

Transcript - Benefitscast December 2025

David Stickland: [00:00:03] Hello. Welcome to our December Benefitscast. It's me, Will Hadwen and Kate Anstee. Let's start by turning to you, Will, let's find out from you what your first item is this month, please.

Will Hadwen: [00:00:20] Well, I'm going to talk about the Welfare Reform Act and the latest commencement order in relation to that which, abolishes for the final time, some of the benefits that are replaced by Universal Credit. So I'm going to start with Housing Benefit. And just to reassure you, Housing Benefit is not going away. We still have Housing Benefits but what we've lost is the ability to remain on Housing Benefit of working age when they move from supported or temporary accommodation to mainstream accommodation. So until recently you could argue they've got an award of Housing Benefit, the same local authority, they're just moving to mainstream accommodation and they can keep that. Now they can't, so that's since the 14th November, if they're moving from temporary accommodation or supported accommodation on or after the 14th of November. Right. Housing Benefit would stop completely. They'd have to claim UC. So that's the first one and.

David Stickland: [00:01:27] Just with that Will, let me just check. So it's you said supported and temporary accommodation. They're both treated in the same way basically.

Will Hadwen: [00:01:34] So both of those are exceptions where working age people can make claims for Housing Benefit. So to be extra clear, if after you were in mainstream accommodation, you needed to return to supported or temporary accommodation or for anyone else who needs to go into those types of accommodation, you can still make a new claim for Housing Benefit where you need to. Absolutely you can. Okay. What you cannot do is to take that award of Housing Benefit into a mainstream accommodation tenancy.

David Stickland: [00:02:04] Yeah, yeah. Makes sense.

Will Hadwen: [00:02:05] And that's from the 14th November. Right. So, the next one that I will cover is, what's happening with ESA? So what's happening with ESA is, you know, that we have two types of contributory ESA, old style and new style. And you'll know that if you claim

Universal Credit and you're getting contributory ESA, it becomes new style ESA. And all that means is you can never have the income related one back. Yeah. So what's happening is that from 1st of December very soon if you are entitled to contributory ESA but not to any income related and that might either be because you've got too much in capital or it might be that you would be entitled to income related, but your contributory amount of ESA is as much as your entitlement. You're not entitled to any income related on top. In that situation you will from the 1st December be getting new style ESA. The conversion will be automatic so you'll never be able to get income related ESA on top. Right now it's really important that we're saying entitled someone who is entitled to contributory but not income related. If you weren't actually getting income related on the 1st of December, and you later discovered via an advisor that you were entitled, I think you'd argue that the conversion never happened because you were entitled, just DWP didn't know you were.

David Stickland: [00:03:40] Okay.

Will Hadwen: [00:03:40] Make some sort of sense. So it is an end, but it doesn't mean that there can't still be entitlement for people who, on the 1st December, would have had entitlement if it had been spotted, if you see what I mean. And then the final one is that from April 2026, income Based Jobseeker's Allowance and Income Support are abolished. So, I don't think that's going to affect anyone in real life because I think most of those people have already claimed UC or claimed UC and gone to their deadline and lost the benefit.

David Stickland: [00:04:22] Okay, great. So Income Support, income based Jobseeker's Allowance really straightforward. You know, those are simply going to be abolished. Housing Benefit I think relatively straightforward as well if you're familiar with the temporary accommodation rules and specified accommodation and all of that but income related ESA is a bit more tricky, isn't it? What type of situations might people continue to get income related ESA then beyond April 2026?

Will Hadwen: [00:04:50] Well, at the moment, obviously this might change because there might be a further commencement order that does for income related ESA. What has what's been done for income support but without that having happened as yet? Um, if you were entitled to income related ESA on the 1st December, but DWP didn't know, so you weren't

actually getting it, but you're entitled to it, you wouldn't get a migration notice because they wouldn't know about you and that situation continued.

David Stickland: [00:05:22] Right.

