

## Benefitscast Transcript – May 2026

**David Stickland:** [00:00:04] Hello. It's our May Benefitscast. This month, it's Sarah Batty joining Will and I and of course, we'll be discussing a number of issues affecting claimants and advisors, us as advisors, of course in our social security system. So first let me turn to you Will and ask you what your first topic is.

**Will Hadwen:** [00:00:26] So my first topic is a very common issue, which is where somebody has a property that they're not living in. And we've got a case on this quite recently which involved a property that somebody was seeking to get back into. So she did have an intention to go and live there again, but in the meantime, she needed to get the tenants who were renting the property to leave. And she had taken advice and been told she couldn't do anything until the end of the contract. Now the tribunal said, actually, that's not good enough. You could have given them a notice to quit, we think that it wasn't reasonable to extend the disregard beyond six months, but the upper tribunal disagreed with that and said that, well, starting legal advice started the period of the disregard after that someone could still be taking steps, even if there wasn't a huge amount of actual legal process. And after the six months, it was a question of whether it was reasonable to continue the disregard which on the facts it was because actually she couldn't legally get the tenants to vacate any earlier, given that they weren't in rent arrears. Okay. So I think this sort of decision is going to be even more relevant now that we've got some changes to housing tenure in England anyway which mean that there will be less room for manoeuvre for some landlords and getting people to move quickly and yet they may still be taking what steps are possible in the circumstances.

**David Stickland:** [00:02:08] Okay. Thanks. So let me check I've understood that correctly. There's kind of two things going on here. There's the sort of requirement to seek advice in the first place. And that can trigger this disregard for certainly up to six months.

**Will Hadwen:** [00:02:26] That's the trigger for the disregard. That's what starts the six months. Yeah.

**David Stickland:** [00:02:29] Okay. And then beyond that, it's, it's possible there's a kind of question of reasonableness thereafter, beyond the six months, have I got that.

**Will Hadwen:** [00:02:37] Beyond the six months, it may be reasonable to continue the disregard further. Now that will be up to another tribunal to decide, but it's certainly open to that. It's possible that this regard should have been extended in this case, and it sounds to me like it would be. And the other important thing about this case is what does it mean to take legal advice? And that's not defined, but it probably doesn't have to be a solicitor, but some kind of formal framework for advice. So it could be, for example, they consulted Citizens Advice and something like that. Who went and had a look at the housing law that applied in terms of what they needed to do to get the tenants to vacate and, not necessarily actually seeking the advice of solicitor or paid for legal advice, but it would be having something, something more than just chatting to your friend or your neighbour or your family.

**David Stickland:** [00:03:32] Right. Okay, so that's good. It's not like a tight sort of definition of what might be legal advice. It's not going to be your friend or your next door neighbour perhaps but it doesn't have to be a solicitor or a lawyer. It could be your local advice service, as you say.

**Will Hadwen:** [00:03:48] Indeed. Yes.

**David Stickland:** [00:03:49] Great. Thanks. And what about situations where perhaps someone has done that and the six months has run, and then it sort of decided that there isn't a further disregard. It's decided that it's not reasonable to extend it further does that mean this is, this isn't available again, to somebody in the same property, with the same property?

**Will Hadwen:** [00:04:11] Well that depends. I think it is potentially possible for it to start again as long as it is fully stopped, so you've got to consider whether, uh, in fact, there was a period during which the property couldn't be disregarded because the steps had stopped. So maybe benefit also stops or the person stops claiming the benefit before you could potentially seek legal advice again to re-trigger it. Certainly how it works in terms of selling a property, you, you can't just keep re advertising it and get another six months. But on the other hand, if you completely took it off the market and were not subject to the disregard and then you started again, then it may possibly be possible to have a second six months.

**David Stickland:** [00:04:56] Okay, great.

**Will Hadwen:** [00:04:57] So it really depends on the facts.

**David Stickland:** [00:04:59] Yeah. Very good. And of course, we'll share details of the decision that you're referring to. We'll share that on our website too. Great. Thanks, Will. Sarah, good to see you. Let's find out from you what your first topic is this month.

