

## Benefits Newscast Transcript December 2024

**David Stickland:** [00:00:05] Hello. Welcome to our December Newscast. We're very happy to be getting together for our regular monthly delve into all things benefits, news, developments and topical issues. Things that we'd like to share. Very happy to be joined by Pamela Carysforth, who's joined our team earlier this year, joining Will and I today. Will, perhaps I can turn to you first. What's top of your list this month, please?

**Will Hadwen:** [00:00:36] Well, I've got a couple of cases to talk about. I'll start with the Universal Credit one. And this is something that happens from time to time. Someone's Universal Credit claim was disallowed due to a failure to satisfy the ID conditions, the identity verification and this case really takes that apart and looks at what's actually happening where someone is refused Universal Credit for that reason. So there is no rule that says that if you fail to provide certain evidence, that means you can be penalized in some way. There's simply no such rule. The law allows the DWP to request evidence, but then it doesn't mean that if you fail to do so, you're not entitled. So the question that then arises is this person had made a valid claim and the ID check is a post claim requirement to make sure that she was who she said she was and that that person meets the Universal Credit conditions. So what really needed to be considered was is she the person that she's saying she is. And in terms of the National Insurance number requirement, is there a National Insurance number that can be traced using the information that she's given? Or if not, can one be allocated to her? So it from that point of view, the first tier tribunal had erred in law by not considering those issues and instead really accepting the DWP's position that if you don't provide evidence within a certain time, it means you're not entitled, which is simply not the case and there's lots of older case law as well that says if you don't provide evidence, people can infer something from that, but it doesn't mean you don't meet the entitlement conditions in itself.

**David Stickland:** [00:02:21] And this is important, isn't it? Because if you're a claimant and you don't know this and you're told by the DWP that you're not entitled because you haven't provided a certain bit of information, that kind of sounds plausible, and a lot of people are going to accept that and sort of think that it's legally correct when it isn't.

**Will Hadwen:** [00:02:38] I think that's right. And it's going to be the most vulnerable people as well, who don't have access to the kinds of ID that the DWP are expecting in this case. It's a bit of a complication, because the person gave a slightly different name than they had to begin with but that shouldn't have held things up. Assuming that you can prove your identity and you're the same person that you initially said you were throughout the claim, that should be okay. So I do think that it is a problem that people think, oh, okay, I can't prove my identity, therefore I can't get something from the state that's a real problem.

**David Stickland:** [00:03:12] Yeah. So common, isn't it, for things to break down part way through the process? I mean, let's face it, there's so many sort of points along the way when you've got to do this, that or the other or provide x, y or z. So it's almost a it's almost helpful, perhaps, for us to be briefing our clients when we're working with them and advising them to make a claim. You know, if you are told that you don't qualify, you know, obviously come and get advice again, because they might that decision might be wrong. But specifically with this issue, it's it's not sufficient to say you haven't provided evidence and therefore you're not entitled. It's got to be looked at in a lot more detail. Right. Okay. Thanks, Will. That's a good one. Pamela, I wonder what, uh, I wonder what you brought with you. Top, top of your list? Yeah. Go for it.

**Pamela Carysforth:** [00:04:05] To be honest, though, just on Will's point there I always find it amazing where they kind of say. And we've raised this overpayment because you failed ID say you owe us £4,000. It's like, wait, who owes you £4,000? Are you saying I owe you £4,000? I didn't think you knew who I was.

**Will Hadwen:** [00:04:23] You know, I'm not the person i said i was, so I don't owe it.

**Pamela Carysforth:** [00:04:26] Yeah. Well, no, I've brought, basically the two child limit. There's no specific update but CPAG are assisting some claimants to go ahead with the challenge on the two child limit rules and basically it's looking at and I always stutter when I'm kind of doing this in training courses or anything because it's the 'rape clause', if you will, which I don't like that as a snappy title, but for children conceived under a non-consensual arrangement. And it's a really interesting challenge because whenever you're looking at two child limit cases, they put the children in order. Yeah, so for instance, say you had children that fit one of the exemptions for

