

## Transcript - Benefitscast June 2026

**David Stickland:** [00:00:04] Hello. Thanks for joining us again, this month it's myself, Will and Marcin, and we're looking forward to sharing with you some court decisions, some updates and some things that we think are probably important if you're working in the world of welfare benefits. So let's get underway straight away. Will, I wonder what your first item is this month.

**Will Hadwen:** [00:00:27] So my first item is some case law and it's about claims for UC and specifically the date of claim. And it's a case called Martin Paterson versus Secretary of State for Work and Pensions. What happened in this case is that Martin rang the UC helpline with the purpose of making a claim. He said that that's why he was ringing but he was told that he had to wait three months because he'd recently returned from Ireland. Now that's rubbish on many levels, which I might come to later. And then what happened eventually is that he claimed digitally with the help of Jobcentre Plus. But that was more than a month later.

**David Stickland:** [00:01:07] Okay. So he phoned, tried to make the claim over the phone, was put off of claiming effectively, did it later. Right. Yeah.

**Will Hadwen:** [00:01:14] For whatever reason. We don't know for sure what happened on that call but anyway, he later claimed digitally in a Jobcentre with assistance, which is important. And he requested backdating to date of his original phone call. Now the tribunal decided the First-tier Tribunal decided that he didn't meet the conditions of regulation 26, which is the backdating regulation and it also looked at the regulations about the date of claim. So regulation 8 of the claims and payments regs says, how you can make a claim for Universal Credit and regulation 10 sets the date of claim. But they decided that none of those assisted him. However at the Upper Tribunal it was decided that actually the First-tier Tribunal had not made sufficient findings of fact to establish what Martin Paterson's date of claim was, so it was possible that that call that he made was to a number that's specified by the Secretary of State to accept telephone claims. Right. And if so, and if, if his claim was the type of claim that the Secretary of State would accept by telephone or was willing to accept in his case, then that could potentially could have been a telephone claim, maybe made on that day or later if the Secretary of State couldn't accept it on that day. Right. Or alternatively, if you didn't provide all the information on that phone call but he, he did so later on within a specific time period. If he was informed of defects and he corrected them within one month. Okay. Or even if those

things didn't apply, maybe in that phone call, he notified the Secretary of State that he would need assistance to make a claim for Universal Credit, and that was subsequently provided at a Jobcentre, in which case, under regulation 10, it would be the date that you first notified that you need assistance. So there were lots of reasons why actually, his date of claim could have been the date of his first phone call, which is what he said it should be backdated to and I don't think we can really say whether he's going to have any chances of success at the First-tier Tribunal, which the Upper Tribunal has said now needs to be held a new tribunal. But the important thing here is all the findings of fact that need to be made when somebody has made a phone call to DWP and you don't exactly know what was said or by whom. So it's possible he might still be successful if he's not, my advice would be that he needs to make a complaint. Although even his grounds for complaint are unclear. It doesn't seem to be fully established whether the wrong advice about the habitual residence test was given by the DWP or by the council. Okay. And further, there are statements to both effects. So somewhere along the lines he got the wrong impression, possibly because of wrong advice. So I'd say that to protect his position a complaint needs to be made as well. But okay. Because I don't know who to.

**David Stickland:** [00:04:27] Because a complaint may be the only way of getting.

**Will Hadwen:** [00:04:30] It may.

**David Stickland:** [00:04:31] Be if he's unsuccessful in sort of making the case that the claim was the original...

**Will Hadwen:** [00:04:37] That's right. If he can't get those provisions of reg 10 to apply, then complaint is the only redress. But it's still an important decision because it reminds tribunals. You've got to make findings of fact in these situations where somebody has rung the DWP. Right. And I know and I know Marcin does as well, that we see several clients who ring the helpline and are put off or given wrong advice, or for whatever reason, their attempts to make a claim get ignored.

**David Stickland:** [00:05:06] So this has been a problem forever, isn't it? Really? And Will you, you mentioned you know, it could be the type of claim that could be taken or made over the, over the phone. For people that might not know what, what type of circumstances might bring about a claim that should be made in that way?

