

Benefits Newscast Transcript - August 2025

David Stickland: [00:00:03] Hello. Welcome to our August Benefitscast. Joining Will and I this month is Liam Casey. Hello. Hi, Liam. Good to see you. Good to see both. As we do, let's hit the ground. Running straight away without wasting any time. Will, where are we starting this month?

Will Hadwen: [00:00:26] So I'm going to start with some changes to residence tests, which were brought in because, well, very broadly, there's lots of things happening in the world. And to date, how that's been dealt with in benefits is by adding a specific provision for people fleeing conflict in a particular country. So if you look at certain regulations, you'll see that people coming from because of the conflict in Sudan or because of the conflicts in the occupied territories and Gaza, there would be specific provision, but this is different. This covers people fleeing any crisis. And it does several things. So first of all, it's an exemption from the habitual residence test. So that's the test that's applied in Universal Credit, Pension Credit and Housing Benefit. And that exemption is if you've left a country where British nationals have been advised to leave or where there's been an evacuation arranged, and it means that you're treated as a person in Great Britain, whereas if you're not habitually resident, you're treated as a person who's not in Great Britain. Right? Lasts for six months. By the time that six months have passed, if you're not already habitually resident, you probably would be by then, assuming that you'd been in Britain for that length of time. And of course, you still need to have an immigration status that allows you to claim benefits. So just to be absolutely clear, you must have an immigration status that allows you to claim benefits.

Will Hadwen: [00:02:03] But when it comes to the habitual residence test which looks at whether this is your home, where you've made your home, where you have an intention to live, you're exempt from that test. Right? So that's great and I think really sensible of the government to, to make it general so it doesn't apply to specific conflicts or countries, but any country where you've been advised to leave by the government or the evacuation of British nationals been arranged from that country. Another thing it does is remove the past presence test in disability benefits under the same circumstances. And really importantly, it allows for temporary absence. So if you were getting a benefit and then you went to one of those countries before the UK government had advised people to leave, and then you got stuck there,

you wouldn't exceed the temporary absence rules so quickly. They're extended to six months. So I think it all makes a lot of sense. I did note that a couple of things. One is there's no change to the Scottish disability or carer benefits yet that I've noticed in terms of the past presence test. So that would, I assume be something that they might think about making that general as well. And for council tax reduction, it's going to depend on your scheme and what is specified there. And so those schemes may still refer to specific countries. So do check those two points.

David Stickland: [00:03:37] Mm. Great. Thank you. So previously Will then we've been looking out for specific pieces of legislation which change or amendments which change the tests for specific groups. Yeah. But now we're looking out for government advice.

Will Hadwen: [00:03:58] Government advice.

David Stickland: [00:03:59] Foreign Office or.

Will Hadwen: [00:04:00] Exactly. That's right. And so for six months from the government advice, just emphasize it's from the six month start, I believe that's what you would be looking out for. So rather than having to look down a long list of places and conflicts, and exactly when your client left in relation to when a particular issue started in a particular part of the world, you can now concentrate on was the information issued by the Foreign Office telling people not to go there? Has an evacuation been arranged by the UK government? Okay. Does my client fit into that?

David Stickland: [00:04:39] And you said that it lasts for six months, and you said that that would probably be long enough for people to establish their habitual residence. Would you be able to for people that don't know very much about the habitual residence, would you say a bit more about that?

Will Hadwen: [00:04:53] Yeah. Of course. So the habitual residence test is the test that's applied and currently most benefits would be affected would be Universal Credit, Pension Credit and Housing Benefit. Now it has affected income related ESA as well. So we should probably put that out there as there are still people on that benefit and the change affects that too and what it says is that in order to get these benefits, you must be habitually resident in

Great Britain. Otherwise you're treated as if you're not here, you're not present, you can't get the benefit. And habitual residence means that you're in Great Britain as your home, where you intend to make your home, where you have connections, where you intend to stay. So you're not just here on temporary basis where you when you have a home elsewhere? And there've been lots of problems with it in the past for people returning from countries who, it may take time to establish their links here. And there are specific problems for EU nationals, which we won't go into just now but very broadly, for people who who've very suddenly arrived here and may not even ever have lived here before and they've left for this specific reason, due to government advice. And that's something which may not be a conflict it could be for other reasons that their country is, but it's advised not to go there. That will help those people. So I hope we don't need to use it that often, but it's a good thing to be aware of.