**Sarah Batty:** [00:05:14] Hi, David. Yeah, I thought we might touch on the latest development in the migration of people off legacy benefits on to UC. We know that there's just a very few people left on income related ESA, and some of those people might still have Housing Benefit as well, sort of linked to that. And the DWP has now legislated to abolish income related ESA with effect from the 1st July. Okay, but but with an important two important exceptions. So those distinct exceptions are; people who have an appointee and people who the DWP has agreed within the last six months are in need of an appointee. Okay. So presumably this is there's been some delay in finding a suitable appointee for this group of people that the DWP are aware of, and that may well be in process. So it's there's some guidance come out as well to accompany it, which makes it clear that this is a brief time extension. Okay. So that in general they are in general they've abolished these legacy benefits now including income related ESA, but there's a brief time extension for some complex cases. So it's good that the DWP has recognised that there are a small number of income related ESA awards that need to continue for now until the suitable arrangements are in place and until people can be they've used the term in their guidance, 'complex cases' and they've used the term 'safe transfer'.

**David Stickland:** [00:07:17] Right. Okay. Thanks. Yes. So we're really nearing the end of the rollout of Universal Credit after having had many extensions to deadlines. I think before the 1st July, it was the end of March, I think. Is that right? That was the last sort of time we were expecting all of the claims to have been sort of migrated or ended. Now it's 1st July, and I think you're saying it's possible that that could, well, it will be beyond that for these two important groups, as you've mentioned. But they're expecting this to be a, like you say, a short time extension for those two more vulnerable groups, I think is what you've said.

**Sarah Batty:** [00:08:01] They haven't put an end. I think it's important to say they haven't put an end date on it. But I think we can imagine they don't want it to take too long. And we don't know how many people. But we know that back in February, there were only 4000 people nationally. And so since February, some of those people will have had Managed Migration notices and already have migrated. And so you would imagine by July, another perhaps they

are, perhaps DWP are aware that another bunch of managed migrations are in process. So yeah, it may be and I think the welfare rights sort of local authority, welfare rights advisers and other advisers dealing with vulnerable groups have been instrumental in bringing to the DWP's attention the fact that some of these some of the some of these complex cases as DWP, so vulnerable individuals are struggling to migrate and will and will struggle and can't be cut off, can't simply be cut off.

**David Stickland:** [00:09:01] Yeah. Got it.

**Will Hadwen:** [00:09:03] But, but it still means that for people who have a migration notice, the deadlines are still as in the migration notice, aren't they? Sarah. That's important to remember.

**Sarah Batty:** [00:09:12] Absolutely. Yeah. If you've been served a Managed Migration notice, you're expected to meet the deadline. And the DWP offers support, by way of the um enhanced support journey.

**David Stickland:** [00:09:26] Okay. Good. Thanks for that. Yeah. Sorry, Sarah. Yeah. Okay. So for those people that haven't yet had a migration notice it, it could extend beyond 1st of July, will extend beyond 1st of July. And then we'll need to provide, we'll be providing further updates on what might happen thereafter, I guess, via our Benefitscasts around that time. And Sarah, for those people who may be fairly new to benefits and haven't heard of appointees, when would someone have an appointee or might need an appointee? In what type of situation? When would that occur?

**Sarah Batty:** [00:10:06] It's someone who's not really able to deal with their own affairs? But it might not be always, and often a family member will be appointed by DWP and that can be, can be a reasonably straightforward process. A DWP would normally go out and do a home visit and check that that person, the proposed appointee, is suitable to be an appointee and understands the duties and obligations of an appointee. There might not be a family member. Some local authorities will become a corporate acting body, a corporate appointee. But only in cases where someone lacks mental capacity, which is a high threshold. And or there may be if the local authority itself isn't, some local authorities don't act as corporate appointees, but they work with other organisations, sort of independent organisations who act as corporate

appointees. So it may be that in these sort of cases, it's still being social workers perhaps are still involved in making assessments as to who might be appropriate to be an appointee.

**David Stickland:** [00:11:12] Right. Lovely. Thanks. Really helpful.

**Sarah Batty:** [00:11:14] The other group, just to finally say, there is another group of people who, who you might, who advisers might come across and it's people who have failed to migrate to Universal Credit. So who have gone past the deadline and haven't claimed Universal Credit. So they're not helped by this time extension. That's not the group of people we're talking about with this, this time extension, that those are people who are going to need advice and support to sort of get onto UC, because for them, there is no way back onto income related ESA. And those people might have really just really, really struggled with the UC process, or they might have chosen not to claim UC, or might be resisting UC because of their own views or confusion about UC. Okay. Again, really complex, complex cases.