**Will Hadwen:** [00:05:26] Well, I think there are two questions in that really. One is what might cause a claimant to want a telephone claim. Okay. Which is one thing and the other one is what might the Secretary of State for Work and Pensions accept? What is a class of claim which they would accept or where they would be willing to accept one. And the, the guidance um that we have on Universal Credit does now say that you can have a digital account for a number of reasons, and even that you could switch from a digital account to a telephone account if you needed a non-digital account, But examples that I would think of would be things like your client is unable to claim online because they can't physically get online for long enough. They don't have assistance to do that or they could claim online, but then they wouldn't be able to manage the award online because they wouldn't be able to log in frequently enough. And we know that that leads to all sorts of problems where people don't report changes, don't see that they've got a claim review, all of that sort of thing. And, and their claim can end up, their award can end up um terminating because they haven't logged in. I've seen messages.

**David Stickland:** [00:06:37] Thanks. So people might like to think about or look out for those types of situations. And as you were saying before, you know, consider if someone has attempted to make contact, perhaps by phone or to make a claim by phone previously, it may be that that's worth looking at and going back to with a view to getting, getting the arrears rather than a backdate. Right? It's different to.

**Will Hadwen:** [00:06:56] Following that up. Exactly. What was that? Was it a request to make a telephone claim? Was the information provided or was it a request for assistance, etc..

**David Stickland:** [00:07:06] Great. Lovely. Thanks, Will. That's good. Marcin, good to see you. I wonder what your first item is this month.

**Marcin Brajta:** [00:07:15] Hello. Hi. So my first item is a quick update on the Housing Costs Element. Probably the same rules will apply to Housing Benefit as well. And I just wanted to mention that because at least in England, tenancies have changed slightly since the 1st May. So I think there might be quite a bit of confusion I think. It seems that, you know some landlords are confused, some tenants are confused. So it's possible that the DWP will also be a little bit confused about what's going to happen. So I wanted to cover a very quick look at this two cases. One is called TU and the DWP and the other one is actually don't know how to pronounce their name. It's Maher Hsnatou I think.

**David Stickland:** [00:08:00] Ok, people can read it in the sources.

**Marcin Brajta:** [00:08:01] Yeah, yeah, yeah. And I do apologise for anyone who knows how to pronounce that case. That's the problem now when we have full names sometimes of the appellants, it's just much more difficult to like work out how to pronounce them. So it's just a very, very quick overview. I mean, some of the reasons as to why people are refused Housing Benefit or Universal Credit Housing Cost Element is because a decision maker might decide that the case is maybe not commercial.

**Marcin Brajta:** [00:08:31] Okay. Or maybe because the tenancy was created deliberately in order to obtain Housing Benefit or Universal Credit Housing Element. So that's the kind of contrived benefit rule. Sure. And they're actually not the same. So, so it's there, there is a certain degree of an overlap, but it would be important to just kind of distinguish them. So we very important, first of all to try and identify why, for example, the Universal costs, Universal Credit Housing Cost Element was disallowed. Was it because the tenancy is not commercial, or is it because the tenancy is well, contrived? So it's created obviously take advantage of the UC system. So what happened in this case it's quite a common one. Basically, the judge said that because the landlord did not seek to evict the tenant because of rent arrears and because there was no written agreement, that meant that the agreement was not commercial. And that's what the statement of reasons seemed to suggest. And that's when, again, the decision went wrong, because obviously these are factors which will point towards the agreement not being commercial. But, you know, that's not really the end of the story. So again, you have to consider, you know, make findings of facts about all the other arrangements and just really explain why there was no commercial, why there was no tenancy agreement and so on, because there are many, many reasons as to why there might not be a tenancy agreement, which is something that I wanted to quickly mention in relation to the Renters' Rights Act.

**David Stickland:** [00:10:14] Okay. Yeah.

**Marcin Brajta:** [00:10:15] Some of the things that will be happening will be, you know, kind of much more difficult to evict tenants these days because especially in England, hopefully because of the end of no fault evictions. Sure. So an interesting case that I had recently was a client of mine lived in a tenancy and her husband died. And what people are very often not aware of is that a tenancy which is an assured tenancy can be well, succeeded to. So she