the two child limit under a non parental care arrangement. You would get paid for them whatever happened. And then you could have up to two children that didn't fit that exemption paid for. So I take over my sister's three children on a guardianship order. I've got two of my own. We can get five child elements. So the rule with children born under non-consensual arrangements is that there is an exemption if you were to restrict the element for the third or fourth child. But if your first two children were born under a non-consensual arrangement. And you are looking at, can I get paid for my third or fourth child? They'd say, well, no, because there's no exemption that links to the third or fourth child. So, you know, one of the comments around this is the DWP are penalising me because of the order of that. Yeah. Now, I do remember when the two child limit came out. So basically at the moment the two child limit is just affecting children born after April 2017. Yeah. Now originally that wasn't in there, but there was a little bit of a kickback from healthcare professionals because part of the criteria for fitting that exemption is that a healthcare professional signs it off. Yeah. So if there wasn't that April 2017 limit, you might get somebody presenting to either healthcare professional, social worker. You know, there's a list of different people that can sign this form. Not to say this definitely happened, but to say it's reasonable that this fits in, that it could have happened so there is this kind of kickback when the rules first came out and there wasn't this rule saying any child born after April 2017 that certain people were like, well, how could I sign a form saying in 2003, this happened to this person who's never spoken to anybody? So they did change it to say it only affects children born after April 2017. But this ordering is different for the different exemptions. So yeah, if I had three children before 2017 Non-parental care arrangement, I can still get paid for two. If I had three children born when I was in an abusive relationship years ago, I can't apply any sort of exemption to child four and five that weren't subject to one of those exemptions. So that is the legal challenge at the moment. But this two child limit, it affects so many things. And one thing that I not strictly limited to my point on this, because the big thing is this challenge is going ahead, is that it doesn't affect Child Benefit. It doesn't affect extra bedrooms, child care, but especially with Child Benefit. I have seen a lot of people not putting in a claim because maybe they've contacted Universal Credit and they said, oh no, you don't get anything for your third child. Yeah. All right. I won't claim Child Benefit either then. Yeah, yeah. So it's my least favorite piece of legislation. Um, but this is just something that's a hot topic as well. Yeah.

**David Stickland:** [00:08:23] Well, yeah. Thanks for sharing it, Pamela yeah, it's interesting, like you say. I hadn't thought of it in terms of all of that retrospective stuff, I have to say. Um, well.

**Pamela Carysforth:** [00:08:35] Actually, if they win this challenge, it does actually create a problem as such. Because if they didn't have this order and the other The legislation stayed as it is. That would lead to the case where you might have to say, oh no, my 17 year old was born under these circumstances, somebody needs to sign this form. That something happened 17 years ago and that is the bit it does. You can't just say this happened. It puts a burden on the victim. Yeah. You know, on the person who this has happened to. Not only to declare it, but also to go and speak to somebody about it. And it's such a sensitive, personal thing, you know, like, say, this did happen. So if they win on this, then the order of children would, I assume, be taken out of the mix that then would look at, well now you need to evidence that this, that the older children fit this criteria that then passes the burden on to the different professionals that might be expected to sign a form. Yeah, and that's before you get to practically how do you do this? But I think I'm straying onto my next topic here.

**David Stickland:** [00:09:47] So there's quite a lot of sort of there's quite a lot of, travel in this in terms of the case itself. But also, like you say, some of those practical issues around what would happen thereafter in terms of involvement of health professionals. But it could lead to a change of policy because presumably if this case is successful, then and it goes through the various levels of the courts, we could see a change in, in government policy, changing the rules. Do we have any sort of sense of when this case might be going ahead ?

**Pamela Carysforth:** [00:10:23] It's quite fresh at they've been given permission to continue. Child Poverty Action Group do have it. As a current update. No you've caught me off the cuff there. I don't know. Yeah. Don't worry.

**David Stickland:** [00:10:39] It's probably not known. Know and also a good reminder. Thanks. Thank you, Pamela, for reminding me of this, because it's very easy to confuse this with Child Benefit, isn't it? You know, and lots of people like to say, you know, could be put off of claiming Child Benefit because they hear so much about the two child limit. And it sounds so often on training, people think of it as a Child Benefit policy, but it's not. It's Universal Credit only. Okay. Great. Thanks Pamela. Will, we're turning back to you. I wonder what is next?

**Will Hadwen:** [00:11:11] So it's another useful case. It's about PIP this time, and it's about the reliable principles which we know and love from our cases, our courses on PIP and in particular, what it means to do something to an acceptable standard and what it means to reasonably need to repeat something. So, this particular claimant was found not to be credible in relation to their walking ability because he regularly went to the supermarket with his wife. But what they didn't take into account was the fact that he had said that he experienced pain on walking, and that he would push through the pain in order to keep active. And so one of the things that this case reminds us of is if someone is doing something but they are in pain, that is part of not doing something to an acceptable standard. You shouldn't be in pain doing these everyday activities and if you are, that suggests that you should potentially get points. And the other thing that comes out of it is repeatability. Because if you think about a supermarket aisle, however long that might be, it depends on the supermarket. You can't just go down it once and there's not going to be a seat at the end. If you do, you have to go back up the next one and so on. Depending on the size of the supermarket, this might have to be done quite a few times. So it was potential that the claimant couldn't reasonably repeat it, repeat it as often as he reasonably needed to do without stopping. In other words,

