

## Benefits Newscast June 2025

**David Stickland:** [00:00:05] Hello. Welcome to our June Benefits Newscast. This month, joining Will and I is Sarah Batty and in a moment, we'll find out from Sarah what her first item is. But as I often do, Will I'll ask you first, please. What's top of your list this month?

**Will Hadwen:** [00:00:25] So I've got an interesting case about the Work Capability Assessment, and it actually relates to a UC decision, but I think would be transferable to an ESA situation as well. It's about activity eight, which is about navigating safely outside. And it is relevant that I've used that phrase navigating safely because what the decision is about is whether it mattered that the word safely wasn't used in all the descriptors when it was used in the title of the activity. And there's that implication that if you can't do something safely, are you really able to do it at all? It's a really interesting case because it doesn't refer to earlier case law so much as it might but it concentrates very much on the wording of the activity in the descriptor. And just says that you know, essentially you can't read those two things separately, it must be that the activity as a whole is one about navigating safely. Particularly, you might say, because it is aimed at people with sensory impairment, and that's specifically mentioned in the descriptors, that the difficulties must be due to sensory impairment. So the particular claimant was someone who had hearing impairment and struggled to hear people behind him on the pavement and stuff like that and collided with things like scooters, which are a bit of a hazard for all of us as we're walking along these days. And the tribunal appeared to have ignored that, and to have concentrated more on the fact that he was usually able to walk around safely without thinking about the fact that that risk of bumping into things or bumping into people was potentially there all the time. So I think it's a really useful decision. It's not an activity that I've thought about a huge amount. Possibly because I don't I don't deal with the sensory impaired client group a huge amount in my other job. But I think it's very useful.

**David Stickland:** [00:02:29] Useful and perhaps an example of common sense prevailing because it sounds perfectly....

**Will Hadwen:** [00:02:36] Yeah, I did think that when I first heard about this case, I was a bit like, and? Yeah, but actually, I do think it's helpful because of the wording of these descriptors and the fact that safely is used in one of them, but not in the others. I do think it's useful to come

back to what is meant in the language of the activity as a whole. Yeah and it's a good reminder to do that, to think about what's really going on. It's not just it's not enough just to be able to get around if you can't get around safely.

**David Stickland:** [00:03:08] Right. Great. Thank you. Great. And it makes me think about the Work Capability Assessment activities and descriptors more generally because of course there's an issue around safety so often and I'm thinking about I suppose I'm thinking about PIP which has specifically within the regulations a reliability criteria which of course we don't have in the Work Capability Assessment. So for those people that may be approaching this, maybe, you know, for the first time or they're not so experienced, how would you go about thinking about that issue more generally across all the descriptors?

**Will Hadwen:** [00:03:45] I think you can apply that issue generally across the descriptors but with reference to case law. So instead of it being in the regulations such as in PIP there's case law that suggests, for example, that if you can't do something more than once and maybe you can't do it at all. Obviously it depends on the on the activity concerned, but a degree of repeatability is probably needed for you to be able to do something. Pain is also mentioned as something that if you can only do something with huge levels of pain or fatigue or dizziness, that kind of thing, maybe you can't really effectively do it. And safety yes, you're quite right. That comes up. And actually I think most of that case law from memory is from Incapacity Benefit. Sarah do correct me if I'm wrong on that, but I think it's quite old case law, but it still carries through. So yeah, I would say in any of the activities worth thinking about those factors.

**David Stickland:** [00:04:44] So thank you. And being able to find some of that case law to understand some of the history, to be able to reference it is clearly really important. And I suppose we can share things like we can WCA info.

**Will Hadwen:** [00:05:01] Yeah, the WCA info I think could be expanded a bit on on that area. There is a section in it called issues, but I do feel it could be expanded a bit, make it a little bit easier to find these old cases.

**David Stickland:** [00:05:14] Okay.

**Will Hadwen:** [00:05:14] But certainly we can help. If people want those references, they can get in touch. I think one is more recent and the others are older.

