

## Transcript - October Newscast 2024

**David Stickland:** [00:00:04] Hello, welcome, everyone. Welcome to our October Newscast. We are very happy to be sharing with you developments, updates, news stories, things that we think are important and we'd like to share with you. Hello, Sarah. Hello, Will. Lovely to see you both. Will can I ask you to share your first October item with us, please?

**Will Hadwen:** [00:00:30] You can. So my first item is a PIP case, and it's about where the decision maker and then in this case, the tribunal decide that because the claimant can do certain things that are not PIP activities, it means they can also do, the PIP activities. So just to give you, give you perhaps the most egregious example in this case it's my longest word for this newscast. This this claimant was young person, and they'd done their GCSEs, and they liked playing games online, so the tribunal said, well, that that means you must be able to cook a main meal. Okay. If you can play online video games for two hours. So you can see that really one thing doesn't compare to the other. And that's essentially what the Upper Tribunal said, is that if you're going to extrapolate from one sort of activity to another, then you got to make the case. You can't just say playing video games is like cooking or passing a GCSE is like cooking. I mean, I when I did my GCSEs, it definitely didn't involve a gas burner, for example, or carrying a hot pan or whatever. So yes, there is a little bit more to it than that, but I think it's a really useful case to think about if you get a decision where the decision maker has said things like, oh, you can drive, therefore you can make complicated decisions and react to signals or you can do sums, therefore you can make budgeting decisions, that kind of thing.

**David Stickland:** [00:02:14] So it's not necessarily that there shouldn't be links drawn, but where links are drawn, the decision maker, the tribunal needs to explain its thinking and how they've arrived at that conclusion.

**Will Hadwen:** [00:02:29] Right. Yeah, absolutely. So it's not that you cannot make comparisons between things that people do and things that people have stated they can't do. But you've got to make it make sense, and it's very relevant. The driving one comes up a lot. I've got a couple of clients where decision maker has said, oh, you can drive, therefore you can do all these activities. And I had another case where it's still ongoing where the client was told that because

she had a degree, she must be able to make budgeting decisions. Yeah. So, yeah, if you are worried about that sort of thing, it's very useful case.

**David Stickland:** [00:03:08] And like you say, in that case, it's kind of, you know, it's, it's a, it's a really sort of obvious example, isn't it, in terms of or a bad example in terms of it's such a stretch, but there'll be lots of other cases where perhaps we need to think really carefully about the circumstances of the individual in terms of their, their broader life situation and how they're coping. Definitely.

**Will Hadwen:** [00:03:32] And it might be that they're doing a particular thing, like driving, for example, because they really don't have a choice because of where they live or because they've got to take their kids to school. So thinking about the reliability factors. Does it make them very tired? Can they repeat it? Does it cause pain? That sort of thing. Is it safe?

**David Stickland:** [00:03:50] Of course. Yeah. Yeah. Really important. All of that? Included. Great. Okay. And, of course, we'll share the decision if people want to look at it in a lot of detail. They can we'll share it in our sources and links. Marvelous. Thanks, Will. So, Sarah, I'm wondering I'm wondering what's top of your list? I wonder if you can tell us.

**Sarah Batty:** [00:04:13] Well, the top of my list was a sort of a big announcement that the Chancellor made and that some members of the public, some MPs are against or opposed to, disagree with it. And this was the restriction of the Winter Fuel Payment to only certain pensioners. And that is people in receipt of a means tested benefit. So it restricts it quite considerably. And regulations of it was announced at the end of the summer, the 29th July, in regulations for England and Wales have been laid on the 22nd of August, and I think there's separate regulations for the devolved administrations. Is that right Will?

**Will Hadwen:** [00:04:55] Yeah, that's they've done exactly the same thing for the Scottish Pension Age Winter Heating Payment and for the Northern Ireland Winter Fuel Payment. So yeah, it is the same across the board in the UK. Yeah.