**David Stickland:** [00:12:06] Okay. Thanks for clarifying that. Brilliant. Will, your second item. What's that?

**Will Hadwen:** [00:12:13] So my second item is another bit of case law where it's a more specific, if you like, issue. And that is what we call the relevant period in Universal Credit, which is where you can't have the LCWRA element for the first three months usually and what that actually says is that you can't have it until the assessment period after three months of medical evidence. But the regulations go on to say that if you would get you some Universal Credit, you your income would be low enough were it not for this provision that you should be treated as entitled to a penny of Universal Credit. Now what Universal Credit tend to do in these circumstances is to just give you an award that says £0 on it. And basically they've ignored this for a very long time and the claim's kept open anyway in order for the work capability assessment to happen. But, what happened in this case was it had a practical effect for a claimant who was the older partner in a mixed age couple, and he was entitled to the enhanced rate of the daily living component of PIP. That meant he was treated as having limited capability for work related activity, something that the DWP recognized fairly early on in the time on UC just over a month after they claimed. But because there was no acknowledgement that they were entitled to a penny, that prevented this claimant from doing certain things, one of which was getting Housing Benefit.

**David Stickland:** [00:13:53] Right.

**Will Hadwen:** [00:13:54] Um, because it was in a form of accommodation where despite it being a working age claim, he could have got Housing Benefit. So the tribunal, the upper tribunal said, yeah, that is wrong. This is actual entitlement to Universal Credit. You're deemed to have income low enough to have this penny, and you are entitled to that penny, and that has various knock on effects where something like Housing Benefit depends on you getting an award of Universal Credit. So I think it's really interesting. It confirms what's always been the case but it might mean that Universal Credit have to do something different practically.

**David Stickland:** [00:14:31] Great. So that's helpful, clarifies things. Um, and as you say, um it then acts, you know, it's confirmed that it is actual entitlement. It acts as a passport to maximum Housing Benefit, right? So it means that local authority doesn't have to go through a means test. They can sort of, they can accept that the DWP has already done that basically. And then they can implement or award maximum. So that's really, really helpful.

**Will Hadwen:** [00:15:00] Really helpful. Huge from that point of view. Yeah.

**David Stickland:** [00:15:03] And could there be any other sort of passported entitlement entitlements that we might think about checking?

**Will Hadwen:** [00:15:10] Yeah, definitely. Depending on the circumstances of the people concerned, it could be free school meals, could be prescriptions. Not for the older partner in this case, who was old enough to get them anyway, but in England, other people might need free prescriptions. And if their earned income was low enough they would be able to get them and it would be the higher of the earnings limits that would apply because of the limited capability for work. And then there's various other things spring to mind especially in Scotland, the Scottish Child Payment, which depends on entitlement to Universal Credit or something that is more than zero. All the regulations say I think, and um. Oh what else? Sure. Start maternity grant or best start grant in Scotland. I could continue. You could go on. But I'm not going to. Great. So it is, um, really useful thing to remember for people in that situation.

**David Stickland:** [00:16:10] Yeah. And this requires some fairly good understanding of the Universal Credit calculation. Most people are not going to be aware of this. Certainly claimants.

So you know for advisors how, how, how, how do we how do we sort of know, how do we recognise people for this sort of potential situation?

**Will Hadwen:** [00:16:28] Yeah, I think it's just got even more complicated because in the past we would have said, well, if you look at their maximum UC including the LCWRA element, will they get UC or not when you take their income into account? But now we have to think about whether that LCWRA element is the higher one or the lower one, and which will depend on some of the circumstances which we've discussed at length on other issues of the Benefitscast. So I won't get into that just now. But yes, it is more tricky to do that. So if you've got queries about maximum Universal Credit and what it should be, you can always get in touch with us.

**David Stickland:** [00:17:08] But we are. Thanks. Yeah. Of course. We are looking at the relationship between income and the maximum Universal Credit. So, you know, I guess if someone would, would have some entitlement to Universal Credit once the work capability assessment and the relevant period has passed, etc., then those are the sort of situations.

**Will Hadwen:** [00:17:27] Yeah. And in the case it was, I think the income would have been state pension and earnings because the younger partner was working. And so that makes it even more difficult because it wouldn't just be the pound for pound. But yeah. The work allowance and the taper as well to consider.