**David Stickland:** [00:12:50] To get around the shop.

**Will Hadwen:** [00:12:51] To get ready. Yeah. Just to do a normal shop. Yeah, yeah. And as far as the points on credibility went I thought it was significant that. Yes, what he said in oral evidence was different to what he'd said on the PIP2 and on the appeal form, but he wasn't a great judge of distance or time, and most people aren't. It's just not something that you think about that much. How long does it take me to walk down the supermarket aisle? How long is the supermarket aisle? No idea. So I think it is a it's an important case just to remember those principles. Is someone in pain from doing something? Does someone have the ability to repeat an activity which they may only just be able to do anyway, given the pain that they're in?

**David Stickland:** [00:13:36] Yeah, sure. And of course lots of people do as you say, sort of push through the pain for lots of reasons. And wanting to stay active is a pretty good one, right? So we wouldn't want to, you know, put people off, you know, having a go and succeeding on this basis when perhaps they do qualify, but it may not be immediately apparent and we might

need to be very careful to, to consider the criteria. Like you say, pain should be considered as to whether that means we people can do something to an acceptable standard. Great. Thanks Will. Pamela, we've got a few minutes left. Enough time, I think, to certainly get number two from you. And then we'll maybe come back to you for number three very briefly. What's second on your list?

**Pamela Carysforth:** [00:14:25] Oh, it's just remembering that the rules for non-dependant deductions. I like trying to get rid of the old language because non-dependant deductions is Housing Benefit. And the amount of time I've seen kind of like non-dependant deductions then in brackets housing cost contributions. Well, really it should be housing cost contributions and non-dep deductions in brackets. Right. So housing cost contributions if there's another adult living with you, not on a commercial basis, then not a subtenant or lodger, then Universal Credit can say they either have to pay nothing towards the rent because of their circumstances, or a flat monthly fee. Sometimes Universal Credit picks up that there should be no deduction at all, because the main claimant is on PIP, that normally works smoothly. Yeah. But under Universal Credit these rules are actually more generous if you will, so they look at the circumstance of the non-dependant. And if that non-dependant is on PIP themselves, or is a carer or responsible for a child under five there also should be no housing cost contribution. Yeah and just sometimes when you first put a non-dependant on, it does actually ask relevant questions. But if you've had your claim going for a while, you might not realise that this is something DWP needs to know. So it's just to have an awareness kind of retrain your brain. If you're used to Housing Benefit, that Universal Credit housing cost contributions, the circumstances of the non-dependant can get taken into account a lot more. So just making sure that Universal Credit is aware that, oh no, that non-dep is on PIP. Yeah, that non-dep is claiming carer's. So that's just a quick tip if you will.

**David Stickland:** [00:16:06] Yeah, thanks. Always good to remind people to check those things. Of course. Like you say, it could be that a deduction is being made or a housing cost contributions is being sort of required to be made when in fact it's wrong. So we should check it. And it's wrong, perhaps because of an exemption like you say, which could be applied because of the claimant's circumstances. Let's say it's the parent of a grown up child. It's quite often grown up children. Or it could be because of the non-dependent's circumstances. And we should check both.

**Pamela Carysforth:** [00:16:37] Yeah, and just a little. Add to that. Like say you hear that a non-dependent has just been awarded PIP. Make sure Universal Credit knows straight away because hopefully a lot of people are familiar with like the relevant benefit rules where if something like PIP is awarded after the benefit exists, then they can go back and give you all the back pay. That doesn't actually apply to the extended benefit unit. So if the non dep was awarded PIP, that wouldn't give that automatic no time limit to declare a beneficial change right to the main claimant of UC. So you know, you might be able to argue it in other ways, but to keep it as safe as possible, declare changes to the non dep as well.

**David Stickland:** [00:17:18] Yeah. Yeah, exactly. Great. And I'm very happy, Pamela, to say that you're delivering our Housing Element course, our Housing Costs Element course. So if people would like to find out more they can come and join you. Great. Thanks, Pamela. Will, number three, I think we've got time for. What's that one?