Will Hadwen: [00:05:22] Until after April, then at the moment, as far as I can see, you could ask for a supersession and start to get income related ESA. They might close that but at the moment they haven't. What they're saying is the conversion happens if you're not entitled to income related ESA on the 1st December.

David Stickland: [00:05:45] Okay. So it's not entirely clear then, but what you're saying is people could who continue to get contributory ESA could ask for it to be looked at again.

Will Hadwen: [00:05:55] But just to be clear, you would need to be entitled to it on the 1st December and continue to be entitled to it.

David Stickland: [00:06:02] Right.

Will Hadwen: [00:06:03] So in a situation where, let's say at the moment you don't have too much in savings and you're missing out on a premium, you could get and indeed should be getting income related ESA but you're not. The conversion doesn't happen. But if at a later date you come into some capital and you're then, someone where the conversion has happened and so although I think you could get arrears for the intervening period, depending on the reason why you'd missed out, say it was a qualifying benefit or something like that. You are then on new style ESA, and you can't get it after that.

David Stickland: [00:06:42] Right. So it'd be time limited then.

Will Hadwen: [00:06:44] So it really is about a continuous entitlement which hasn't been spotted to Income Related ESA.

David Stickland: [00:06:50] Okay, great. So just to be absolutely clear, I've understood this correctly. And for people listening, we should be looking out for these claims anyway. And

people will have been looking out for them for a while, but we should continue to be looking out for them where there's been entitlement as of 1st of December and continuing thereafter.

Will Hadwen: [00:07:07] Absolutely. Yeah, that's my understanding of what the commencement order is saying.

David Stickland: [00:07:11] Yeah, that's really good Will, thanks. Great, Kate, wonder what's first on your list, please?

Kate Anstee: [00:07:20] Thanks, David. That was really great. Will as well. Thanks for that. So my first topic is the recent Supreme Court ruling on Jwanczuk, the Secretary of State for Work and Pensions, which was a Supreme Court case heard in March 2025, I believe. And we had the decision last week from, from that Supreme Court decision. So a bit of background, Mr Jwanczuk applied for Bereavement Support Payment after sadly losing his wife, I think around 2020 and he applied for Bereavement Support Payment, which is a benefit that can be paid from resulting from section 31 of the Pensions Act 2014, which is basically where there's a contribution condition that has to be met by the deceased in their working life. Okay. So it's contribution condition, and if that's met, then the surviving spouse partner, cohabiting partner can apply for Bereavement Support Payment. Okay. He was refused Bereavement Support Payment because due to his wife's lifelong disability, she was unable to work and therefore unable to meet that contribution condition under the Pensions Act. Right. And so he was refused, BSP which was absolutely the correct decision according to the legislation by the DWP in terms of, in terms of her having not met that contribution condition. So he sought legal representation, and he pursued a Judicial Review to the High Court and the High Court, I think that was 2021, the High Court agreed that he'd been this was on the grounds of discrimination, he satisfied the other status under article 14, which was argued in line with article one, protocol one which was which. So article 14 is the prohibition of discrimination to enjoy the rights under European Convention of Human Rights.

Kate Anstee: [00:09:29] Article One, Protocol One is the or the wording 'peaceful enjoyment of possessions, including property, which is also welfare benefits'. So he sought judicial review on the of the legislation on those grounds and the High Court agreed with him and said that that, there should be an exception read into the legislation, which would entitle him or actually

'contribution conditions would be met where the deceased is unable to work due to a disability'. Right. So it's like an exception that they that they read into the legislation. Secretary of State appealed to Court of Appeal. Okay. Court of Appeal agreed with the High Court, who had followed a decision in O'Donnell v Department of Communities 2020, which is a Northern Ireland case. Right so the so the Court of Appeal agreed with the High Court. So the Secretary of State, requested permission to appeal from the Court of Appeal, and they refused it, so they requested it directly from the Supreme Court. Okay. And that was what sort of culminated in the Supreme Court decision. So there were two main issues that the Supreme Court considered. The first one is a general principle around following cases from other jurisdictions within the United Kingdom. Okay, so it's quite an interesting analysis that the Supreme Court made, which was about you know, what to do in these situations. So, there's, there's, there's there was a bit of a discussion, you know, there's a bit of a focus around, generally the hierarchy of the legal systems within each jurisdiction is apply. So English courts are not bound by Scottish courts, etc., vice versa.