**David Stickland:** [00:17:43] Great. Thanks, Will. Very good. So Sarah, I think it's your second item. Is that right?

**Sarah Batty:** [00:17:51] Yeah. The item I was going to mention is another Upper Tribunal decision in relation to Universal Credit, which is about starting off the Work Capability Assessment process and how you can get it started and evidence your incapacity for work and this, this, this is a case where someone submitted a fit note and the, the sort of the Work Capability Assessment started and, and they were assessed from the date of the fit note. But they then argued that actually just over two years earlier, they'd already told the Department for Work and Pensions orally in person, in meetings and so forth, that they were unfit for work, and the Upper Tribunal, and they argued hang on a minute, there's like a process called self-certification, which comes before the fit note and I, I self-certified, but the Upper Tribunal judge um has said no, you can't orally self-certify for the purpose of Universal Credit. It does have to

be in writing. And so the, you know, that you can do that on the Universal Credit journal by reporting a change of circumstances and declaring your health condition on, on there. So that's, that's the best advice to people. But the decision is a good the other the positive thing about the decision is it's a good reminder that a fit note isn't the only type of evidence. You can then go on to supply the medical evidence regulations and talk about whether, do talk about alternative evidence. But before alternative evidence can be submitted, it has to have been unreasonable to have supplied a fit note.

**David Stickland:** [00:19:45] Okay.

**Sarah Batty:** [00:19:46] So in this case, the tribunal hadn't considered the reason whether or not it was unreasonable. So it's going back to a new tribunal in this particular case. But it sort of sets out the logical process that should be followed. So in most cases, people are going to be able to get a fit note. It's it you know it remains the best advice. Get a fit note. That is the designated way of telling the Department for Work and Pensions and evidence in it. But, you know, they can consider alternative evidence where it's not reasonable.

**David Stickland:** [00:20:18] Okay. Got it. Um, so a few things there then; to self-certify that can't be done verbally or orally in a meeting with your work coach, etc. that needs to be done in writing. So on the journal, I think you said or on the online account, that's the that's the best place to, to do that. That's important and then to supply fitnotes where you can. And in most situations, you would think that most people are able to, but if not there's a question of whether it's sort of unreasonable to expect a fitnote to be provided. And, and it may be that it's not reasonable and an alternative could be provided. Probably there are a number of situations where we could imagine that happening. And I guess evidence could be sought from, from, from other, um, other, other places, other people who may be able to sort of confirm that person's situation and provide some evidence.

**Sarah Batty:** [00:21:12] Yeah, the evidence has got to be though, it's got to be sufficient to show that the person is incapable of work. So again, it doesn't rule out a person giving their own evidence but is a person's self-declaration sufficient to show that they would, that they should refrain from work or seek or looking or doing that the person should refrain from work related activity. So sort of a letter from a health professional in writing is always going to be much better than trying to argue that, you know, I've told I've told you time and again about

but the fact that you've told people, trusted officials about your health and they haven't prompted you to get a fit note, you know, that that could be a situation which makes it unreasonable for you to have gone and got one right. Or there might be some kind of breakdown in the relationship between you and your GP, some kind of temporary situation. Or it may be that you're working part time and your GP doesn't want to issue a fit note because they don't really understand. I mean, the fit, you know, they don't really think that's appropriate. Right. And they might write a letter instead.

**David Stickland:** [00:22:20] Got it. Lovely. They're really helpful examples. Thanks, Sarah. Great. Uh, so a few minutes left, uh, to, uh, fairly briefly address our final item. So Will, what's your third topic?

**Will Hadwen:** [00:22:33] So third topic is, is something that comes up, every now and then quite frequently for me, um, and maybe for some other advisors out there as well, because we do get queries on it and it's about, Universal Credit and prisoners. So it's just a reminder that in the Universal Credit regulations, the basic principle is you're not entitled to UC as a prisoner. Except that if you're already getting the housing costs element, then that can continue, if you're not likely to be absent from your home for more than six months. So that might depend on whether you've been sentenced and if so, for how long and whether in total you're going to be absent for more than six months. So this gets confusing for a lot of people, but just to remember that principle. And then the other principle might be that perhaps your client had limited capability for work related activity before they became a prisoner. They definitely still have limited capability for work because there's a regulation providing that, that determination continues. There's no such provision for limited capability for a related activity. But you could probably argue, well, nothing's changed so they should have that again unless there was a problem with the earlier decision. But then you're not going to um, get around the fact that you've got that waiting period again, that relevant period for the actual element. Okay. So that's going to make it very difficult for people. And one of the things that might, uh, might stop your UC entitlement and then start again is being a prisoner, which again, is going to be an issue for people losing their entitlement to that higher protected rate of the element. So it seemed a topical thing to come back to.