**David Stickland:** [00:05:08] Okay, thanks.

**Sarah Batty:** [00:05:10] It's quite a significant announcement for us as benefits advisors because there's clearly two groups of people. There's a group of people who are getting well, there's three groups of people isn't there? There are people getting the Pension Credit who are going to be all right and are still going to get it. There are people who could be entitled to Pension Credit and haven't claimed it for whatever reason. And then there is obviously the other group of people who whose income takes them above the threshold. And there's nothing, not a lot we can do to help them. But there is something we can do to help the people who could potentially be entitled to Pension Credit and are not claiming it. So there's a huge exercise to do in promoting the take up of Pension Credit. And the government has urged local authorities to engage in that huge exercise. And I was reading that in the three weeks following the announcement the number of Pension Credit claims made has tripled in each week following the announcement of the policy. So that's good. That suggests some people are checking, making claims to see if they're entitled to Pension Credit, but there will be people who haven't done that yet. And quite often people will say, oh, I've tried before to get Pension Credit. And they told me I wasn't entitled. Or they'll say, I've done an online calculation, I'm not entitled, or they've got some like misapprehensions such as like sort of misunderstandings, I should say, such as you know, I've got savings, therefore I can't get it or that kind of thing. So I suppose we our advice would be to get an individual benefit check, get it done by an independent benefits advisor if you can, because they can spot things that online calculators can't. Such as the what ifs or what if I was to get a disability benefit? What if I was to become, register entitlement to underlying Carer's Allowance and secure the Carer's Premium in the calculation of Pension Credit? There's a worry though as well, isn't there, with this increase in Pension Credit claims, because the administration of Pension Credit, advisers will tell you isn't all that great. There's quite a lot of delays, and there's quite a lot of error made in the decision making. So there is a bit of a worry about whether the DWP has sufficiently staffed sort of Pension Credit to be able to deal with the influx accurately. I don't know what you two think about that.

**David Stickland:** [00:07:48] Well, there's two things that are running through my mind immediately, and I'm thinking about the three groups that you mentioned. And then again when you came back, you were talking about Attendance Allowance and Severe Disability elements and carers and so on and thinking, yeah, there are three groups, aren't there? There's the like you mentioned, there's the group that will qualify because they've already got Pension

Credit. There's the group that have not claimed but are potentially entitled, and then there's the group that are not entitled because their other income will be too high, I think is how you described it. And as you, as you said that, I was thinking, well, yeah, but it's not always straightforward, is it? And of course there's calculators that we could use. But thinking particularly about like you say, the what ifs, what if a claim to Attendance Allowance was successful. Does that change the calculation? Does that bring them into entitlement. And then I was the second thing I was thinking about in terms of delays and so on. I was I was thinking about dates and I wanted to check with you both that am I right in thinking that the latest that a backdated claim to Pension Credit could be made in order to gain access to the Winter Fuel Payment is the 21st of December. Yeah, a backdated claim.

**Will Hadwen:** [00:09:03] Yeah, for the three months backdated to the qualifying week. Right.

**Sarah Batty:** [00:09:07] Yeah. Because then you can get three months backdated as long as you would have met the, the criteria for that prior period. And even if a claim is delayed sort of. So if a claim is made before the 21st December and then if there are roadblocks, stumbling blocks, inaccurate refusals, delays you know, advisors and claimants should persist in pursuing that because securing, eventually an entitlement for the qualifying period. So there's a qualifying period and it's the qualifying week is the 16th to the 22nd of September. So you've got to have Pension Credit entitlement in that week. So if you secure it later after some prolonged process. Sorry to sound pessimistic, but if that was to be the case, let's hope most of them go through straight forwardly, but you would then be able to secure, retrospectively the Winter Fuel Payment.

**David Stickland:** [00:10:03] It's a good point. Quite right. I mean, the work could go on beyond the 21st December. And for some people it will. Like you say, because of delays, because of errors in decision making, it could go on a long time after that and people still could gain access to that payment. Okay. So yeah, this is the big story of the month, I guess, any other thoughts from you on that Will before we move on?

