

Transcript

Benefitscast February 2026

David Stickland: [00:00:04] Hello. It's our first Benefitscast of the New Year, and we're very happy to be back. Today, joining me is Lindsay and Will of course. Lindsay, I'll turn to you in a moment. But first of all, Will, can I turn to you and find out what's the first item you've got today?

Will Hadwen: [00:00:23] Well, some very exciting news on managed migration. We think it's exciting anyway. And it's about people that miss their deadlines, which is very topical just now as we're coming to the end of the whole process. So what it does is it's not a case. It's not a bit of legislation. It is a concession from the DWP that if someone on ESA that's old style ESA misses their final deadline in their migration notice and then claims Universal Credit at some later point, they still have limited capability for work related activity status. And not only that, because they've been getting credits for limited capability for work, they should get the LCWRA element from the first assessment period.

David Stickland: [00:01:12] Right.

Will Hadwen: [00:01:13] So this goes back to a regulation in the Transitional Provisions Regulations, which is regulation 21, and that links to regulation 8b of the credits regs. But basically what it says is, to get credits for limited capability for work. You make a claim for ESA, which these people did, albeit some time ago. And when that ESA finishes, as long as you've not done something that takes away your limited capability for work, like you've not exceeded permitted work limits or something like that, then you still have that same status and you still have those credits, even though you may not realise it. And so that gives you this transitional protection for your LCWRA element. It's really great that DWP have accepted this. Unfortunately, they don't have a technical fix as yet. Right. Which means people probably will still not see the element there when it should be, but the advice on that would be to put in a mandatory reconsideration request and you can also let Rightsnet know when the element is missing. And they're keen to hear how much that is happening.

David Stickland: [00:02:19] Great. And we can share that email I guess. Yeah good. So you don't automatically lose your limited capability for work related activity status unless something specific has happened. Like you say, if you've moved into work, for example. Okay. Great. And you keep that and therefore you can get the, the element from the beginning of your, of your first assessment period.

Will Hadwen: [00:02:49] Of your first assessment period. Yeah.

David Stickland: [00:02:50] Yeah. Great. Okay. That's really good. So we kind of need to know, it's one of those situations where we need to know the history, isn't it? We kind of need to know what's happened before, you know, history helps. Yeah.

Will Hadwen: [00:03:01] And of course, the worry is that a claimant by themselves, who's been on ESA for some time, they might not even know what the LCWRA element is. So how do they know that it's missing? So you just have to hope that people in that situation, the reason that they've claimed UC, will probably be because they've sought advice, because they've missed their deadlines anyway and so perhaps hopefully they would then get told by somebody, oh you should have had this from the beginning. But I think we have to be realistic. And there are some people who are just going to miss out on it or have missed out on it in the past.

David Stickland: [00:03:37] Yeah, but we can do what we can to check where we can. And what if somebody who perhaps was in that situation and they didn't realise they've sort of carried along with their universal new Universal Credit claim, they've thought, well, I'll have another go at the work capability assessment, hand in medical certificates. The whole thing sort of starts again perhaps a number of months down the road. What, what should happen in that situation?

Will Hadwen: [00:04:00] Well, of course, if nobody realises, then that could just continue. But if somebody does realise and says, oh, hang on, you should have got the LCWRA element from the beginning. Once that is in place, you can ask for that process to stop. Now, the problem with that is you can't be sure it's going to stop, because they do have the right to reassess you at any time to check that you still have that same status. But given the backlog in these situations, it usually does stop once you ask them, you know, actually you don't need to do that referral anymore. The problem is the interim period before you've got the LCWRA element. I

would probably carry on with the sick notes, just because I don't want my client to be under the stress of having to look for work. If the work coach isn't yet convinced that they have carried over that status, then I'd want to err on the side of caution. That was a big problem you'll remember from people who were directly coming from ESA, even. So, now we've got someone who's had a gap, I would say just from a practical point of view, that I wouldn't stop handing in the sick notes until the LCWRA element had been confirmed. But of course, technically you shouldn't need to continue doing that.

David Stickland: [00:05:15] Great. Very good. Thanks, Will. That's really helpful. Okay. Lindsay, it's good to see you and I'm curious to know find out what the first item is that you're going to share.