actually became a tenant even though her name was not on the tenancy agreement. Okay. So that is succession. And again. And then if she were to die now, it would be possible for her son to live in that property, to inherit that property, which is completely outside of the succession scheme. If, for example, he was named in her will. Or if, for example, the intestacy rules applied. And in the past we didn't really have to worry too much about these cases because the landlord would sometimes just serve a section 21 notice if they didn't want to have that new tenant as their tenant. But it would be much more difficult to end tenancies now, because the kind of one of the possession grounds is not really available to someone who inherited the tenancy and lived at the time of the death with the tenant. So it's possible that you might have a situation where a tenancy was granted to person A, then person B then succeeded to the tenancy, then the person B dies and someone else inherits that tenancy. And then we'll have to explain all of that to the DWP. And my main concern is that the DWP will just say, why don't you just go to your landlord and ask for a new tenancy? And the thing is that, okay, well that's cool. Sometimes people might want to have a new tenancy, but sometimes they might not want to have a new tenancy. Right? So in my client's case, the landlord would be very happy to give a new tenancy in exchange for extra rent, because she's now trying to increase rent to over £5,000 a month. So if so, my main concern is that if someone follows the advice to why don't you just contact your landlord and get yourself a new tenancy when it's completely unnecessary, then that can create a problem where the landlord will happily, happily grant the new tenancy in exchange for something else, and people will then get into financial difficulty. So we just have to be aware of the fact that, you know, there is no need for a written tenancy agreement to, to begin with.

**David Stickland:** [00:12:38] It's certainly very case specific. And there's no sort of easy answers to this, quite often, it's a matter of sort of understanding exactly what the details are in that particular case. People should um consider challenging decisions and of course can contact us for support and we'll be happy to sort of help out where we can in terms of understanding the law.

**Marcin Brajta:** [00:12:59] Yeah, yeah. I think challenging decisions. If in doubt, just submit that mandatory reconsideration. Ask for an explanation as to why that decision was made, and very often you will see that you know something went wrong, hopefully. And yes, if in doubt, contact us because yeah, it's possible these cases would just become a little bit more complex

because at least my experience is that the DWP's approach, at least in the private rented sector, is that these tenancies are kind of one off, short term disposable, and you need to have your name on a piece of paper. If you don't, then it's not on a commercial basis, which is wrong.

**David Stickland:** [00:13:33] Yeah. Okay, lovely. Well, thanks, Marcin. It's good to have understood that. And like you say, things are changing as well with in England with the new housing legislation. Great. Will, let's turn back to you and find out what your second item is. We've definitely got time to look at that in a reasonable amount of detail, I think.

**Will Hadwen:** [00:13:50] Okay. Okay. I just wanted to add to what Marcin was saying that I've had a few of these cases too, unconnected to the Renters' Rights Act, by the way, because they're not in England. But that I often see the DWP being confused about the two grounds, the commerciality and the contrived. And like Marcin's saying, those two situations often do overlap. They don't necessarily overlap. However, what I've done with some appeals is because the mandatory reconsideration notice was so unclear, I've put a defence to both. Because what I don't want to happen is to to just concentrate on one and for the tribunal to then decide actually the other one applies. So, so yeah, I just add that in. And that's in cases where the name was on the tenancy agreement, it's, it's not particularly complicated. It's more whether it's commercial because of the nature of the rent or the fact that they might, wouldn't want to evict and then that sort of leads to whether it was contrived as well.

**David Stickland:** [00:14:49] Great. Thank you.

**Will Hadwen:** [00:14:50] Okay. So my second one is a compensation scheme and this is a bit of history as well. So you might remember a case that goes back quite a long way. In fact, all the way back to 2000, about claimants who claimed UC when legacy benefits were wrongly ended. And essentially it was determined that they couldn't return to those legacy benefits. Right. And I think now that's completely established. We wouldn't question that. They did manage to get those termination decisions revised. So they, the, the legacy benefits shouldn't have stopped, but they had subsequently claimed UC.

**David Stickland:** [00:15:30] Right. So they're sort of trapped in Universal Credit.

**Will Hadwen:** [00:15:32] They're now trapped on Universal Credit. Yes, exactly. And, in some of those cases, the ones in the test case, Universal Credit was worth less than their legacy benefits. Now permission to appeal in that case, where it was that was found to be unjustifiable breach of human rights, that difference in entitlement, that permission to appeal was refused back in 2021. I went and checked it was over five years ago, but now we've finally got a scheme for compensation, and you've got to have been on a legacy benefit. A decision was made to end it. You claimed Universal Credit often because you were advised to do so within one month of that legacy benefit terminating. And then you your UC turns out to be less than your legacy. Your challenge to the termination of the legacy benefit is successful, but you cannot go back to the legacy benefit because you're now on UC, which is worth less. So all of those things apply. You could be entitled to compensation.