David Stickland: [00:06:25] Great. Thanks will. Liam, it's good to see you. And what's the first item that you'd like to share with us?

Liam Casey: [00:06:36] So I'd like to share some recent case law updates about incapacity and disability benefits. So the first one I've got is about the Work Capability Assessment it's called AL versus SSWP. And of course, we'll share the links after we make the video. And so this one is about the Work Capability Assessment. That's obviously the test that the DWP use to decide if you have limited capability for work or LCW, or limited capability for work related activity LCWRA, in ESA and Universal Credit. So there's different ways to get LCW or LCWRA, there's a descriptor test, but there's also a substantial risk test. So this one's about that substantial risk test okay. And the main kind of thing that this case kind of said is that a tribunal has to give adequate reasons if they find that somebody has got limited capability for work based on the substantial risk test, but not limited capability for work related activity. Okay. So yeah, I can tell you a bit more about the case and then see if you've got any questions. So basically in this case, it was a case in the first tier a tribunal, that then was appealed to the upper tribunal, the first tier tribunal they accepted that this claimant that their mental health conditions meant it would be a substantial risk to them to have to work, so they awarded him a limited capability for work, but they didn't decide that that risk would extend to work related activities. So they didn't give him LCWRA. And that was a bit strange, because the list of work related activities that the DWP provided included a work placement which is quite similar to working. The upper tribunal

basically said, well you haven't explained why you think that it would be a risk for this person to work, but not to do work related activities.

David Stickland: [00:08:41] I see, yeah. Right. So yes, if you if you, if you, if you can't work, why is it that you can do a work placement? Right.

Liam Casey: [00:08:52] There might be good reasons for that sometimes. I mean, it will depend on the case. So sometimes it might be, you know, depending on the facts, that somebody isn't able to work safely, but they are able to do work placement. It could be the case. So it's not always automatically going to mean that you should also have, uh, substantial risk for LCWRA, but it's certainly something worth looking out for. I mean, it's maybe worth, I don't know if I got time. It's worth just mentioning briefly kind of what this list of work related activities is?

David Stickland: [00:09:25] Yeah, I think it would go on.

Liam Casey: [00:09:26] Yeah. So I mean, if you do an appeal, like a work capability assessment appeal, then there's case law that says that the DWP should provide a list of work related activities that you might be required to do in your kind of jobcentre area. So if you do an appeal, you'll often see a list like this. It'll have different examples, things like writing a CV, attending a course or attending a work placement. So that's just one thing to note it's important to look out for that if you are doing an appeal of a work capability assessment decision, because you can then think about the risks that might result from your client having to do those activities. And actually, this case just took that a little bit further because they also noted that the healthcare professional who did the assessment for this case, there was no evidence that they had that list of work related activities either. So the upper tribunal in this case said, well, the first tier tribunal should have thought about that when they were weighing up the health care professional's evidence because it looked like the healthcare professional hadn't really considered the work related activities because they didn't know what they were. So that might also be something that you want to think about if you're doing an appeal, you know, has the assessment report, the things in there, have they correctly considered, this range of work related activities? If they've maybe decided that your client doesn't have LCWRA and there's no substantial risk from those activities.

David Stickland: [00:10:52] That's really helpful. Liam, particularly thinking about the differences and how we should approach it and thinking about the list as you described it. And again, for those people who may be fairly new to some of this, thinking more generally about the claims process for either ESA or Universal Credit, when people get the form, the UC50 or the ESA50, how does that address the whole issue of substantial risk?

Liam Casey: [00:11:22] Well, in my view, it doesn't really so if you see the form, you know, there'll be these different questions about activities really. And that's looking at the descriptor test. For the work capability assessment. But the substantial risk test is a really important backstop. So if you don't meet the descriptors for LCW or LCWRA, you might still be treated as having it based on substantial risk. So what I would do and what I do is I put it in the back of the form, there's an extra question at the back and add further information. And I will explain in there whether there would be a substantial risk from being required to go to work, to search for work, and also to do work related activities. So you could just pick out some activities and explain what types of risks would result.