Lindsay Fletcher: [00:05:28] Thanks, David, yeah. I mean, my first item runs on quite nicely from what Will was just talking about. This is actually a piece of legislation. So Universal Credit, transitional protection regulations. There's been some additions. So it's possibly quite a niche scenario, but it will be very useful for some. So it's a niche way of protecting the severe disability premium transitional element for some, in specific circumstances. So what it's actually saying is if someone has claimed Universal Credit, but it's been refused or closed because they've not verified their identity. And then for whatever reason, we're seeing that ESA often carries on being paid because they can't close it because someone's not passed the identity check stage sometimes is mixed versions of what happens in that scenario. So if the UC carries on being paid and then eventually someone reclaims Universal Credit.

David Stickland: [00:06:37] Sorry if the ESA continues to be paid rather than the. Yeah. Yeah.

Lindsay Fletcher: [00:06:41] Sorry. Yeah. So the the ESA can yeah. This is why I said it's quite complex.

David Stickland: [00:06:45] Just checking!

Lindsay Fletcher: [00:06:47] So you claim UC, the claims refused because you failed your ID, your ESA carries on being paid and then you reclaim Universal Credit within a month of being told you can do, then, technically, the ESA you've still been getting shouldn't have carried on. But what they're saying is, we will allow you to still have the transitional SDP element, because

normally you have to be on in receipt of ESA within a month of claiming UC to get that SDP transitional element. So there is an argument, well, technically you haven't been in receipt of ESA within a month because you shouldn't have still been getting ESA. But what they've said is, well, we'll be kind and we'll treat you as still getting the ESA, but only for the purposes of getting a transitional SDP element, which is a set amount. So it isn't full transitional protection. It isn't full transitional element. Usually it's not far off. If people only needed a transitional element because of the lack of SDP. So yeah, so hopefully that that kind of makes sense.

David Stickland: [00:08:05] So it sort of avoids that gap sort of thing that otherwise would mean that you don't get the transitional protection. Okay. That's, that's good isn't it and what happens to the ESA. Does that form an overpayment. Are you then in an overpayment situation with ESA? What happens. What happens there?

Lindsay Fletcher: [00:08:27] Yeah I mean again technically that ESA what they continued paying is an overpayment because as soon as you claimed you see the ESA should have stopped. So you're not entitled to it anymore. However because it's a legacy benefit overpayment, we've still got the non-recoverable official error kind of argument, because it isn't the client's fault because it's carried on that it's carried on being paid. So that ESA overpayment shouldn't be recoverable. I would still possibly, depending on the circumstances, advise someone to ask for a mandatory reconsideration of the UC refusal, due to failing the ID checks, and then if the UC is backdated because you've won that reconsideration then the ESA would be deducted as income.

David Stickland: [00:09:27] From the universal. Yeah.

Lindsay Fletcher: [00:09:28] Get around it that way. Yeah. So from the UC arrears they would deduct the ESA. You have been paid in error from that. So yeah, so quite complex, quite niche. But for some people it's it will be a lifeline, a lifeline to keep that SDP.

Will Hadwen: [00:09:49] And it might mean, it's not worth challenging the original UC refusal because UC usually would have been worth less. So if you know that the ESA overpayment is not recoverable and the client didn't do anything to contribute to it running on after the run, then you could just leave it.

Lindsay Fletcher: [00:10:08] Yeah. If you've still got you've got your SDP transitional element, if that's not far off and you've not really lost out, you might just be happy with with that outcome.

David Stickland: [00:10:18] Great, thanks. So just to recap then. So we as advisors should be looking out for situations where people have claimed UC following an ESA claim, legacy benefit. The claims closed, broken down because of problems with getting ID verified and so on and so forth. We should be advising people to claim again as soon as possible and to check that the element, the transitional SDP element is in is included. Yeah.

Lindsay Fletcher: [00:10:49] Yeah, definitely. If people have missed that that month, this the month kind of option, then it's always advisable to do an MR of the UC refusal because you've not verified your ID in that situation. You would most definitely want to do an MR of them closing it because you've failed the ID checks because you need them, that continuous claim to get any transitional element. So if you don't fit into this niche criteria, it's still a good reminder that very often there are very good grounds to ask for an MR of a UC claim closure decision, as they like to call it, but it is a decision. It is appealable. You can ask for an MR if it's been refused because you've not verified your identity.