**David Stickland:** [00:16:34] Right. Great. Thanks. I made a note of those and I'll try and summarise them because this is what people should be looking out for. Right. So well, potentially to identify a possible sort of award under this compensation scheme. So I think you said someone was getting a legacy benefit. A decision was made to end that legacy benefit. Yeah. Then that person claimed Universal Credit. Universal Credit is less, so they're worse off. And then they've successfully challenged the decision to stop the legacy benefit, I think, is what you said.

**Will Hadwen:** [00:17:03] Right. And importantly, that UC claim must be within a month of the legacy benefit terminating.

**David Stickland:** [00:17:09] Right. Thank you. Yeah. Missed that bit out. Yeah. Good. Okay. Cool. Thank you. Yeah. And it does seem like a long time ago now, doesn't it? I mean, I was, I was sort of casting my mind back to, to all of this and it was so routine at the time. We were sort of doing better off calculations for people. And should they claim Universal Credit, should they not claim Universal Credit because it was so kind of terminal and you couldn't go back and etc., etc.. so just for people that sort of might need reminding, what, what are the sorts of situations where someone might have been in that position and then become worse off? What might their circumstances have been? Yes. When they became worse off.

**Will Hadwen:** [00:17:42] Yeah. And this is really important because we've got some advisers out there who might only have become into come into welfare rights since this decision. So it is really, not even reminding. It's kind of like a history lesson.

**David Stickland:** [00:17:56] Fair enough. That's a good point.

**Will Hadwen:** [00:17:58] Which, which is fine and useful. So the sort of examples that I would give would be things like maybe somebody on old style employment and support allowance was found fit for work, their ESA stopped. They later challenged that fit for work decision and they were successful. But in the meantime, they were on UC. Or somebody was a carer getting Income Support. The disabled person loses their disability benefit that causes Income Support to end. Their carer claims UC but in the meantime the disability benefit and then the connected Income Support claim Income Support termination are successfully challenged. So this kind of thing did happen. You saw it happen all the time and it's definitely worth looking out for those understandably, difficult, clients are not necessarily going to talk about something that happens at this point quite a long time ago, but worth looking out for now.

**David Stickland:** [00:18:54] And you make a really good point, Will that lots of people won't have any awareness of this, of course and, and, you know, we'd like to help people as much as we can, of course. So I guess if we're sort of boiling it down even further to be looking out for people that may have got legacy benefits. So if you know that somebody did and to, to, to sort of find out you know, if they considered themselves to be worse off, you know, having made that, that, that sort of move to Universal Credit, then there might be something to explore here. It's, it's tricky, especially if you're, if you've come to benefits, you know, more recently than that because of course you wouldn't have that, that knowledge as you, as you correctly pointed out before. Thanks. Okay, good. Let's briefly go back to you Marcin, we've got a little bit of time left. So if we can sort of fairly quickly run through your next item and then we'll sort of just, um, finish with a roundup of what we've got left.

**Marcin Brajta:** [00:19:49] So let's have a look at what happened in this case. So this was one, this one was quite interesting. So first of all, we're looking at severe disability premium and Income Support. But the same rules will apply to Pension Credit. So what happened in this case? The relevant facts, just to summarise them very quickly. We had a family and we had the claimant and at the relevant time the claimant was living with a couple of family members,

including her son, who turned 18 back in 2013. So basically what that means so when she was awarded Income Support, she lived with her husband who also received Personal Independence Payment. So again, if we look at severe disability premium living with someone who was in receipt of a PIP, a relevant benefit will not stop her from getting the severe disability premium.

**David Stickland:** [00:20:43] Right. Because let me just sort of clarify their Marcin for those people that might not know, the severe disability premium requires you to be living alone or to be effectively treated as living alone. And certain people can be ignored, including other severely disabled people. Yeah.

**Marcin Brajta:** [00:21:00] Then she lived with her husband, so that was fine, then lived with her daughter, who was under the age of 18. So that also was fine. And then also lived with her son. And her son was effectively blocking her from getting the severe disability premium. And the same would apply if someone was on Pension Credit. That adult son would block them from getting pension or from getting the severe disability addition. So it was her son who was blocking her.

**David Stickland:** [00:21:26] So it was her son, but not the other people because they could be effectively sort of ignored.

