

Benefitcast October 2025 - Transcript

David Stickland: [00:00:05] Hello. Welcome to our October Benefitcast, where we discuss all things welfare benefits, what's important, what's going on in the world of welfare benefits. This month, it's myself and Will and Marcin's joining us. Marcin, I know you've brought some cases, some court cases with you. And I wonder if we can start with the first one of those, perhaps.

Marcin Brajta: [00:00:30] Yeah. Of course. Thank you for asking. And yes, I do have quite a few cases. The one I would like to start with is PB and the DWP or the SSWP. This one I think is really, really important because it talks about tribunal users, tribunals and how they should approach asking questions at a hearing. I think this is very important because, as we all know, it's not always possible to attend a tribunal hearing with our client. Very often we will, just because of limited resources, help them to prepare maybe written submissions, send all the evidence, and then unfortunately, because of the difficulties with legal aid and basically just the costs involved, appellants have to represent themselves and that is very often something which is quite difficult to predict because we really don't know how someone will behave on the day of the hearing. And what is really stressful is that if they are they're on their own and they maybe don't have someone with them, then, you know, they might panic. They might then find it really difficult to really explain to the tribunal how their health condition affects them. And we now have another decision. I will talk about some other decisions as well. But this is like one of the latest or the latest decision that looks about vulnerable adults and tribunals. So it's about vulnerability and hearings. Right. So what is the case about? It's really about, I think, two things. So we actually have as maybe something that not everyone is aware, there is a practice direction, which is basically a formal document which tells the tribunals how they should approach interviewing or basically how they should approach an appeal where we're dealing with a child or a vulnerable adult or a sensitive witness. It's called practice direction on children, vulnerable adults and sensitive witnesses. It's quite short, but it basically says that the tribunal must consider how to facilitate the giving of any evidence by a child, vulnerable adult or a sensitive witness. And that's, I think, a very, very helpful document. We also have a set of rules that tribunals have to follow. And there is a rule called 2. It's actually rule 2C of the tribunal procedure, which says that again, uh, tribunals need to make sure that um, appellants are enabled to give their evidence effectively. So that's these are the two things that the tribunals really have to, have to have to bear in mind. And what happened in PB is that the

appeal bundle confirmed that PB was diagnosed with a number of health conditions and that included ADHD, depression, anxiety and also substance abuse. And very, very importantly, there was also a letter from a psychiatrist which said that PB, the appellant in this case, had difficulties with social interaction and communication. So that clearly would be something that might have affected his ability to give evidence at the hearing. And what is quite interesting is that, uh, in this case the statement of reasons did not explain in any way exactly what steps the tribunal took to make it easier for PB for the appellant to take part in the hearing? So and it showed that that he had some difficulties answering questions during the hearing, but there was no evidence that the way that the tribunal approached the hearing was adjusted in anyway, so one of the errors of law that was then essentially identified by the Upper Tribunal was just this lack of evidence to show that the first tier tribunal actually considered how they can help the appellant, who had all of these difficulties with social interaction, to deal with the tribunal, because, you know, if someone has difficulty with social interaction, they might find it very hard to answer questions from the, from the tribunal. So that's something which I think is very important because people often, you know, talk about this duty to make reasonable adjustments and so on. And this case really confirms that tribunals have to take into account the practice direction and really should really reconsider how to facilitate the giving of evidence and that that should be evidenced preferably in the statement of reasons. And that's not the first case that actually looked at that, in 2025, we also had a case of CH and the DWP where the Upper Tribunal was concerned with the way in which the First-tier Tribunal again approached a case involving a vulnerable adult, especially the way in which they were asking a lot of closed questions. They were basically questions which were yes or no. And essentially the appellant didn't have any opportunity to actually maybe provide further clarification or add more information. So they actually concluded that asking these series of really closed questions where the appellant really had no opportunity to kind of chip in and add additional information, amounted to procedural irregularity. And to be honest, like I've had quite a few of these cases. I mean, I recently had a PIP appeal and my client fortunately did really well, but I was quite surprised by how the first two approached that case. So we sat down and my client had a diagnosis of PTSD, but all very well evidenced. And one of the members of the panels asked my client, "okay, I will now read out the report of the healthcare professional to you" which was very long. "So I will start reading it out and if anything is incorrect, please stop me". And he started reading really quickly and I was like, "whoa, my client is from Somalia, he's got PTSD, this is completely inappropriate." Fortunately, my client did really, really well. But I'm slightly