**Will Hadwen:** [00:10:24] Um, just that delays are unfortunately very common and we are experiencing quite long delays with Pension Credit. And we'll have to see, because there's also a relatively small group of people moving to Pension Credit from Tax Credits as a result of the

closure of Tax Credits. So there'll be those people as well. And then the other thing to watch out for if you are in Northern Ireland is they are considering a hardship payment to people who miss out on the Winter Fuel Payment there, but they haven't definitively said that they will, but they are considering it.

**David Stickland:** [00:11:01] Great. Thank you. Thank you both. Okay, so moving on I think Will, back to you. What's your second item?

**Will Hadwen:** [00:11:12] So my second item is the usual obsession of Managed Migration. We have to mention it in every Newscast at the moment. So this particular issue is about passporting and it's about how your passported help might change when you move from, specifically Tax Credits, to Universal Credit. So what's happening at the moment is a lot of the people on Tax Credits are now either on UC or they haven't claimed for whatever reason. And with some types of passporting, they might find that they no longer qualify. So for example, free prescriptions. With other types of passporting, they might find that they do qualify when they didn't before because of different criteria. So for example, free school meals. So it's both things can happen. And what that results in is a series of different cliff edges depending on your earnings. So there'll be one level at which you would lose your free prescriptions. There'll be a slightly different level at which you would lose your free school meals for your kids. And then another level again, where your earnings have exceeded the work allowance and all of these subject to other variables as well. There's a recent report from Bath University about these cliff edges. It's a more general report. It's not about Management Migration, but about the cliff edges in general. Just talking about how this can then act as a work disincentive because it's so confusing having all these different numbers and not only that, but it's different in England and Wales and Scotland. You know just to make it even worse.

**David Stickland:** [00:13:02] So I guess people think, keep it simple, let's not increase my hours or move into work, because right now at least I know what I'm entitled to.

**Will Hadwen:** [00:13:10] Yeah, people might think that but from a migration point of view and from an advice point of view it's just something that we do need to consider and maybe think about. Is there passporting that this person has relied on being used to? Is there a possibility that they might think they're still entitled to free prescriptions when they're not? Just to

explore that with people can really help and prevent them from getting a scary letter through saying you weren't entitled and you ticked that you were. Yeah.

**David Stickland:** [00:13:39] Yeah. So sort of look at it for each individual. Think ahead as much as possible. Look at the criteria.

**Will Hadwen:** [00:13:47] And ideally yeah, yeah.

**David Stickland:** [00:13:49] Okay, cool. Thanks Will. Sarah, I think we have time for one more from you. I wonder what your next item might be.

**Sarah Batty:** [00:14:00] Well, mine was going to be about Managed Migration to Universal Credit as well. And just a reminder of where we're up to in terms of client groups. Because if you remember they had been concentrating on Tax Credits claimants and that might be the bulk of the people we've seen as advisers. But for the last sort of 3 or 4 months, they've been migrating Income Support, Income Based Jobseeker's Allowance and Housing Benefit only claimants. And now that it's towards the end of September, they have started to migrate income related ESA claimants. And if you remember that that group previously it had been announced they were deferred until 2028/29. And so some people in that group might have been given that advice at an earlier stage, but in April of this year, it was announced that they would be migrated this year between now and December 2025. So we're going to start to see those in our caseloads. And the DWP acknowledges that they're a vulnerable group because they're people with a health condition or disability and has put in place, in theory, an enhanced support journey whereby those people will get, an extra as well as a reminder letter. They'll get text message, a telephone call and potentially a home visit. If they have if they are sort of approaching their deadline and haven't made a claim for Universal Credit. And ultimately it says on the sort of chart that's been produced about this, that they'll ultimately be a referral for a complex case check and for consideration by an advanced customer support team leader, which is the person within DWP tasked with safeguarding vulnerable people if they're brought to that, that person's attention.

**David Stickland:** [00:16:00] Okay, so be prepared for new groups basically coming into our caseload for Managed Migration and thinking about those issues, which may be specific to those client groups, particularly thinking about ESA and those vulnerabilities, like you say.