David Stickland: [00:11:37] Right. So that would also mean if you're successful, there's no gap. And it will also mean that there's an SDP transitional element.

Lindsay Fletcher: [00:11:43] Then you'd get your full transition element because it would be a managed migration, a full transitional element claim.

David Stickland: [00:11:51] Oh thanks, Lindsay. That's really good. Really clear. Grateful to you. Let's turn back to Will for item number two.

Will Hadwen: [00:11:58] Okay. So I've got a bit of case law now. And this is a case called GB versus Secretary of State for Work and Pensions. And it actually follows on from another really big case that we talked about in the update webinar. And that was TR and GD and that was about official error. And if somebody asks for a revision, which could be a request for an any time revision on the grounds of official error, if the facts were made out, then that's appealable and the appeal should be admitted. So what happened in this case was that somebody didn't

get their housing element in their UC. They declared their housing costs. They'd been asked for evidence. They provided the evidence, but the element never appeared. And quite a long time later, more than 13 months later, they were advised they should have been getting the housing element. And so they challenged the original decision, and they were basically told that they were too late. DWP treated it as a change of circumstances, even though it had never been a change of circumstances. So the claimant appealed and the tribunal missed a lot of things in that, the First tier Tribunal missed a lot of things in their consideration of the situation, and they missed the fact that the client could have been asking for an official error revision because she stated that she'd not only declared her housing costs, but had provided evidence.

Will Hadwen: [00:13:30] And it was also clear that the point that she'd done so, she was well within the 13 months, right? So either way, she had an appealable decision. There's quite a lot of interesting stuff in the case about, when a tribunal should and shouldn't strike out and appeal, which I'm not going to get into. But I think for us, what's what's really, really helpful is here we've got somebody who didn't use the words 'official error' as far as I know, but just said, look, this has to be wrong. I told you that I was entitled to something. I provided the evidence. And then you're saying that I'm out of time? It doesn't make any sense and she was successful ultimately because she'd go all the way to Upper Tribunal. Self-represented. So very impressive.

David Stickland: [00:14:20] Great. Thank you. So in terms of the key message that we want to give people, then I'm thinking that the first thing to say is that where there is official error, that means we can go back at any time to a decision, however long ago.

Will Hadwen: [00:14:35] It doesn't matter how long ago.

David Stickland: [00:14:37] Have it corrected and get the arrears paid throughout that period? Identifying official error is sometimes difficult in this case. In this case, it kind of was fairly obvious, it seems, because.

David Stickland: [00:14:52] I think most people would say that was wrong. Yeah. Wrong. Yeah.

David Stickland: [00:14:57] And often it's, it's, it's DWP failure to use or or or look at properly the evidence that was available which clearly they didn't in this case. But I'm thinking about other situations where perhaps it's not so clear. In disability benefit claims, for example, where

perhaps a report or evidence is overlooked, can we still make this argument in that type of situation? Potentially.

Will Hadwen: [00:15:21] Potentially, yes. Yeah. So in this the lead case TR and GD, TR in particular was talking about her condition and how her condition affected the daily living activities. And she wasn't simply saying, I have this condition, therefore the decision is wrong. She was linking it to the conditions of PIP, and so it could be an official error on the basis of the evidence she gave about how her condition affected her. And you could have other situations where you think it's possible the DWP have ignored your client's own evidence, or the evidence of their own health professionals, even if you're not sure but if there isn't anything to prove that the decision maker considered it, then there's potential official error in there. So that does give you an argument. You only have to show that if these grounds were made out, if these were the facts, there would be official error. Even if you're not sure exactly what happened and then the other thing that I think is really helpful in, again, in the lead case is the person GD. It's about what if the decision maker's actually come to an irrational conclusion? They've looked at the facts. They've made one decision and that doesn't fit. It just doesn't fit. And that was about substantial risk, in a work capability assessment case, if I, if I'm found to be substantial risk were I to be fit for work? What about the substantial risk of work related activity? But I think you could also, in some cases have that in a PIP case. And in fact, the lead case on that from quite a long time ago is a DLA case about a decision maker who went beyond the bounds of reasonable judgment in thinking about somebody's ability to walk, ability to mobilise in the DLA context.