concerned that this is something that happens a little bit more often, and we might not be aware of that because we're not necessarily able to attend every single appeal with a client. So when I saw that, I was just like really shocked, this is you know, I would struggle to answer that. It was a very, very long report. And my client was effectively asking, you know, I'll be reading stop me when something's wrong. It's probably not the best.

David Stickland: [00:07:10] Yeah, it's really important, isn't it? And you so you've said about you said a bit about what should happen and how the tribunal should go about it and everything. For someone that's watching this and, you know, thinking about their own work and helping people prepare for appeals, what can they do? What can we do to sort of help the tribunal with this? I mean, I guess it's about making the right information available. You mentioned the psychiatrist letter for, for example, which, you know, but making it clear as to what the circumstances are and why that person might be vulnerable. Right? And what might we do if, if that, if it doesn't go well, you know, in a case where, you know, like PB, perhaps you know it's gone wrong. What can people do after the event?

Marcin Brajta: [00:07:53] Yeah.

Marcin Brajta: [00:07:53] So that's a very, very good question. And uh, there was another case. This one is a little bit older called RT and the DWP. It was a PIP appeal which actually looked at that question because like what the Upper Tribunal said in RT is that if you think about it the vast majority of appeals that will be before the first two tribunals will involve someone challenging maybe a Work Capability Assessment or a Personal Independence Payment. So basically, almost without an exception, all of the appellants will be probably vulnerable adults for the purposes of the practice direction, so technically first tier tribunals should essentially consider the direction in every single case. However, not every single time not considering the direction will be potentially a material error of law. So what they said is that, I mean, I guess, you know, if you maybe have someone who has a physical condition such as arthritis, then it might not be necessary to adjust any way in which someone who has arthritis gives evidence because, you know, they might not necessarily have anxiety or difficulty with social interaction. So what they said is it's very, very important that especially if someone is represented is actually represented then that representatives who consider that the practice direction requires any special arrangements should tell the tribunal as quickly as possible about it and if

necessary, make a request for any necessary adjustments so they essentially can press like look, put a little bit of that kind of burden on the representatives, because I think what we have not yet seen is when someone maybe had difficulties. The practice direction was engaged. They were represented but the representative didn't alert the tribunal to the fact that certain adjustments had to be made. So be really cautious here and just kind of encourage everyone. If you see that your client has difficulty with social interaction, or that their ability to maybe answer questions will be in any way affected, please try and make the tribunal aware of that as soon as possible.

David Stickland: [00:10:04] So if you're attending, you can make sure that happens on the day. And if you're not attending, it's important to raise this beforehand.

Marcin Brajta: [00:10:12] Well, I would say try to raise it as early as possible, because maybe if you're saying that, oh, this person will require, maybe let's say, you know, regular breaks whilst they're giving evidence. So maybe, you know, they can give evidence for five minutes, then they will need a ten, 20 minute break. Then ideally, you should really tell the tribunal a little bit earlier, not on the day of the hearing, because they'll be very busy. They will probably have like 60 or 90 minutes available. So if you require three hours to actually, you know, interview someone or to actually go through the appeal, then ideally you should let them know in advance. So if possible. Yeah, let them know as early as possible.

David Stickland: [00:10:48] Great. Thanks. And if, if, if you think something might have gone wrong on the day and, you know, maybe you were there, maybe you weren't there, request a copy of the statement of reasons from the tribunal.