**Sarah Batty:** [00:16:19] Yeah, and there's a problem. One of the biggest problems that's with Managed Migration is the calculation of the transitional element. So advisors are reporting lots of errors in that. So they're reporting that they're seeing people who haven't got a transitional element and should have. And as a result of that, some of those people are not getting Universal Credit at all. When the adviser had calculated that they should people with a lower amount of transitional element. And the big problem is the lack of sort of transparency of that calculation, the lack of breakdown that's provided to claimants and even when claimants are asking on their journal. You know, can have a breakdown of how you've calculated my transitional element. They're not getting one commonly and so they should people should sort of formally ask for a breakdown and if necessary, they should ask for a reconsideration if they think there's anything wrong. CPAG have made a tool. It's on their website. We could do a link to that, couldn't we? Which it will produce a sort of a journal message for you to type to pay, cut and paste on Universal Credit Journal to ask for the breakdown of the transitional element calculation. And it sort of is quoting the relevant regulations. So it could be helpful in cases where a simple request for a breakdown hasn't generated a breakdown. But yeah, that level of inaccuracy is a concern. And as of that, you know, as advisers we need to challenge those incorrect decisions.

**David Stickland:** [00:17:52] And I guess given that the schedule is being the migration is being sped up, we're only likely to see more of these types of errors. I guess, given that DWP are going to be under more pressure to roll it out than perhaps they were before. So, like you say, very worthwhile to check and to remember that they are challengeable by Mandatory Reconsideration. And we'll definitely link to that tool that's on the CPAG website. So thanks for that too. Will, I think we've got a couple of minutes for, for one, one more. I'd like to, to, to hear from you about your last item.

**Will Hadwen:** [00:18:30] So this is another bit of useful case law. If you've got any of those Carer's Allowance overpayment cases where somebody went over the earnings limit. So it's about averaging your earnings. And this particular claimant, which term time only was paid

monthly. And the tribunal decided that it hadn't been irrational for the DWP not to use an averaging over the course of her work pattern provision, and instead to take it on a month by month basis, which seems like a very odd reasoning. But in any case, the Upper Tribunal said it wasn't for the tribunal to decide whether it was irrational not to use the averaging, but to look at the decision completely afresh and decide what would be the most correct approach to get average earnings. And I think that's useful because when you've got a regulation that says they can do this, but on the other hand, they can do that. You might not always be sure how to challenge that. But you can say, actually this doesn't produce an accurate result, which I think it clearly doesn't for that person. And therefore it should have been averaged over well, a school year essentially. And that would have helped her in terms of the overpayment. Just watch out if you do have a case like that, because sometimes the averaging can make an overpayment last for longer. So you do have to be a little bit careful, but it can help with some of those cases.

**David Stickland:** [00:19:59] Thank you. Yeah, it reminds me I had an overpayment of Carer's Allowance, a client the other day, case the other day, and it was very difficult to encourage that person to consider challenging the decision and exploring it further because of the whole negative experience and the large amount of money that's quite often involved. People are so, affected quite often by these decisions that the thought of and she's since not been claiming Carer's Allowance when it was available and would have increased her income and because they didn't want it, they didn't want it anymore after having had such a bad experience previously around what is, as we know, you know, a seemingly fairly straightforward rule that so often isn't because of things like averaging that you've just mentioned. Yeah. So encouraging people to check.

**Will Hadwen:** [00:20:59] Yeah. And also to remember that there are two decisions because the other decision is, is the overpayment recoverable. So in the case law that the appellant had also stated that she had declared starting the job and that hadn't been fully considered either. So yeah. Good point. Yeah. How earnings been averaged or assessed. And is the overpayment recoverable because it's the old rules about, failure to report things that should be used there.

**David Stickland:** [00:21:27] Definitely. Good. Good reminder. Thank you. So thanks both. We'll get that. We'll get those sources onto our website so people can explore those further. Thanks,



everybody for listening. And we'll see you again next month. Thanks, both. Thanks, everyone.  
Bye bye.