**David Stickland:** [00:05:23] Great. So have a look at that website if you're curious or wanting to find out more. And like Will says if you're if you're not sure you can always contact us for further help. Great. Thanks, Will, Sarah lovely to see you. And I'm wondering what's first on your list?

**Sarah Batty:** [00:05:41] David, I wondered if we could touch on the government's proposed welfare reforms to disability benefits. And I guess we will return to these again and again, if indeed they go ahead. And that's sort of the first thing to say, really, is that nothing's actually happening or or changing just yet in terms of the law, in terms of the regulations, in terms of anyone being reassessed. What's happening is the government has made some proposals and is in a consultation period. So it can be quite confusing, can't it, when there's a number of things being proposed and the news is sort of recycling these stories again and again and I think what people can do, they can respond to the consultation. It runs until the 30th June. So organisations, organisations and individuals are responding and you can read sort of some of the responses of some of the bigger sort of advice organisations, some of the disability charities, you can see what they think and what they are telling the government, and they're also holding consultation events. I think we need to remember that the earliest of these changes is aimed to be 2026/27, which is pretty soon seeing as we're in 2025. But particularly for the PIP, the proposed changes to PIP eligibility, Personal Independence Payment, legislation would need to be passed in order to introduce those major changes, so that might or might not happen or it might change. We don't know yet. And the Work and Pensions Committee, which is sort of a parliamentary committee made up of MPs who examine things in more detail to sort of assist or even challenge the government has called for quite strongly for delay and for caution in the government in because of the impact of these changes.

**David Stickland:** [00:07:33] Right.

**Sarah Batty:** [00:07:34] And we're starting to learn a little bit more about the impact. And you know, the impact is worse the more the more you look at it. I have to say, from my point of view as a benefits adviser. Yeah. And sort of advocate for disabled people. But it's looking like

over 50% of people don't score four points for the daily living component of, of of PIP, in fact, as many as 87% of people who get the standard rate. So we sort of learning more about it. So people might want to bear that in mind if they are responding. And just if people are approaching us for advice. So the other thing is like, what do we do as advisers when clients are asking us, am I going to be affected by these changes? What's going to happen to my benefits? I just think we need to exercise great caution in offering any advice. And because we don't know what's what's going to happen we don't know if they're definitely going ahead. There's no real way of preparing people for changes at this stage. And what we just need to do is carry on helping people to maximise their benefits, as we always would under the existing rules, and, and and reassure them that advice services will be there to support them in the future in, in respect of future changes.

**David Stickland:** [00:08:56] Great. Thank you. Yeah. I guess it's a period of great uncertainty, as you say, which is horrible in itself for people that may be affected. We can't deny that it's significant because it is potentially. But like you say, nothing is happening as of now, there's a lot of ongoing discussion, consultation that you mentioned, Work and Pensions Select Committee, which of course we'll keep coming back to as and when we get updates so people can check in with us for updates. But nothing's happening as of now. I guess also, if you've got a sympathetic MP, think about going to see your MP as well if you can because like you say, legislation will have to be passed, MPs will have to vote on it in terms of much of it, but yeah, April 26, it's not that far away, is it. So as and when we hear of stuff, of course we'll be sharing all of that too. Yeah. Great. Thanks for reminding us of that, Sarah. We will be coming back to it of course. Okay. Let's move on. Will, next, number two, uh, I think on your list.

**Will Hadwen:** [00:10:11] Well, as you know, I'm obsessed with managed migration.

**David Stickland:** [00:10:17] And thank goodness you are. That's what I say!

**Will Hadwen:** [00:10:20] This is something that's come up in various forums in my own caseload and elsewhere with colleagues and on Rightsnet. And that is that people who are migrating from ESA, they're in the support group, they're getting letters, as we know at the moment, asking them to claim UC. So this is migrating from old style ESA, I should emphasize and because they're in the support group, they ought to get the Limited Capability for Work