David Stickland: [00:11:15] But actually the English Supreme Court, whether the Supreme Court in England can/should follow Northern Ireland cases.

Kate Anstee: [00:11:22] Yeah. Well so there's no so English courts are not bound by say for example, Scottish courts, but there is a general understanding about respect and where cases are similar and the principles are similar, there needs to be compelling reasons to depart from that, including where the case is wrong. The Supreme Court said that the Court of Appeal erred in law by not departing from O'Donnell. Okay. And the reason for that is because, there was a later case than the O'Donnell case, which went before the Supreme Court, which we might all remember, which was about the two child limit case, and that was in 2021. And that was very much concerned with very similar facts to Jwanczuk case, which was about compatibility with convention rights. In the two child limit case, it was articles 8, 12 and 14. And that of course, that decision from the Supreme Court, was, as we know it ruled that incompatibility wasn't unlawful. Okay. So in other words, it was accepted that the two child limit was lawful. And that was fine. And what the Supreme Court said is that the Court of Appeal should have looked at those principles of the decisions in that case when making its decision about the Jwanczuk case. So that was that was the that was the first thing. And there was lots of other sort of like discussions around those principles. But certainly that was one of the main, main points. And

then of course, they dealt with the substantive issue about whether Mr Jwanczuk was, discriminated against or unlawfully discriminated against. Okay.

David Stickland: [00:13:05] And what did the Supreme Court say.

Kate Anstee: [00:13:06] He was denied it. So they said that he certainly fits the other status under article 14. He certainly fits, you know, disability by association. That's all fine. And of course, they accepted that he's lost out by being refused Bereavement Support Payment because his wife didn't, you know, didn't meet the criteria, but they've said that the Secretary of State's principles for these conditions are legitimate. They're a legitimate aim, that it was it was proportionate. It's reasonable and the way that the legislation is enacted through Parliament is the required level of scrutiny. When they look at people who may lose out from the legislation and it was proportionate and justified, was the was the result. But I understand from Will that potentially there might be a further appeal.

Will Hadwen: [00:14:02] Apparently Mr Jwanczuk has said that, he's very disappointed by the result, as you would expect and he's considering appealing further, which would mean appealing to Europe. Yes. So we'll see what happens. Okay.

David Stickland: [00:14:14] So as it stands, there may be further developments, but as it stands, it's okay not to have an exception. Or in other words, it's okay to require everybody to have met the National Insurance contribution condition. That's as it stands. Okay. And I suppose for those people that are working with Bereavement Support Payment claimants or potentially it is important for us to recognize the difference between the contribution condition in that benefit and others, isn't it? Because, although it doesn't help in this particular case, because obviously in lots of situations people won't be able to work at all. But where you can work, it's a fairly low bar, isn't it, for the National Insurance contribution. So most people with a you know, yeah, with any kind of working record will probably meet it. But in this case it's very different because insurance. Yeah.

Kate Anstee: [00:15:06] Yeah. Yes. Exactly. Yes.

David Stickland: [00:15:09] Right. Thanks very much, Kate. Great, lovely. Uh, back to you. Will, what's item number 2, please?

