in itself. I guess without us trying to sort of go into the detail of that right now, people should be looking out for those cases and they can always contact us for support. We'll be able to help people with some of the technical sides of it, as well as, like you say, requests for having overpayments written off. If it turns out that there is, in fact an overpayment. Yeah. And I guess we can look out hopefully we'll, you know, be able to look out for significant changes. £151 is such a little amount, isn't it, when people are already on a low income quite often and not wanting to have to worry about all of these complex rules, there's enough other stuff to be worrying about for most people in in their daily lives, I should think. Okay. Thanks, Sarah. Really, really helpful. Will, we certainly have time for one more from you. Okay.

Will Hadwen: [00:15:40] Just a tiny addition to what Sarah said is a reminder that Carer's Allowance is one of the old benefits. And so the old recoverability rules apply. And that means it's not recoverable unless you've misrepresented or failed to disclose. So there may in some cases that I've had, the carer did actually say, oh, I've got this new job and this is the salary. And they felt that they had declared it right. So this is worth looking out for as well.

David Stickland: [00:16:04] Yeah. So it's like I guess it's, is there an overpayment? Has it been calculated correctly? Is it legally recoverable? And if it is, can it be waived. So there's a number of things for us to go through with people. Right. Got it. Thanks.

Will Hadwen: [00:16:17] I will very quickly go through my other topical, issue, which is Tax Credits finalization. This is the last year of Tax Credits, but they still have to be finalized for last year. So if you haven't yet finalized your 23 to 24 award, you've got until the 31st July to do that. Some people don't need to respond but do check the details that are sent to you. Just in case some people do need to respond, if they do, there'll be a red stripe on the letter. If you have, um, either moved to Universal Credit or you have received a migration notice and you've

gone past your deadline, Tax Credits have stopped as a result, then you'll have to go through in-year finalization. So that's of your 24 to 25 awards. You'll get a letter asking you to finalize that. Don't ignore it. Don't think, oh, it's the same thing. I've already done it. No, you haven't checked which tax year it is because you have to finalize that as well. So quite a lot of admin for people on Tax Credits.

David Stickland: [00:17:25] Okay. Got it. And you mentioned the red stripe. So that's something that people can look out for. And that tells them that they have to take action. Is that right?

Will Hadwen: [00:17:32] Yeah. So you have to take action if you are asked to make a declaration. So that's for people where Tax Credits can't just assume that for example, oh, you're on Income Support and so you get full Tax Credits and that's all we need to know. But if you are on Working Tax Credit and they don't know what your earnings are for the tax year that has finished, you need to declare that, for example, so I would watch out for that. But I would also be saying to people exercise caution and check your awards anyway, okay. Because overpayments arise so easily in Tax Credits. The way to avoid that is to check every single, single bit of information you get from Tax Credits and see if it's correct about your circumstances and your income.

David Stickland: [00:18:20] Okay. Lovely. Thanks. That's helpful. So we haven't got very long left. I wonder if I can turn to you both and ask you, in brief, what were the other issues that you noticed this month? Sarah, why don't we turn to you first?

Sarah Batty: [00:18:36] I was going to mention there's an Upper Tribunal decision about backdating of Universal Credit which is about a person with a disability. That's one of the circumstances in which you can get the one month's backdating. And this person had a disability, but also other factors going on. And the Upper Tribunal judge said that the First-tier Tribunal hadn't made sufficient findings of fact. The First-tier tribunal had decided that in spite of his disability, he could reasonably have been expected because it's not just enough to have a disability, it's that the that you couldn't reasonably be expected to have made the claim earlier and the judge decided, the, the First-tier Tribunal had decided that he could have made a telephone claim, but they hadn't really made any findings of fact about whether he knew about telephone claims, whether a telephone claim would have been accepted by the DWP, whether

in this particular case, his combination of English not being his first language could be considered in combination with his disability. So I what I found quite interesting about it was it said it failed to consider what a "hypothetical person with the appellant's disability could reasonably have been expected to do, given his knowledge of the benefits system, the possibilities for acquiring information about entitlements and procedures available." So there was a hint that it wasn't just the disability alone other life factors could be could potentially be taken into account. The the judge didn't say they definitely should have been in this case. They said the tribunal should have explored those factors more fully.

David Stickland: [00:20:23] Okay. So what we're saying then is that when it comes to disability and backdating of Universal Credit, we need to be able to identify a disability health condition and to think whether that person could reasonably have been expected to make the claim earlier. Is that right? Yeah. Okay. Great. Thanks. And again we'll share that. So if people want to find out more they can look it up and Will, very briefly, what was your, your final item?

Will Hadwen: [00:20:51] Um, so I had a couple of Upper Tribunal decisions as well, both about PIP. One is about, um, things that happen after the date of the decision and when they can be evidence retrospectively. So generally you've got to ignore stuff that happens after the date of the decision. But sometimes it can illustrate whether a risk existed at the date of the decision. So the client had had seizures, quite serious seizures after the date of decision. And that indicated that the risk of those seizures had been present or potentially indicated it. The tribunal had simply discounted the post decision evidence, which they should not have done. They should at least have considered how that related to her risk. And because safety is a factor for all the PIP activities, it was really relevant to whether she could be said to have done any particular descriptor at a particular level. Okay. So I think that's a really useful one. Great.

David Stickland: [00:21:47] Again, we'll share that on our links. Yeah. Very good.

Will Hadwen: [00:21:51] And the other one is credibility about credibility of a claimant, which again, I found really interesting. Where the First-tier Tribunal had said, oh, this person's overstating their needs, overstating the effect of their condition, but actually, it seemed possible that they had disregarded a huge amount of medical evidence and to be fair, it was a very big bundle. Sarah will be familiar with bundles that go up to Z there was another of the,

uh, Z bundles. I think it has actually not quite as big as was hers. And anyway, they said, if you're going to make a credibility assertion, you've got to back that up. And you must have looked at all the evidence. And so it's a findings of fact which an Upper Tribunal wouldn't normally mess with. But in this case, finding a fact where you've not considered all the evidence is not good enough.

David Stickland: [00:22:44] Okay, great. Thanks. And yes, respect to all those tribunal reps out there and the great work that's being done, particularly having to go through all of those bundles like you say. Okay. Thank you. We've been referring to our advice service. Of course you can email us if you've been on a course with us recently. If you haven't, please look on on our website where you'll find details of other courses you can attend. Thanks to you both. Thanks, Will. Thanks, Sarah. Thanks everyone for listening. See you. Bye.