Benefitscast Transcript – August 2026

David Stickland: [00:00:05] Hello and welcome to our August Benefitscast. It's our monthly round up of what's going on in our social security system. And to discuss things, it's me, Will Hadwen and Kate Anstee this month. As ever, I'll start with you. Will. What's the first item you've got this month?

Will Hadwen: [00:00:23] Okay, so my first item is possibly unwelcome news that we're going to see, people still on DLA, getting letters about the move to PIP. You might remember that started ages and ages ago and it took longer than they expected. And then, the pandemic intervened and they stopped activity for a while, but restarting in September. They're going to start off with just a few thousand cases. And this is in England and Wales, by the way, and they'll be selected randomly by postcode because they want to test how it goes with people. I think people might be very surprised after all this length of time. So as it happened before to, to jog your memory, or maybe you weren't in advice before you'll be invited to claim PIP. Um, and you, if you take up that invitation, you'll then have an assessment of some type for most people. If you don't claim PIP, your DLA will end. It's um just worth saying that this is just a DWP move so it doesn't affect the Department for Communities in Northern Ireland. They are separate. Doesn't affect Scottish disability benefits. They've all been transferred. People in Scotland have all been transferred to an equivalent Scottish disability benefit. And there's sort of separate advice that can apply, uh, up there. So it's just England and Wales, people that are still on DLA. Depending on your age, you might get an invitation to claim PIP.

David Stickland: [00:01:56] Okay, great. Thanks. And just to be clear, Will. And for those people that haven't been working in benefits for maybe quite as long as we have, we're talking about people that were adults who were getting Disability Living Allowance at the time or before PIP was introduced in what, April 2013?

Will Hadwen: [00:02:14] 2013. Yeah. So the key is that we're talking about people who were over 16 and under 65 on the 8th of April 2013. So if you're still on DLA, but you were already 65 on the 8th of April 2013, you don't need to worry about this. You can stay on DLA.

David Stickland: [00:02:34] Okay, great. So, this is approximately 150,000 claims, although not all of those are going to be done immediately. You said it's a small number initially.

Will Hadwen: [00:02:48] It's starts off small for sure. How quickly it will ramp up I suppose. Depends on how those first 3000 cases go. Um, so the information that we've got about this at the moment isn't fully in the public domain. Um, it's for Rightsnet subscribers only. So I will be supplying a source, but not everyone will be able to see the source, unfortunately. But I still think that's really important for everyone to know, um, before this all starts up.

David Stickland: [00:03:14] Right. Great. And it will be of those 150,000 claims, most of those people will, will get an invitation to claim PIP letter. You talked a bit about age. What we're saying is this is people who were of working age at the time that PIP was introduced. Right. So older people who were of state pension age or men's state pension age at that time, I think it was.

Will Hadwen: [00:03:36] Yeah. That's right, that's right. So it's probably easier if we just say it's about whether or not you were 65 on the 8th of April 2013, if you were already 65. This isn't going to affect you.

David Stickland: [00:03:50] Fabulous. Thanks. That's nicely illustrated it for us. Great.

Kate Anstee: [00:03:53] I think it's, interesting as well, that I think people did think that this might have ended some time ago and of course it's restarting. But also just I, I like the emphasis on the invitation of the letter because that has caused problems in the past, hasn't it, with people not realising what will happen.

Will Hadwen: [00:04:15] Yeah. Yeah. It's, it's the, the sentences about what happens to your DLA, which are really important. If you don't take this up, your DLA is going to come to an end. So yeah, we've got to make sure that people, um, make an informed decision about what to do. And most of the time that's going to be to claim PIP.

David Stickland: [00:04:31] Mhm. So if you're working with someone who, you know, comes into your office and says, I'm getting Disability Living Allowance, I've got this letter telling me to claim PIP, what should I do? Chances are they are. It's going to be, it's going to be advisable to claim PIP in, in, in most cases, assuming it's somebody of that age, you know, who was under 65 at that time.

Will Hadwen: [00:04:49] Yeah, yeah. And then they may well need support with that because it is a very different benefit.

David Stickland: [00:04:53] Right. Yeah. Great. Thanks. Both. That's good. Uh, Kate. Good to see you. I wonder what your first item is this month.

Kate Anstee: [00:05:01] Thanks, David. Um, yeah. So I will discuss the case of GB versus Secretary of State for Work and Pensions 2026. I think it was a June decision, issued in July. Uh, so the key issues are, uh, it was about whether uh, GB, uh, the client in the case had limited capability for work related activity based on substantial risk factors under schedule nine, paragraph four of the UC regulations 2013. And I'll mention what schedule nine, paragraph four is in a moment. Yeah.