Will Hadwen: [00:15:16] So, I've got some case law as well, but it didn't get to quite that level. My case is a PIP case, and it's called JAT versus Secretary of State. So that was the initials of the claimant. Right. It's one of a number of cases about activity 9. And that is engaging with people. And in this particular case, the client did have some relationships with neighbours who were also her friends. So as you can imagine, being neighbours with people who'd known her for some time but she did have quite a severe mental health condition and although because it's an Upper Tribunal case, it gets sent back to First-tier Tribunal to decide what they said was that it's not sufficient to conclude that just because somebody can engage with people they've known for a long time, that they can therefore socially engage without support and without prompting, and in particular, in this case, if she'd got the points for requiring social support, she'd have got four points that would have made the difference that she needed to get PIP and I just think it's really interesting because we've got so many decisions now that say, some types of social interaction don't necessarily mean that you shouldn't score points in activity 9. So just because you work doesn't mean you shouldn't score points. And just because you can go to the pub and order a drink doesn't mean you shouldn't score points. You've got to look at the whole context and the wide range of situations in which that person might not be able to engage, which is what could possibly apply here.

David Stickland: [00:16:55] Yeah, okay. That's helpful. Yes. Lots, lots going on with activity 9. Like you said, lots of supporting case law, really worth looking at, not just for this case, but if people are helping people make claims for PIP Will and they want to explore case law and possible decisions that might help them. How would you recommend they do that?

Will Hadwen: [00:17:22] Well, a really good site for that is pipinfo.net. Okay. which I use all the time and recommend all the time. And what you can do with that is you can get to the case law by clicking on a particular activity and seeing the cases that have discussed that type of activity. You can also, if you wish, and go through it if you know what the condition the client has, click on a particular condition and see if there are cases about that. But I recommend doing it via the activities and the principles of PIP, if you can, because I think that reminds you that it's not actually about the condition, it's about how the condition affects the person.

David Stickland: [00:18:00] Right? Lovely. Thanks so much. Okay, Kate, it's your second item. I wonder if you could let us know what that one is.

Kate Anstee: [00:18:09] So this is another piece of case law and interestingly, concerns activity 9, although, it does expand. So this is, LAG by her appointee, case, and it's a, it's a recent case. It's it, it reinforces case law that we already know about. Okay. Around, regulation four and seven, but a bit of background about the case. So this claimant was awarded standard rate daily living. Uh reviewed in 2023, presumably lost it, appealed to the First-tier Tribunal, who awarded seven points for daily living, ten points for mobility. There was a lot of evidence to support, uh, I think the conditions were emotionally unstable personality disorder. There was, there had been violent, you know, interactions. And so she would take herself out of situations to avoid getting into those situations. Okay. Right. So what the sort of crux of it was, is that the First-tier Tribunal accepted that there was evidence to support that, she had these difficulties and these disabilities, but they said that, she didn't qualify for 9D, which is, for the eight points because, these things weren't happening on the majority of days or she, you know, wasn't going out in these social engagements for the majority of the of the day.

Kate Anstee: [00:19:31] So it couldn't support that that level of risk was there. And what the Upper Tribunal said was, well, actually what should have happened is, consideration should have been given to whether um, regulation 4, which is about the reliability, reliability of what happens and being able to meet the descriptor criteria, uh, in line with regulation 7, which is about the frequency and whether, if somebody doesn't do something on the majority of the days, are they not doing it because of their disability? Okay. And if they, if they could do it on the days, on the amount of days, that would be reasonable. Um, you know, uh, is the is the sort of prohibition are they being prohibited from doing it because of their disability? Right. Okay. And therefore if they are so they would be able to do it on the majority of days. Then uh, the higher descriptor should apply.

David Stickland: [00:20:29] Okay.

Kate Anstee: [00:20:30] I thought this case was interesting because it, it's helped recently around, a PIP mobility case because we often see decisions around PIP mobility in activity 1 or

activity 11, however you want to refer to it planning and following journeys. Right. Often um claimants are taken down from 1F which is 12 points. As we know it's the enhanced rate down to 1E or even 1D okay. Which reduces them to ten points, which means that they've lost their enhanced rate. They're often reduced on the basis that they don't do something on the majority of days. So the arguments then need to be, well, okay, why are they not doing it? Is it to do with their disability? Because if it is to do with their disability, then going back to the kind of basic standard PIP regulations and case law, if they could do it with the support of whatever part of the descriptor, could they be doing it on the majority of the days? Got it. So I just yeah, it's quite a nice reinforcement, if you like, of where that threshold lies.