David Stickland: [00:17:16] Thanks, Will. So if it seems that something is wrong in terms of the way the claim was handled or decided, then perhaps people should be perhaps looking into it a bit further and can always contact us with cases. If they might need a little bit of help.

Lindsay Fletcher: [00:17:35] We can. I think we can go easy on ourselves as well in finding this confusing and complicated, because as we've just seen, even the First tier Tribunal kind of got it all wrong and didn't consider the official error route and just struck it out. So yeah.

Will Hadwen: [00:17:51] And that was.

Lindsay Fletcher: [00:17:52] Important as well as.

Will Hadwen: [00:17:52] Us. Okay.

Lindsay Fletcher: [00:17:53] Yeah. Yeah. They're struggling as well as us. Yeah.

David Stickland: [00:17:56] That's. Yeah that's a good point. Thanks. Lindsay. So Lindsay yeah. Your second item I think we're on.

Lindsay Fletcher: [00:18:04] Yeah. So my second item is not there's not anything changed or not news as such, but I just wanted to highlight something that, you know, we've been talking about a lot which is significant delays in specifically LCW reassessments.

David Stickland: [00:18:23] Right.

Lindsay Fletcher: [00:18:23] Just so we're all kind of aware that it's happening and what should what the process should be so we can push for it and enforce it and don't kind of give up. So if someone is on Universal Credit with LCW only, so not LCWRA, just LCW and they report that their health's got worse, or maybe they've got a new health problem and they, they themselves have asked to be referred for a new work capability assessment.

David Stickland: [00:18:56] Yeah.

Lindsay Fletcher: [00:18:57] In my area, and I think in a lot of areas, we're seeing delays of around 18 months or even longer for actually conducting the WCA and getting an outcome. Which is quite shocking. You know, anything can change in that time. People could, their health could have got worse, but then now got better, or they could have even come off Universal Credit because their income increased or anything. So, you know, it was never meant to take this long. I have seen, you know, some colleagues and advisors try to get the process escalated or get their client's case prioritised, but it's not proving overly successful, even for the most vulnerable. But, you know, that's not to say don't try. I think one of the main reasons for the increase in reassessment requests is, UC migration. So many people have been on ESA with LCW for years and if you've only got LCW, you should be expected to do work related activity. But very often ESA haven't really been doing that much we've found over the decades, years. But when they switch to UC it seems to be coming back to the forefront or ramping up or it's starting again because, UC you're looking at things with a fresh set of eyes. So many people are

realising, oh, I'm going to have to do work related activity. I'm not really fit for that. I can't do it, it's affecting my health and their potentially getting advice and realising, oh, there's a there's a higher group I could be in, which would mean no work related activity and would mean more Universal Credit.

David Stickland: [00:20:53] So perhaps there's been a surge in the recent.

Lindsay Fletcher: [00:20:56] Yeah. So I think that's why there's been a surge of new WCA reassessment requests. The figures are quite shocking, I think at the end of August, Parliament said there was 110,000 outstanding reassessments and they was only getting through about 2000 a month.

David Stickland: [00:21:21] Right.

Lindsay Fletcher: [00:21:22] So I don't think I've seen any updated figures of how many are still outstanding. They did say they was putting plans in place to try and reduce the backlog, like recruiting more healthcare professionals, and then recently they've said that they're going to look at awarding PIP for longer time periods to potentially free up assessors to do more WCAs but it's not overly clear if anything's drastically improved yet. And certainly I've not seen a drastic increase in people getting their appointments who've been waiting.

David Stickland: [00:22:00] So, I mean, probably this is mostly a capacity problem, isn't it? And it makes sense with what you said about the the migration, the Universal Credit migration, because.

Lindsay Fletcher: [00:22:07] They said it's, you know, it's an unexpected surge. But, you know, I'm sure there could have been a little bit of planning for it. It's not as unexpected as.