**Will Hadwen:** [00:17:35] It's Managed Migration. Yeah, I have to get it in there pretty much every month. So this is just an overview, really, of the kind of cases that I've been dealing with recently. We're seeing lots and lots more people coming from ESA, Employment and Support Allowance, and some of these are very old cases. So it's a reminder that when Universal Credit is looking at what your transitional element might be, if you're going to get one, it's going to look at what's called an 'existing benefit' in the regulations. And that is for the purposes of ESA. That's income related ESA. So you don't need to worry too much about what the client was originally on with. Some of these people have come from Incapacity Benefit for example. What we need to know is what is the correct amount of income related ESA for them to be on now? And it's well worth having a look at that. We've seen quite a lot of errors people missing premiums or people being overpaid as well on the reverse of that. And what you don't want is if someone is being overpaid you don't know how quickly that's going to be picked up. And that could mean that then Universal Credit is overpaid as well. So it really is in people's interests to get this sorted out before they migrate. And when it comes to getting ESA increased, maybe getting an old style contributory award, topped up income related ESA for example, to make that request at least two days before claiming Universal Credit. And that's just to make sure that you are covered by the transitional provision regulations.

**David Stickland:** [00:19:10] Thanks, Will. And this has been going on so long now, hasn't it? I suspect many people really have very little knowledge of the way that income related ESA is calculated. We haven't run training courses on it for some years, I don't think, and it could well be that people just don't know. So I guess if you're not sure you can contact us, we'll be happy to check it with you looking out for underpayments and overpayments and getting it exactly right before any migration happens. Great. Thanks, Will. And finally, Pamela, number three from you.

**Pamela Carysforth:** [00:19:41] I'm so glad I got this in. Yay! What is it? It's privacy and Universal Credit. So I've got there's two elements of this that I wanted to highlight. So one of them actually links to the two child limit. Just thinking from a practical point of view about how you'd go about requesting that extra child element for a child. I'm thinking about new partners as well. So the DWP have got a process that mean you should be able to keep this information to yourself. So if you were to phone the UC helpline and say, actually I want to go for this exemption, they shouldn't ask you personal questions. They shouldn't ask for more details. They should just say, here's a form, go away, fill it in and get one of these different professionals to complete their section. Yeah. but I think a lot of people aren't 100% aware that if you ask questions on your journal about something, your partner can see what you're asking, right? So it could have been that you had a very personal, private situation from ten years ago and one of your children could fit the non-consensual criteria. You might not have told that to your new partner. There's another whole aspect of this. As, would you actually put that on your journal? Would you go down this route if that applied to one of your children? Now you might have to if that was the difference between absolute poverty and not but two child limit out of all obviously benefits have got to deal with people in all sorts of different situations. The technical term I think is icky, you know. So from start to finish with the whole thing but it puts a lot of onus on the person who's gone through this to declare it. Yeah. Speak to a professional and quite potentially inform their current partner about something that happened in the past. If they did put it on the journal and I was helping them as an advisor, I'd see it too. You know, so there is a way of doing it more discreetly. Okay. But then in the same way as an advisor, if I saw three child elements on a claim, I might be able to work this out anyway. So it is just it fits into me as a very strange situation for something so personal to be linked to an extra benefit element.



**David Stickland:** [00:22:07] So given that that history is there potentially for, you know, to be seen at a later date on the Journal. Are you saying then that it may be appropriate to do it, to make a notification over the phone and then to expect the DWP to have a process.

**Pamela Carysforth:** [00:22:20] You can do that. They do have a process. Yeah they do. So they shouldn't, shouldn't ask us questions and they should make this form available to you. As well I have noticed that with other things like banking details, they do have a way of anonymising a message that's gone on the Journal after the fact, you know, so if you put on certain information, I've seen it where we've deleted this message because of different concerns. But I can also see somebody just putting on for advice on the Journal, this, that and the other has happened and their new partner has then seen it, or a benefit advisor has seen it. You know, there's a lot going on there. But in privacy as well, you might phone up the helpline, you might say, all right, let's make you an appointment with your work coach, or that might happen on the Journal. Dear work coach, I've got something personal to discuss with you. Right, come into the job centre. Only 30% of job centres have private interview rooms. And this is one thing, and I'm not being a big campaigner, but before the government change, I did start a petition on this just to see if shouldn't every job centre have private facilities available.

**David Stickland:** [00:23:31] And isn't it going to be a need everywhere? You would think so, yeah. Yeah, well.

**Pamela Carysforth:** [00:23:35] It is kind of in the headlines at the moment about making the job centres more life centres. Yeah. Having a trauma based approach to helping people get back into work and things like that. And there are quite a lot of examples about in the first instance, not just being able to say, hi, can we go and talk in private. Yeah. You know.

**David Stickland:** [00:23:54] So it's a bit of a no brainer isn't it. Okay. Thanks both. Thanks Pamela for joining us for the first time. That's been fun and I hope you enjoyed it. Thanks everyone for listening. Until next month. Thanks again. Bye bye.

**Pamela Carysforth:** [00:24:07] Cheers. Bye.