David Stickland: [00:12:08] Thanks. So clearly, this is something that we need to think about right through the claims process including at tribunal, as you've, as you've described so clearly. Thank you. Great. Will, let's turn back to you. Your second item, please.

Will Hadwen: [00:12:24] Yes. Well, I thought I'm following on from last month, which feels like such a long time ago now. All sorts of things happened in Parliament which you may or may not have watched on Parliament TV.

David Stickland: [00:12:37] We trailed last month. Basically.

Will Hadwen: [00:12:39] Indeed so we've ended up with the what's now called the Universal Credit Bill, and I thought it'd be really useful to summarise what is happening and what is not happening. So, no changes to PIP. The changes to PIP are not in this bill, not legislated for us yet, and we don't even know now what the changes to PIP will be because that's going to be part of a review. But what is changing is rates of Universal Credit. So we can now expect and it's pretty much certain because this bill only awaits royal assent. And then we expect you to come into force from April next year. So standard allowance being uprated by more than inflation and

for new claimants, so that specifically means people who don't start to get the LCWRA element until after the 6th of April 2026. The limited capability for work related activity element would be frozen, so it wouldn't be uprated. And that would apply in 26 to 27, 27 to 28, 28 to 29. Those who are protected will be people who already had the element. The LCWRA element before the 6th of April 2026, those who are terminally ill. So that's the prognosis of death in 12 month's time, and what are being called the Severe Conditions Criteria claimants. So those people will be protected and they will have their LCWRA not frozen and also not cut. It's important to note that for everyone who's not in those groups I've just mentioned, so the new claimants, they will get £217.26. And not only that, but it won't go up until April 2029 at the earliest. So this is what we are talking about. And there are several implications for this. So one of the implications, of course, is people who become unwell and fall into that category and then past three months relevant period as well of course to get the element after April 2026 and then the other people that I think our colleagues are quite worried about as well, young people. So they're already disabled and their parents are getting money for them but they will end up getting so much less money under Universal Credit than they would have done that there was already a drop at that point in life in that transition. Already a £200 drop for the family per month in in the worst case scenario. But now that could potentially double depending on exactly how much the standard allowance goes up by. So that's quite a serious loss of income for a family with a disabled child. And there are other anomalies in there as well which I don't think we have time to go into. But it's just to point out that this is a very severe cut. But there will be people who are protected and those people who are who protected will also be protected from the freeze.

David Stickland: [00:15:51] Okay, great. Thank you. That's helpful. So let me just check with you, Will you said £217.26 per month. I think that's for people that are getting this for the first time on new people, basically after April 2026. Yeah. And then there's a higher amount, which is for pre 2026 people, those in the severe conditions criteria group if you like, plus potentially those people that are treated as terminally ill. That's right. Okay. And how much did you say? Do we know how much that that's the current rate?

Will Hadwen: [00:16:33] We don't know specifically but it's, So that's the current rate. Yeah and it will go up by inflation. So that's also in the Act that it will increase.

David Stickland: [00:16:44] So right I was not aware of that. I thought it was....okay.

Will Hadwen: [00:16:47] Yeah. Yeah. So? So that was quite a last minute change. I think I decided that they weren't going to freeze it apart from for new claimants. But as many people have pointed out that this creates this almost generational divide between disabled people who happened to get in there, if you like, with the LCWRA element before April 2026 and those afterwards. And that doesn't just depend on age, of course. It also depends on when you become unable to work.

David Stickland: [00:17:18] And we're going to have a new set of rules to get to grips with in terms of the severe conditions criteria. Yes. So far from scrapping the work capability assessment, there's kind of more to it.

Will Hadwen: [00:17:32] Yeah. So, so the plan to scrap the work capability assessment is not off the table just to clarify that. So there's lots of other things in the green paper that are not in the bill. And those things the PIP changes no longer happening as they were previously described. But we don't know now what will happen to PIP because that's under review. Work capability assessment, that could still go and other changes like restricting the health element for people under 22 and combining contributory ESR and JSA into one benefit. So those things still could happen.

David Stickland: [00:18:08] Potentially, but they're not in the bill. So it would require another piece of legislation with another. Yeah, another vote potentially.