David Stickland: [00:22:16] So this can go on a long time. I suppose it's helpful for people to know that they're not alone with this, because sometimes there's a claimant and and as an advisor, you can think, well, is it ever going to happen kind of thing. But hopefully it will, of course you will get that decision. And then if you're successful in, in, in, in getting limited capability for work related activity status, then you've got to go back throughout the the history of it all and make sure that you get the element included correctly.

Lindsay Fletcher: [00:22:44] And yeah, so if it's the client who's instigated the reassessment because they reported they've got worse or a new health problem, then if eventually they do get that LCWRA decision, that's effective from when they reported it from the assessment period in which they reported it. The LCWRA element should pay arrears back to then. Which obviously if you're looking at 18 months that's going to be quite a bit and obviously with the, the April changes, of reducing the LCWRA element for new, potentially for most new decisions after April. We need to check carefully that, these people who eventually have been waiting all this time get to the correct, get the correct rates, whether they get the old rate, the protected rate or the new rate.

David Stickland: [00:23:40] So there's added complexity there.

Lindsay Fletcher: [00:23:42] Yeah, I can imagine there's going to be potentially errors in that as well. So we need to check the arrears really carefully and make sure as long as the referral has been done, the client's done the WCA50. Maybe check with the healthcare professional that it's in the waiting list and then just just keep waiting.

David Stickland: [00:24:03] Yeah. Got it. Really good stuff. Lindsay. Thank you. Will and Lindsay, we've got only a few minutes left, so I wonder if you can introduce both of your final items fairly briefly, and then we'll include links and so on of course. Will let's ask you first.

Will Hadwen: [00:24:21] Yeah. So my final item is about some new guidance from the DWP, amended guidance on the managed payment to landlords. And that's when you get your housing element of UC paid to a landlord. And what it says is that there's a change in process and the claimant should now be consulted. They'll be asked to check their journal. There'll be a message there. They've got seven days to say whether they object or not. This goes back to a case that we talked about last year actually, to do with rent arrears deduction. But it's the same principle that you shouldn't really be making, a managed payment unless you've checked it's in the best interests of the claimant. So, the claimant might say, oh, actually I don't have eight weeks rent arrears or I don't, I don't consider myself vulnerable or whatever reason, DWP might otherwise believe there was. The only problem is, and to me this is a big problem, if you object to the managed payment, you're then asked for evidence and in the meantime your UC is not paid. So, and it seems to suggest that the whole of your UC is not paid, not just your housing element, which I find odd. So I would like to know a little bit more about that and ask

some questions of DWP. But in the meantime, I think it's something to treat with caution. Or if you do have a client who really, really doesn't want their managed payment, then they can consider objecting.

David Stickland: [00:25:46] Okay. Okay. So we'll kind of keep an eye on that as well. Great. Thanks, Will. And same for you, Lindsay, if you could briefly just share with us your final item.

Lindsay Fletcher: [00:25:58] Yeah. So mine was just a reminder that if someone is on legacy benefits and they are paid arrears of benefits, which are over five grand and are paid as a result of the DWP's official error, then that's disregarded indefinitely as long as you're still on the benefit. So it's not just for the usual 12 months. Usually benefit arrears are disregarded. It can be disregarded indefinitely. But what we're seeing is that disregard should carry over onto a UC claim if it's claimed within a month of the legacy benefit. And we're seeing a lot of UC claims potentially refused because someone has over 16 grand when the arrears are made up of official error benefit arrears, which should be disregarded and were disregarded on the ESA claim. So it's just to remind people that obviously to ask for an MR or appeal to get them to change that decision, but that disregard should continue into the UC claim. But we're seeing it a lot where UC are just seeing, oh, over 16 grand, close and just refuse the claim.

David Stickland: [00:27:20] Okay. Got it. So more important stuff when it comes to official error. Other things to be looking out for if you've, yeah, if someone's got capital, savings, let's say above £16,000, it's always worth finding out why? What? Where does that come from? What form of capital is it? Whether there might be a disregard and as you say in cases of official error over £5,000, right from previous system, if that becomes part of Universal Credit, maybe that there's something for us to look at there as well. Great. Thank you both. I think we're done for today and until next month. Thanks, everybody for tuning in. And we'll see you again in February. All the best. Bye