Marcin Brajta: [00:10:58] And also the recording so that you can actually listen to the way that the hearing was conducted. Yeah. Just try and see whether they were closed/open questions, if anyone actually had a chance to you know, actually provide some further information because sometimes it does seem to appear that, you know, the appeal is conducted just a little bit, maybe like an interrogation, like an interrogation, when you have a lot of really kind of, you know, very, very quick questions and, you know, and then at the end someone's asked, oh, do you have any further questions? There's a short pause. Okay? No? Okay. Well that then

concludes the whole case. If someone is a bit more time to maybe think about it, potentially that would be a procedural error.

David Stickland: [00:11:39] Right. Good stuff. Marcin, thanks very much. Um, Uh, turning to you, Will.

Will Hadwen: [00:11:45] I just wanted to chip in on that and just say for our Scottish advisors, advisors based in Scotland, that the practice direction applies to the tribunals in England and Wales. The benefits administered by the DWP and child benefit and not to the Scottish disability benefits, uh, which have a different regime under the first tier tribunal for Scotland. I think many of the same principles apply and I've certainly seen many of the same issues. Right. I wanted to say that.

Marcin Brajta: [00:12:19] Thank you.

Will Hadwen: [00:12:20] My first topic is, I think let's start let's start with a really topical winter fuel payments. Okay. It's not currently that wintry where I am. It's quite a beautiful autumn day, but last week, which is the week beginning the 15th of September, is what's called the qualifying week for winter fuel payments. And what that means is that if you reached pension age, you were at pension age or already of pension age in that week, then you'll get a winter fuel payment. This year it's going to be different for last year. Very different. It won't depend on getting a benefit. It will simply depend on being old enough in the qualifying week and being someone who's allowed to claim benefits, so not someone who has no recourse to public funds. And of course, being in the UK somewhere. So what I would recommend people to do is to go and look online at Gov.uk and familiarise yourself with the process. Most people don't need to claim, having said that in Scotland, because it's DWP who knows how old clients are because they're the people paying the state pension and not Social Security Scotland who are paying the Winter Fuel Payment, there are some people who need to apply a slightly different groups of people who need to apply in England, Wales Northern Ireland and in Scotland. Just one complication. The other complication is the big BUT, having said that, everyone will get it and quite a big group of people will have it clawed back through the tax system, and that's people who've got taxable income of over 35,000. Now it's too late to opt out if you're in

England and Wales, but you can still opt out if you're in Scotland until the 10th October. So worth looking at that, depending on where you are.

David Stickland: [00:14:12] Right. And the reason for opting out is because you'd have to pay it back anyway. So what's and it's more admin. And you know.

Will Hadwen: [00:14:20] If you're if you're someone who's got to pay it back anyway, then you might consider whether you wish to receive it. But I believe that it's too late to do that now in England and Wales, and I think also probably Northern Ireland. There are some other minor differences. Scotland are paying more and it's not significantly more. But it is more so that's another way in which the Scottish system is making itself noticeably different from, from the English system to the extent that they can and the amounts that you get depend on various complicated situations, like, do you live with another person who's also a pensioner? Do you live in a care home? Do you get a qualifying benefit? So all those issues as well but broadly speaking massive change compared to last year.

David Stickland: [00:15:10] Yeah. Good. And just on the opting out thing and the income, just to be clear the income is £35,000.

Will Hadwen: [00:15:18] Yeah over £35,000. Yeah.

David Stickland: [00:15:20] And that's for joint claimants.

Will Hadwen: [00:15:23] No that's per person. Per person would get it. Yeah.

Will Hadwen: [00:15:26] Right.

David Stickland: [00:15:26] Yes of course. Thanks and with the, with the sort of clawing of it back, how much do we know about this in terms of how that will happen? Is it going to be for most people, fairly automatic, or most people have to make a sort of tax return type thing?

Will Hadwen: [00:15:43] I think we don't know everything yet. I think it's fair to say and the reason that we don't know everything is that, um, the detail of the detail will be announced in

the budget, and that's not until towards the end of November. But what we do know is there'll be broadly two ways that people might get it clawed back. One is that HMRC will change your tax code for next year. So for the April 26 to 27 year and the other way is if you're already in self-assessment is to add the amount to your 25 to 26 self-assessment tax return. What the government have said is that nobody will be brought into self-assessment purely because of the Winter Fuel Payment. Trying to say that it won't add to people's admin.