Related Activity Element immediately in the first assessment period. And that is not happening or not always happening. And the DWP have essentially been saying, well, we've got a backlog, we've got a delay. We can't assess this properly until we have been in touch with ESA and worked out exactly what you were getting. But the weird thing about this is in some cases, they are getting a transitional element, would suggest they did know something about the income related ESA, but they're not including the LCWRA element. It's all a bit of a mess. It seems to me. It also strongly suggests that if they can't sort it out in that first assessment period, if it's going to take them longer to calculate an accurate amount of UC under the transitional rules, then they shouldn't be going as fast as they are with managed migration. But that suggestion has been, I think has been batted back, ignored, etc.. So, um, yes, it's continuing. It's a problem and I think we should be alert to it, we should ask for mandatory reconsideration, we should complain and potentially tell MPs as well that this is happening, depending on how long it takes to sort out. Because people could be potentially overpaid, underpaid, depending on what's been happening with the transitional element as well. Um, it's all a mess. Yeah, it. Seems to me.

**David Stickland:** [00:12:16] Yeah. So it's like they're doing half the job, like you say, because they're doing something on legacy benefits to calculate the transitional element, but not necessarily recognising that it would support. Does seem a bit strange and, and you mentioned sort of things that people can do. So looking out for that missing element essentially and asking for a mandatory reconsideration complaint. So are there any issues here in terms of, you know, potential problems around the element, the transitional element, then being eroded, I mean, obviously it shouldn't then happen? We've got to look out for that as well.

**Will Hadwen:** [00:12:50] It's a really good question. David, thanks for asking that. Yeah. There have been problems in the past where someone hasn't got an element they should have got in their first assessment period. It's added later on, which should be a revision to the award and so should take effect from the beginning. But if DWP don't do that and they only add it later, then it they could wrongly erode the transitional element. So there's quite a lot to look out for. And it's a big ask for advisors. But I would try to have some idea of what UC should be if you can. You can always come to us for help with that. Yeah so that you, you have an idea of what they should have been paid in each assessment period until this gets sorted out.

**David Stickland:** [00:13:33] Yeah. Uh, yeah. This is this is difficult stuff. And lots of people listening to this probably won't be getting terribly involved in managed migration and stuff. So I suppose the message, the key message is, as you just said, there is, is to look out for migration notices and you know, and maybe check with us, you know, we'll be happy to, to help you, even if this is something that you're not terribly familiar with. Thanks, Will right. Yeah. Uh, Sarah back to you. I wonder what's next?

**Sarah Batty:** [00:14:05] Um. Well, the next thing David, was an Upper Tribunal decision about Carer's Allowance and the backdating rules. And I thought it was an interesting decision because it just reminds one of the things it does is reminds us that the rule is there. So the rule is that if you if the person you are caring for is awarded a qualifying disability benefit, then you can make a claim for Carer's Allowance, within three months of that decision and that three months, that decision might have been made by the DWP. Just a person claims the benefit and gets awarded it the disability benefit. Or it could be that initially the person was refused the benefit, the disability benefit and then appealed against the decision. And sort of some months later they're awarded it by an appeal tribunal. And so that decision as well within if a person claims Carer's Allowance within three months of that, they can get the Carer's Allowance backdated for the same period as the disability benefit was or back to the date. And the important thing about this decision was the wording within three months. So what it means that the Upper Tribunal decided is it's three months after the date the decision is made. It's three months starting from the date of the decision. And in this case, the lady, the claimant had claimed 11 days before the tribunal made the decision. So if she had only waited until the decision was made and she was obviously arguing, well, that 11 days is within the three months. But the tribunal said no, it's got to be within three months. You know, the decision has to have been made awarding the disability benefit before the clock starts ticking on the three months. So it's just, unfortunately, she there had been an earlier decision where the disabled person, her husband had been awarded the qualifying benefit and she was 14 months after that decision and 11 days before the earlier decision.