David Stickland: [00:21:36] So it's almost like looking at sort of not just looking at regulation 4 and regulation 7 sort of separately. It's almost looking at sort of the interactions between them and sort of thinking about how that impacts on someone in real terms, looking at both of those things.

Kate Anstee: [00:21:49] Yeah. Yeah, yeah.

David Stickland: [00:21:50] And just for, just for the sake of completeness, Kate, just very briefly run over for everybody the, the sort of basics in terms of what the regulation 4 reliably, reliably criteria is and the and the other one, the regulation 7 one, most of the time.

Kate Anstee: [00:22:07] Yes. Reliability reg 4. So that's the that's the kind of threshold about meeting a criteria. So can somebody do it safely, repeatedly in a reasonable time frame to an acceptable standard. So you've got like the four cornerstones of the threshold. Um, and then uh, Reg 7 is about, it says frequency, but it's the 50% rule 50% of the time. Uh, how frequently and therefore that determines which descriptor applies if it's on more than 50% of the time.

David Stickland: [00:22:35] Great. Thank you so much, Kate. Brilliant. Will, we've just got time very briefly, I think, to address your third one. And then, Kate, I'll ask you just to mention your third one, and we'll include. We'll include the links in our sources. So Will. Yeah. What's your third one?

Will Hadwen: [00:22:53] Um, so my third one was about MJ lookalikes and I'm getting quite a few of these just now. And just remind you, MJ lookalike is this is somebody who, is getting the carer element of Universal Credit and also a transitional element. But as well as being a carer, they're a disabled person. They didn't have limited capability for work status or limited capability for work related activity status in their previous benefit. They acquire it, they get the LCWRA element. And what that does is replaces the carer element and at the same time erodes the transitional element. But the unfair thing is that erodes the transitional element by the whole of the LCWRA element. And and therefore what that means is the person has lost out, they've lost out. And because they lose both the carer element and the transitional element is reduced at the same time. So there's lots of these around because quite a lot of disabled people were, for example, on income support as carers, but were in fact disabled people. And um, the, the case law on this, uh, agreed that it was discriminatory and that it was unlawful and that is now settled case law.

Will Hadwen: [00:24:11] And that applies um, if you've got an assessment period affected from 29th of January onwards. So if the affected assessment period includes the 29th of January this year or later, then the DWP should apply the law. But what we've got, there's got a lot of cases where the effect of the decision goes back in time, like I had one just fairly recently, which, because it had gone to appeal, went back quite a long way. And where it goes back to an assessment period before the 29th of January 25, then the DWP are doing what they did in the past, which is to say no, sorry, you're going to lose the whole of the carer element and the amount of the LCWRA element from your transitional element so you lose out now, the way that you deal with these depends on the dates. If it's one of the later ones, it affects a later period. Then they should just apply the law. If they don't apply the test case, you put in a mandatory reconsideration and they should then apply it. And their guidance is clear on that.

David Stickland: [00:25:17] Okay.

Will Hadwen: [00:25:18] But if the effect is to an assessment period before the 29th of January 2025. Then they're not going to change the decision because they're bound by what are called the anti-test case rules.

David Stickland: [00:25:33] Okay.

Will Hadwen: [00:25:34] And in practice, they don't change it for later assessment periods either. Mm. Um, so not only do you lose out, but you might have an overpayment as well. Um, I've got one case where someone is repaying an overpayment. Um, so what you'd have to do is to request a mandatory reconsideration. DWP can't actually change the decision because they're bound by the anti-test case rules. But on appeal, the tribunal can follow the principles of MJ. Okay, to be discriminatory and the arguments are sound so that they would have to follow it.