**Marcin Brajta:** [00:21:29] Not the other people. Right. So then she claimed Income Support in July 2016. And then that was backdated to the 19th July. And then she claimed Personal Independence Payment, which is interesting. She claimed in Personal Independence Payment after she claimed Income Support. But Personal Independence Payment was backdated to before her Income Support actually started. To cut the long story short. Basically, the main problem was that if there was a change of circumstances under section 6(2)(a), then the general requirement is to basically report that within a month. Okay. And that didn't happen. Right. So the problem is if you don't report it within a month, if you report it late, then the decision will take effect from the date when you actually report that change of circumstances. So what she was effectively trying to argue is that actually there was an additional trigger which was her being awarded a qualifying benefit. Right. Because that benefit wasn't really well, it did not require her to report a change of circumstances within that one month. And her argument was that if you have two separate triggers, so section 6(2)(a), so there was a change of

circumstances, her son moving out or section 6(2)(e) her being awarded a relevant benefit. Then she can choose the one that's more beneficial. Okay. So that was quite a cool argument. Yeah. And like a lot of that decision really kind of, you know, deals with that. And I think that's what makes reading this decision extremely difficult. But I think that if you search for a paragraph, paragraph 162, yeah, there is a section which I think we should start with when we're looking at that decision. It basically says that that was the, the kind of judge comment and saying that Mr. Johnson hit the nail on the head when he said that the claimant's fundamental difficulty was that at the point at time in which the trigger was engaged, so, so she was awarded a benefit, she had a non-dependent living with her, and as a result, she was not eligible to receive severe disability premium. So that effectively blocked her right from relying on that other trigger.

**David Stickland:** [00:23:52] Right. That couldn't work because of the presence of the non-dependant.

**Marcin Brajta:** [00:23:54] So even though obviously that trigger maybe happened at that point, she was blocked from getting that severe disability premium. So what the judge said. And that's in the preceding paragraph, is that that trigger is not a rolling trigger. So even if a change happens, you're awarded a qualifying benefit. If at that time you're blocked from getting SDP for another reason, then that trigger will not be a rolling one, which will enable you to five years later say, okay.

**David Stickland:** [00:24:21] At some point in the future.

**Marcin Brajta:** [00:24:22] Now, my son moved out. There was a trigger five years ago. Now why don't you readjust my award, even though I failed to tell you about the fact that my son moved out. So what she should have done is that she should have notified the DWP about the fact that her son moved out.

**David Stickland:** [00:24:42] I think what you're saying is there's two potential triggers here, and we need to be able to sort of clearly distinguish between them. There's the change of circumstances, one where perhaps someone becomes eligible for the severe disability addition because let's say somebody moves out. What you're saying is I think, that has to be reported as a change of circumstances, and it relies on that. But if someone becomes eligible for the severe

disability addition in Pension Credit, let's say, because they've been living on their own for a while, and then they get an award of a qualifying benefit, that that should allow for the decision to be changed anyway and they should get the arrears.

**Marcin Brajta:** [00:25:21] I would recommend is that, you know, this is a really, really long decision. Have a look at these examples in paragraph 190. And if you have a situation when you know that happens, which is really common, like people notify things like just kind of have a timeline of events. Okay.

**David Stickland:** [00:25:37] Okay. All right.

**Marcin Brajta:** [00:25:38] So try and see if these examples in paragraph 190 apply. And also have a look at paragraph 206 where the judge explains the rationale for that.

**David Stickland:** [00:25:46] Okay, great. So we'll include that of course in our list of sources. Paragraph 190, as Marcin says, will be a useful one to look at. So please do. Great. Thanks. So as we finish, because we've definitely sort of used up our time now. And that's fine because it's important to have a proper discussion about these things. I'm glad we did. But perhaps before we go, I'll turn to you first Will, you can share your final item. Tell us what that is. You can introduce that to, to, to those listening. We'll include it in our sources.

**Will Hadwen:** [00:26:13] Yeah. So I'll just introduce the fact that there's some pilots looking at how fitnotes should work. There are four pilots. In two of the pilots the fitnote wouldn't be issued immediately, and instead you'd be referred to various types of support. It's unclear to me at the moment how this will work for benefits. So hoping that some more guidance comes out about it soon, or someone, possibly me, asks a question or gets a question asked about it to clarify, but we'll put the sources in, um, to the document, and then you can see for yourself why it's a bit of a worry. Yeah.

**David Stickland:** [00:26:48] Thanks. Both. We've come to the end. Grateful to you both and for everybody listening. Until next month. Thanks again. Bye.

**Marcin Brajta:** [00:26:54] Thank you.