David Stickland: [00:16:34] Right. So yeah that's that's good to hear. Right. Good. Cool. Thank you. Yeah. Marcin back to you. So it's another case, I think. Which one are we going to look at next?

Marcin Brajta: [00:16:47] Okay. I guess we can just have a very quick look at the case of KK and the DWP, because I think this is a really important one. I'll, I'll try and I'll try and really deal with it fairly quickly. I think it's a really long decision, but I think it can be summarised relatively, relatively quickly. So this one is really important. And that's something that I deal with on a regular basis like a lot of the clients that I have either come from abroad or maybe have family members abroad, and they very often go on holiday. And then things happen when you're abroad. And so that's one of these cases where things happened when someone was abroad. So the background facts, just completely summarise them very quickly. So it's a case involving entitlement to Universal Credit when someone goes abroad on holiday. So the kind of general rule is and essentially that it's possible to be absent, abroad provided that this absence does not exceed and is not expected to exceed one month. So we're looking at this one month absence. So in this case everything was fine initially. So the appellant travelled to India on the 5th March and they were expecting to return on the 1st of April, 2023. So everything was perfectly fine. And they were meant to be back within one month. And they actually did a very good thing, so they notified the DWP about their travel plans. So everything was done correctly. And I always encourage people to do that just to kind of reduce the risk of the DWP just asking questions or something. I mean, if possible they tell the DWP And they never intended to travel for the purpose of medical treatment or maybe recovering from medical treatment. And what then happened is that after they left the UK and they were advised by healthcare professionals that they would need to remain in India for a little bit longer for up to three months to recover from a health problem. And what that meant, and that was after they already left. So they so they initially left because of just kind of holiday and trying to visit their family. And then only

after that they learned that because of medical reasons, they were unable to return. And that then obviously delayed their return. So what happened. They told the DWP and then they returned to the UK in June 2023. So that was way, after the 1st April 2023. So what then happened is that the DWP decided to that that effectively they were not entitled to Universal Credit because the exception and the exception is that the absence is not expected and doesn't exceed one month no longer applied to them. So that's a very, very important one, because it's not just about the expectations. Also whether in fact it actually exceeds one month.

David Stickland: [00:19:55] Yeah.

Marcin Brajta: [00:19:56] So what they then argued is that was quite interesting. They effectively said that the additional exception, which is also found in Universal Credit regulation, and that's the medical treatment exception applied to them and that the need for medical treatment doesn't have to predate, the departure from the UK or from Great Britain. Okay.

David Stickland: [00:20:29] So one of the things changed, I'd like to rely on this other provision.

Marcin Brajta: [00:20:30] Yeah. Yeah. So like, if we think about it, that like, general rule is that you are allowed to be outside of Great Britain for up to one month, provided that that absence is not expected and doesn't exceed one month. We also have a bereavement related exception, which says that that period of one month may be extended up to a further month if the temporary absence is in connection with the death of a family member. And then we also have an exception which says that, where the absence is not expected to exceed and does not exceed six months and is solely in connection with, for example, medical treatment, then that is allowed. So if you have an absence which is not expected and doesn't exceed six months, then and is solely in connection with, for example, medical treatment, then that absence can be longer than one month can be up.

David Stickland: [00:21:25] Different rules. Different lengths of time, Different reasons for being absent.

Marcin Brajta: [00:21:30] Yeah. So if you think about, yeah, we have this one month rule and then one month that can be extended by one month if in connection with the death of a family member or the six month absence rule for medical treatment.

David Stickland: [00:21:42] Right. And so what did the court say about their changing circumstances?