Will Hadwen: [00:18:15] Some of those are. In fact, most of them are out for consultation, not the scrapping of the work capability assessment, but mostly the ones that are out for consultation. So we'll see what happens but what we are definitely seeing in April and it's, it's really difficult to see what could intervene now to prevent this is the changes to the amounts of Universal Credit, really significant changes?

David Stickland: [00:18:41] Yeah, definitely. Okay, good. That's a useful roundup. Thanks very much. Liam, we've got time for definitely one more from you. So, what would you like to share with us next?

Liam Casey: [00:18:51] Okay. I've got another case law update for you on a disability benefit. This time it's Adult Disability Payment, which is the kind of Scottish version of Personal Independence Payments, PIP. So this case is called MM versus Social Security Scotland and basically what was decided was that you can get points for aids and appliances for ADP, if you need to set a reminder on your mobile phone to take medication, if you can't remember to do that unaided due to your disability or health condition. Yeah. So you might be able to get points in that situation. So, yeah, that's what the judge kind of decided. And it comes down really to the legal definition, I think of aids and appliances which includes a device that improves or replaces your impaired physical or mental function. So, you know, in this case, the mobile telephone was the device with the alarms set in it, the reminders, and the impaired function was your ability to, to remember, to do that yourself. Yeah so quite a simple case but I think quite useful, quite interesting as well, because it reminds us that aids and appliances aren't just about physical functions, but they could also potentially be about cognitive or mental functions. Yeah. Well so we're used to thinking about things like walking sticks or adapted chopping boards but yeah other sorts of maybe digital devices used to replace kind of cognitive functions might be relevant as well.

David Stickland: [00:20:44] Thanks. I think it is a good reminder as you say and also a good reminder that there is no list of what, you know, constitutes an aid or an appliance. And yet it kind of has to be looked at almost on a case by case basis right? It could be any number of different things that we may not have come across before.

Liam Casey: [00:21:02] Indeed. Yeah. And it could be an everyday object as well. So, you know, a mobile phone many people set themselves reminders on their phones to do things, so it could be an everyday object, but what's crucial is that it's replacing an impaired function. So you're not just using it because it's convenient. You're using it because you wouldn't be able to do the activity without it.

David Stickland: [00:21:23] Great. Thank you. Liam. Will, again, a little bit of time left, I think briefly for us to touch on your last item, if we can.

Will Hadwen: [00:21:34] Yeah. So my last item is something that we may have talked about before, but it keeps coming up because we've now got a lot of people on Employment and

Support Allowance claiming Universal Credit under managed migration, and some of those people will perhaps make the claims themselves and not get the support that they need. And so what's happening is people missing their ID interviews in particular so the client recently who just didn't answer his phone and so, you know, ultimately his initial claim for Universal Credit was refused. Now, in the transitional provisions regulations, it says that if, the Secretary of state makes a decision awarding the transitional element, but then ultimately that claim just doesn't lead to an award you don't get the transitional element on a subsequent claim, subsequent award. Now it's I think it's interesting to to contemplate how could the Secretary of State have even got to the point of deciding whether there was a transitional element in a situation where actually, the claim was never processed to that extent. And I don't know, because I think you'd have to look at exactly what will happen behind the scenes. And I'm not sure if you could show that here, the Secretary of State, a person acting as a Secretary of State had actually done that. But in order to be safe, what this means is, as well as making a new claim, as soon as you discover these cases, you need to appeal or sorry, you need to challenge the refusal of the original claim in exactly the same way as you would any refusal of Universal Credit. They might call it a claim closure, but it's just a refusal to pay universal credit. Might work on mandatory reconsideration if not at appeal the tribunal can consider whether you are the person that you said you were, and they can decide the benefit should be awarded and it doesn't really matter that you didn't get a chance to present your ID within that time. Because as long as you can show that you are who you say you are, or more specifically, that your National Insurance number belongs to you, which is what is really going on here.

David Stickland: [00:23:56] Okay, so perhaps people can look out for those. Let us know if they have any cases, they can contact us. We'd be happy to hear from people and help in in that type of situation. Great. Thank you both. I think we're I think we're done. I think we'll leave it there. Our time is up. Of course, people can find details of our training on our website. Our advice email is, of course, available to those people that have attended training with us recently. Thanks for listening. Thanks to you both once again. All the best to you. Bye bye.

Will Hadwen: [00:24:31] Thanks.