**David Stickland:** [00:16:07] So, so very unfortunate for that particular person that, within that appeal, like you say it does sometimes happen, doesn't it? It seems a bit strange that she's almost been penalised for claiming too early in that particular case, but it illustrates the important thing that, um, you get another chance at this effectively if it goes to appeal, or you

may get another chance at appeal in that you can have it linked to that qualifying benefit again, which, yeah, I'm not sure that I, I was very well aware of that. So yeah, that's a good reminder. Thank you and so what also about Universal Credit, Sarah, because it might be that a carer's getting Universal Credit, caring for someone and that person then gets a qualifying disability benefit. How does it work in Universal Credit?

**Sarah Batty:** [00:17:02] Well, Universal Credit has the carer's element. And so if, Carer's Allowance is backdated to an earlier period then they should then that means there's entitlement to the carer's element for the same period. So there should be arrears of the carer's element paid. Now it's a bit complicated actually in Universal Credit it does get quite messy because if you get arrears of Carer's Allowance, um, they create an overpayment of Carer's Allowance, um, of Universal Credit. So the arrears of Carer's Allowance, Carer's Allowance is deducted isn't it. As income. So they get an overpayment of Universal Credit. But then you also have some arrears due to your Universal Credit to the Carer's Allowance. Now you'd like to think you wouldn't that the DWP would say, oh hang on, we owe you some money. But we were already paying you some money, so we'll offset it and just not pay the arrears. Instead of giving you the arrears of one benefit and then asking you to repay the exact same sum through a new benefit you'd like to think, wouldn't you, that that was the case, but just doesn't happen in practice. And so it can get a bit messy, but we can prepare people for that. You know, we can say to people you will be overall better off you know, we're just you just let them know what to expect. And the other thing is if, if a, if a person isn't going to claim the Carer's Allowance because actually, for example, they've got earnings over the over the limit, um, to get the Carer's Allowance itself, you can still get the carer's element in Universal Credit and you could ask for that to, um, you could ask for arrears of that as well. You could ask for that to be backdated to the date of the qualifying benefit award as well.

**David Stickland:** [00:18:42] Right. Really good reminder. Thanks. So again, I guess this can be complicated and it may sound complicated. Lots of people listening or watching. I suppose the key message we want to give is somebody gets awarded a qualifying benefit either on a decision DWP or tribunal, perhaps um, and somebody can claim Carer's Allowance. They should do so within three months to make sure they get the arrears. Um, and really stressing that that can happen after appeal as well as on the initial decision. There may be some further things that appear to be difficult and complex within, Universal Credit. And again, would be happy to

help with that if people need some further explanation or clarification. Great. Thanks, Sarah so we've got a little bit of time, a few minutes, I think, Will we definitely got time to briefly touch on your third item. What's that, I wonder?

**Will Hadwen:** [00:19:33] So my third item is something that I've possibly talked about before, but I've had more cases recently and seen more cases and the other thing that brought it to mind was the DWP saying how many pounds of benefit they had discovered had been incorrectly paid out when they did the targeted claim review. So they identified, they are saying a billion. I think it's almost unbelievable. A billion in overpaid UC, that had been identified from these targeted claim reviews. And whilst I suppose that is a good news story for them it is very problematic for, quite a few clients and I see a lot of clients who really, really struggle to provide the information that UC are asking for during these claim reviews. Okay so there's a number of reasons for that. Sometimes it's a bank account they've forgotten they had. Sometimes it's about the format of the bank statement which UC want. Just quite specific. They don't want just a list of transactions. They want a bank statement, which is a specific thing that has to have your details at the top. And some of my clients are just they're unable to do that. And I think we need to make more use perhaps of the regulations here and what they say, which is, first of all, they say, um, that the DWP can ask for information in connection with an ongoing award.

**Will Hadwen:** [00:21:08] They're allowed to do that which the claimant has to supply within a certain length of time. They should be informed of what that time is. Then if they don't do that, that benefit can be suspended. And if it's suspended for a month, then it can be terminated. And I think people get really, really confused about this, that they might use terminology which isn't legally correct. Like they might say they've been sanctioned when what's actually happened is a suspension. Sometimes it takes a bit of time to get to the bottom of what's happened. Um, but a couple of cases I've had recently really vulnerable people not able to supply this information despite being willing and trying to do so. And I think what perhaps we should have argued at an earlier stage was that the client was unable to get the information or in some cases, that it didn't exist, obviously, depending on the facts. In order to then persuade the DWP that actually don't have the power to terminate. Obviously, once they have terminated, you do have the right to ask for mandatory reconsideration and appeal, but that's

going to go a lot better if you can show there was evidence that the client couldn't get the information, or the DWP were asking for something that just didn't wasn't there.