Marcin Brajta: [00:21:47] And so just to keep it like I think short and simple, what they said is that the wording was really, really important because what they said is that, well, if we have a look at the exception that deals with the death of the family member that says that that period of one month absence from Great Britain for any reason can be extended by up to one month. So but that was the only provision under regulation 11 which deals with absence that allows for an extension. But the medical absence rule doesn't talk about exception. It just says that you can be away up to six months provided that your absence is in connect is solely in connection with that medical treatment. The problem was here.

David Stickland: [00:22:36] From the beginning.

Marcin Brajta: [00:22:37] That that absence was not solely in connection with the medical treatment. And what the Upper Tribunal said is that wording is very important because if the DWP wanted to maybe create a rule which allows you to be away for up to one month and then to extend it, then they would have said so, because that's what they did with the bereavement rule, where you have one month absence or pretty much any reason that then can be extended if there is the death of a family member. But with medical treatment, essentially what was really problematic here is that that kind of, you know, solely that that sole reason for absence has to be medical treatment from the very start of your absence. So essentially that phasing of different reasons was not allowed, unfortunately. And that was basically what happened here. So yeah, the period of absence has to be solely in connection with a medical treatment. And essentially the tribunal looked as also as to why we have that rule. And they said that the main purpose of that rule is to basically make sure that people that need to leave Great Britain to obtain treatment are not penalised by having their benefits withdrawn. But that's a little bit different to maybe someone who leaves, who actually leaves the UK and goes on holiday and then they are unable to return. And they basically said that, you know, in that case, and anyone

who travels basically undertakes that risk, and there is no need for the DWP to really insure them against that. So it's a little bit of a different situation. Basically if you go abroad, the DWP's position is then well, you might not be able to return, but you accept that risk when you leave. We will be protecting those who have to leave because of a medical treatment, but not those who go abroad on holiday and just happen to develop a health condition.

David Stickland: [00:24:28] Okay and I guess in more, more often it will be the case that people are going for shorter periods and it is going to be likely to visit family and so on. I guess more often. And what I was interested in, what you said, you know, thinking about the, the not just the length of time, but also when it takes effect, when Universal Credit would stop and thinking about what you said about expectation. And I think I really want to sort of focus on that to help people understand that it's not just about how long you're you're absent, it's how long you expect to be absent. So Universal Credit stops, have I got this right, Universal Credit would stop from the beginning of the assessment period in which your absence exceeded or was expected to exceed the one month.

Marcin Brajta: [00:25:16] Yeah. So, like if you, you know from the very outset that it will exceed that one month period, then that will be that relevant change and that will then lead to supersession.

David Stickland: [00:25:26] Yeah. From the beginning of the period in which you leave basically.

Marcin Brajta: [00:25:29] And also, yeah, change of circumstance will be backdated to the start of the assessment period. So if you know that you're going to be away for one month just yeah that can. And then you leave at the end of your assessment period. And that can then have consequences.

David Stickland: [00:25:44] So if for example, somebody was to go to visit family abroad to be absent for what was planned to be a three week absence period, and then towards the end of that, something changed so that they had to stay longer for another three months. Let's say there's a family emergency or another three weeks, I should say. Let's say there's a sort of family emergency. So you end up staying for six weeks. It's from from when the expectation

changes. So three weeks in, you now know you're going to be absent for more than a month. It would be from the beginning of that assessment period.

Marcin Brajta: [00:26:17] And hopefully that will move you then into the next assessment period. So at least you will be paid for that.

[00:26:22] Right? depending on how. Yeah, yeah, yeah.

Marcin Brajta: [00:26:24] I can have really, really harsh consequences if, if I am if you for example, have. Yeah. So like, if your expectations change as soon as you go abroad, then that might still not really help you. But if it happens at the start or during, let's say if you leave during assessment period one and you expect to come back within a month, and then something happens during the assessment period, two and you know that you won't come back, then this will be arguable that that change you not being able to come back should only affect you from assessment period two not assessment period one.

Will Hadwen: [00:26:58] Okay. Yeah. Yeah. And in fact. Okay. Sorry about that confirming that.