David Stickland: [00:26:08] Okay.

Will Hadwen: [00:26:09] They're not bound by the anti-test case rule.

David Stickland: [00:26:11] Great. Thanks. Will, just for me to be absolutely clear on the dates for everybody, because I think you may have originally said 29th January, 2026, but that was that was an error, right? Yeah. So 29th January, 2025. Yeah. Yeah. Great. So, yeah, it seems a crazy situation, doesn't it, that you could be worse off in this, in this situation. But the there is a, there is a remedy is what you're saying. And for those that are more recent it should be really straightforward. But for those going back to a time before that date, 29th January 2025, it could be more problematic.

Will Hadwen: [00:26:50] Yeah.

David Stickland: [00:26:50] Yeah.

Will Hadwen: [00:26:51] It's not about the date of the decision either. It's about the where you start to get the LCWRA element right, which can quite often be in the past. By the time you get it.

David Stickland: [00:27:02] Yeah.

Will Hadwen: [00:27:02] Lots of decision.

David Stickland: [00:27:03] Yeah.

Will Hadwen: [00:27:04] And so that could be before the 29th January for an assessment period before January. So it's a big problem. There is a really helpful CPAG test page about it, test case page, which will help and of course, you can get in touch with us as well. But the initial advice is the same for both situations, which is to ask for a mandatory reconsideration. Even though some of those it won't work.

David Stickland: [00:27:30] Brilliant. That's great. Thanks Will and of course, we'll include that in our sources. So that should help. Great. Kate, we've got a couple of minutes left. Not very long. So if you could just mention your third one, just very briefly, give us the kind of headline, and then we'll include the sources in our links.

Kate Anstee: [00:27:48] Yeah, it's very much a general observation this and I think it's on, on our list as AA and and SAR, but actually I'll just probably mention the SAR the Subject Access Request. Sorry. Yeah. Subject Access Request. So basically I just think that they're extremely useful the proven to be extremely useful at the moment. And what I've noticed is if there is a situation where somebody receives a PIP refusal, for example, I'm using PIP as example, but that's probably the most common one, PIP refusal and perhaps that person may not ring up to lodge an MR for a couple of weeks if they or a representative that was helping them could request the subject access request straight away, and then they lodge an MR perhaps a couple of weeks later, the DWP will often say, okay, we're going to now give you another month to send in some information to follow up. They don't always because often they'll often resolve it within the month. But I am seeing where they're kind of giving people that bit of extra time, possibly to do with delays in the system. And in that time, that subject access request has come back before the final date of needing to submit stuff for the MR and it's just proving to be really useful because there are things in there that are can be dynamite for a challenge and resolve it much, much quicker. So it's just just an observation really in terms of what's working.

David Stickland: [00:29:18] Brilliant. Thanks. And if people have cases where they think that might apply. Might be helpful. They can let us know. You'll be happy to reply on an email, won't you?

Kate Anstee: [00:29:26] Yes. Well, I don't know if you wanted to add anything Will about SAR.

Will Hadwen: [00:29:31] Well, the just it wasn't really about subject access requests, but just to say that I think it's a common misconception that you can't follow up an MR with extra information. Absolutely. Yeah. If you get new stuff comes to light, new evidence, new facts follow up. Until you get a response on that MR you can add to it.

Kate Anstee: [00:29:51] Absolutely. It's open isn't it. For that information. Yeah definitely.

Will Hadwen: [00:29:54] Yeah.

David Stickland: [00:29:55] Thanks both. That's a good place for us to end. Just a quick reminder that we have course dates on our website and if you need to extend your access to our advice service, there's various ways you can do that. You'll also find that those details on our website. Thank you once again, both Will and Kate. Thanks everyone for listening. Cheers. Goodbye. Bye.