**David Stickland:** [00:22:20] Okay. So people shouldn't necessarily be deterred if a client doesn't have a particular piece of information for, you know, lots of different possible reasons. It may still be that there can be a sort of positive, successful outcome for that person. Eventually it may be more difficult, it may require mandatory reconsideration, or it may be a more lengthy process. But being clear about that process and understanding that is the important thing, not being put off with continuing.

**Will Hadwen:** [00:22:50] Yes, exactly. I think it's easy to get bogged down and not know what the law is here, but just have that sense of something unfair is happening, which I agree that it is. It also might be relevant to refer to some of the DWP's guidance on when they wouldn't sanction somebody who's vulnerable if they know them to be vulnerable and they've got, uh, the additional needs marker on their claim. So why would they terminate? Because somebody doesn't supply information. And the problem is that here the termination has happened because if suspension is allowed, then after a certain length of time, termination is allowed, even if there's no evidence that the person has more than 16 grand or whatever the worry might be.

**David Stickland:** [00:23:36] Yeah, yeah. Okay, great. Thanks, Will. Sarah, we don't have very long, but I don't want to completely miss your final item, so I wonder if you could briefly share it with us, and then maybe we'll include it in our sources document. So, yeah. What's your final item that you brought, Sarah?

**Sarah Batty:** [00:23:55] So it was another upper tribunal decision that caught my eye. And the decision is called LB. And it was about how a tribunal had conducted a hearing and an appeal hearing, and it had been a telephone hearing. And of course, we are doing tribunals by phone and by video these days, it's quite common. And the tribunal had made various errors of law, which is how it had reached the upper tribunal, the upper tribunal. But one of the errors was that they hadn't, they'd asked the client questions, but then not listened to his answers before they moved on and asked a further question. So he'd been having difficulties hearing, I don't know whether it was due to technical difficulties. It wasn't clear or whether it was due to his

hearing. For whatever reasons he'd indicated he couldn't hear the questions, but then further questions were asked without giving him the full opportunity to answer. And then even though the judge sort of the discussion had moved on, and even though later in the hearing, the judge sort of asked him, did he want to go back and answer some earlier questions. By then, he'd sort of felt unable to participate in the hearing, and that was the key thing. In order for that, for a hearing of an appeal, to be fair and just, which is what the rules require, and you have to be able to participate in it. If you are asked questions. You have to be given the opportunity to answer them. And quite what interested me about this one was that the upper tribunal judge had listened to the recording of the hearing, and so they weren't just going on what their client had said had happened in the hearing. They could hear it themselves, and they've commented on that. And so it's a good reminder, isn't it, that, um, if a hearing is taking place you can get a copy of the recording of it, and you there's an online facility called Manage My Appeal. You get a link to it when you lodge an appeal, and you can log in to that and there's a button called request a recording. So that's a way of doing it and the thing was it was considered a procedural irregularity, but it was it basically rendered the hearing unfair.

**David Stickland:** [00:26:15] Yeah. And I think that those words are the ones that I'm sort of keen to end with fair and just and if it I mean, obviously in this case, it seems quite obvious, doesn't it? But I guess if people attend hearings and it seems that it's not or there's a question around whether it's fair and just maybe look into it further. Again, you can contact us for support. Great. Thank you both. That's really interesting. Thanks everyone for tuning in. Of course we've got courses on our website that you can look at if you've not attended training with us recently, certainly to make sure you've got access to our advice service. Thanks again both of you. Thanks everyone for listening. Thanks. Goodbye.

**Sarah Batty:** [00:26:53] Bye.