David Stickland: [00:27:02] Okay. Good. Well, it's good to to sort of delve further into that. Will, uh, we've, we've got time to discuss the second one of yours, and then perhaps you can just very briefly tell us what the third one was, and we'll post it on our sources. Is that okay?

Will Hadwen: [00:27:19] Yeah, yeah. So my second one was actually very closely related to Marcin's case and this is a case about what's called closed period supersession. It's a case called SSWP versus SC. A closed period supersession is where you stop meeting the conditions entitlement for a benefit. But by the time the decision is made, you meet them again. And so your benefit isn't terminated. Instead, you don't get the benefit for that what's called the closed period. And but you don't have to make a new claim and what happened in these cases also to do with absence abroad the claimants tried to argue that for example, if DWP knew in advance that they were going to return, they could make a prospective closed period supersession so they wouldn't have to reclaim. That didn't work. They said no, you can't do that. And, at the time the DWP made that particular decision, you were not entitled. So all they had to do based on the evidence they had was to end the benefit. They weren't making a

decision after the circumstances had changed back. When they were entitled again. Another interesting thing that came out of it was to confirm that there's no such thing as a nil award of Universal Credit. And I think this is really interesting because it's the actually the DWP who said there's definitely no such thing, and it doesn't fit in with the spirit of Universal Credit. And yet, as we all know, as advisers, clients frequently get awards that say £0 on them. Anyway. So that was my. I summarised an extremely interesting case very, very quickly. So do go and have a read of it.

David Stickland: [00:29:11] Yeah, people can look at that, of course. Yeah. And and just on the sort of the sort of approach that we might take as well. Marcin described his case and that you would always, Marcin said that you would always sort of advise people to make these notifications in good time and to keep the DWP up to. And this doesn't change any of that.

Will Hadwen: [00:29:32] No, no it doesn't it doesn't change it at all. I would still do exactly the same. I'd much prefer my client to, have benefit terminated and then have to reclaim on their return than have an overpayment. Yeah. Having said that, of course it is always up to the client. Yeah. but I would also say just a reminder that it is their duty to report changes of circumstances that affect their benefit. And going abroad is a particular one that people are told to report. So, yeah, report it in good time and report your intentions as well and report when they change. And my very last one was, it's about the right to reside. I've been seeing quite a few cases where people have had their Universal Credit terminated at an HRT review. And there's a couple of things going on here. One is DWP are missing qualifying rights to reside? That seems to come up all the time. They don't ask the right questions and the client doesn't understand what's required. So doesn't give the information. And the other thing that happens is where originally perhaps the client got Universal Credit in order to avoid the risk of destitution following the case AT. And then the DWP argue well, that doesn't apply anymore because you've got UC. Well, that circular argument is one they can't make because the risk is always there. If you take UC away, the risk appears again. But I think there's also some situations where perhaps circumstances have changed. You know, the client is now able to work where they weren't before.

David Stickland: [00:31:02] So there needs to be another assessment of their needs sort of thing?

Speaker4: [00:31:05] So there needs to be another assessment of their resources. Yeah, exactly. Yeah. Remember the principle and again with these cases because they don't come up that often, it's difficult to stay on top of all the different qualifying right to resides that people had. So talking about people with pre-settled status or people with an ongoing and unresolved application to the EU settlement scheme and as usual, get in touch with us if you need help.

David Stickland: [00:31:31] Yeah. Great. Thanks very much. And Marcin we'll include, your third case was about medical evidence. Right. And we can include that in our sources.

Marcin Brajta: [00:31:39] Yeah, that's a very short one. Yeah. Just. Yeah. Tribunals should consider all the evidence, not just something that's tailored to an appeal. That in a nutshell, right. Confirmed by the Upper Tribunal. So that's great news. Finally, some good news.

David Stickland: [00:31:53] Good. Nice. That's a good way to finish. Thank you both. That's very, very interesting. And yeah thanks for your expertise as ever. Thanks everybody for tuning in. And we wish you well. Goodbye.

Marcin Brajta: [00:32:04] Thank you. Goodbye.