**Sarah Batty:** [00:24:19] Could I ask a question here then? Will. Because this came up on a course recently, what happens if someone goes into prison and comes out again within the same UC assessment period?

**Will Hadwen:** [00:24:32] I think that's a really good question, Sarah and I think it is arguable that because what matters is their entitlement at the end of the assessment period, you ignore the, the non-entitlement that the non-entitlement just becomes hypothetical. And we don't have any case law on that that I know of. So that's why I would try and argue.

**David Stickland:** [00:24:52] Okay, so look out for any cases like that. Contact us, let us know.

**Will Hadwen:** [00:24:54] Because sometimes it's just a short period in custody. But yeah, Universal Credit might argue in the alternative that it doesn't come back and therefore requires a new claim.

**Sarah Batty:** [00:25:05] I wondered if very practically it would stop at the point they reported they were in prison. And then how would you and then get.

**Will Hadwen:** [00:25:13] And how. So you'd have to, claim it again, and then argue that the decision on the new claim should actually go back. And what we do know is that in practice, one thing which is remarkably quick is the interface between Prison Service and DWP. It's one of the quickest things in the whole of the benefits system, how quickly they find out that someone's in prison. Also, it seems to me anyway.

**David Stickland:** [00:25:38] Okay. Thanks both. And I suppose we should also flag up for those people working in supported housing, specified accommodation, temporary housing. It's a whole sort of different set of rules for Housing Benefit again, so a bit more complexity if you're working with anybody getting Housing Benefit and that happens, contact us. We'll help you with that on a case by case basis, but it will be a bit different again. Great. Thanks. Sarah, finally, your third item. What's that?

**Sarah Batty:** [00:26:04] It was about these 'right to try work' regulations that have now been laid by the DWP. For what they're worth with effect from the 30th April. So, there's a really, really briefly, the background about, about this is that the DWP thinks that the fear of losing

benefits is putting people off from, from work and so has sort of sought to reassure people by putting this in some kind of assurance into, into law. But the problem is, is that all the regulation does is say that paid work and voluntary work will not in and of itself trigger a work capability reassessment. So this is for somebody who is on disability benefits, on sickness benefits and wants to start working. So it's saying that the, the starting of work in and of itself won't trigger a work capability reassessment or a review of the PIP award if someone gets PIP. But the problem with that is that work, the work that someone's now able to do might be evidence of a, of a change in their condition or of their functionality. So, and this has been flagged up by the Social Security Advisory Committee, which is like a body that can review draft regulations and give advice to the government. And, and, and the, and the DWP guidance has acknowledged that that if the, the, the, you've got to think about the type of work the person's now doing, the environment they're working in, how do they get to work? How do they cope in work? What is all of that in relation to what the person's being assessed as, as having difficulty with or being incapable of in terms of the actual criteria for those, those benefits. So it doesn't, it, if that indicates a change, it doesn't stop a reassessment and it's an explicit in the guidance that they should still reassess people if, if, if there's been a change of circumstance and they've got the right for PIP to reassess you, to decide whether or not there's been a change of circumstance.

**David Stickland:** [00:28:18] Okay. So, so this, this really doesn't offer the kind of guarantee that we might like or perhaps might have been suggested because there's plenty of other situations where we could envisage that there would still be some kind of review or change to the award. Yeah. And I suppose the practice also we see, you know, we're seeing lots of overpayments, aren't we. And people hearing of overpayments of, of, of health and disability benefits, perhaps including where they've gone into work is a thing as well. And that's going to, you know, that's another thing that's probably more significant in terms of people's understanding of it and view of it.

**Will Hadwen:** [00:28:57] Yeah. I mean, that's a whole other issue because you've got to think about whether the, the overpayment is indeed recoverable depending on the benefit. But I think what Sarah's saying, and I completely agree is it doesn't really change the advice that we would give somebody who's considering going into work would be exactly the same advice as it is before these regulations come into force. What work is it you're thinking of doing? How did

you get your disability status in the first place? What points did you get in which descriptors? The client won't be able to answer that? But I would want to find that out and then consider whether the way it contradicts that has been a functional change.

**David Stickland:** [00:29:34] So a really sort of close and careful look at the award as it is and the circumstances of the case is what's required. Nothing changes as far as all of that goes. Great. Thanks both. Thanks everybody for listening. And of course, our advice email is available to you if you'd like support, we'll post the sources and reference references on our website. Until next month. Thanks very much. Goodbye.