David Stickland: [00:05:36] And this is something Kate, this is something we talked about last month, because we'll talk about the fact that there are fewer of these decisions happening right now. And we were sort of musing as to why that might be. So this is substantial risk where people are found, um, not to have, uh, limited or they, if they were to be found to have limited capability for work related activity. There would be a substantial risk to their health.

Kate Anstee: [00:05:59] Definitely. Definitely. Yeah. So it's a wordy regulation, I must admit. Um, and the other key issues were um, was the work related activity that GB was required to do under their LCW status did that placing them at substantial risk, uh, and whether the first tier tribunal erred in law by assuming that only the only work related activity imposed on GB on GB would be undertaken in his home within flexible time. So just to come on to that wordy, regulation, David, it's "the claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work related activity." Okay. So as you've said, it was about whether the limited capability for work, the work related activity imposed on GB, Place them at substantial risk. Right. Okay, so just for a bit of background context. GB has ASD on the autism spectrum disorder. Um, anxiety ADHD, uh, and the upper tribunal judge does actually note in the in the, in the, um, commentary that, uh, that there is previous mental distress. Okay. GB scored points under activities 15C, I think 15C and 16B so this is about being unable to get to an unfamiliar place unaccompanied and also social engagement being precluded due to mental distress. So it was accepted that that threshold had been met for, for those particular activities. Right. But GB was already being mandated to attend in person a restart programme at the jobcentre. Okay, so in April 2024, he was mandated to attend that program. And then in, uh, he queried that and the work coach said, yes, it was mandatory as part of your work related activity, but we'll provide you with, uh, you know, support to be able to do it. Okay. So what happens is the mandatory reconsideration goes in, it gets refused, GB appeals to the first tier tribunal. Mhm. Now, what's interesting about it is the first tier tribunal accept that GB was attending Restart and that had been that had been mandated to attend. Yeah. But there was this assumption, if you like that, because that was, uh, not appropriate that it would be removed, that the work coach would just kind of remove that. Okay. And therefore, the assumption was that any work related activity for GB would be the most onerous. So they list the most onerous and least onerous, most demanding, least demanding. The most demanding would be able to be undertaken in his home. Looking on the internet, using the telephone perhaps, doing research about a future career. Okay. Okay. So where this fell down was well, what the upper tribunal judge has said and they've, they've, they've allowed the appeal, remitted it back, um, for, for another hearing about whether, whether LCWRA should be, you know awarded, but what they said was that it's not up to the work coach to be able to make that selection. Okay. So schedule nine, paragraph four, is a safeguard from, unintentional imposition of inappropriate work related activity, basically. And what?

David Stickland: [00:09:44] Okay, so we can't rely what they're saying is we can't rely on the work on an assumption that the work coach will only apply certain types of work related activity. In this case, stuff that can be done at home. We can't rely on that being assumed.

Kate Anstee: [00:09:58] Yeah, exactly. And and, and what the judge helpfully did was refer to some of the more familiar cases that we know about. IM from 2015, 2014/2015. KC from 2017, where there's a two stage approach to identifying whether some what, what work related activity somebody should have. First of all, what is available in the local area? Okay. That particular local area to the claimant. And then what can that claimant actually do, not what they might hypothetically be able to do, not they might, you know, here's a list of things you can do and some that you can't do. And therefore it's up to the work coach to decide which apply. The judge says quite specifically that the Secretary of State must nail his colours to the mast in advance and take off the table any activities that he agrees could not be imposed. And then the first tier tribunal must apply the schedule and see what remains.

David Stickland: [00:10:54] Okay. So any types of work related activity that they're not going to be asked to do should be explicitly stated by the decision maker, rather than assumed that it will be applied by the work coach.

Kate Anstee: [00:11:06] Yeah. Or that it could somehow be done with some reasonable adjustments. But it's, you know, that it's left to the work coach to decide. Yeah.

David Stickland: [00:11:15] Okay. That's good. Great.

Kate Anstee: [00:11:18] Yeah.

David Stickland: [00:11:21] Okay.

Kate Anstee: [00:11:21] That's it on that one.

David Stickland: [00:11:23] Yeah. That's good. Yeah, that clarifies things, I think, doesn't it? And and I guess we ought to be reminding people that this is in cases where someone has, it's been found that they don't have limited capability for work related activity under the sort of the general provisions, if you like. This is sort of secondary to that. And we should be sort of making sure that it gets applied properly in this way.

Kate Anstee: [00:11:44] Yeah. Yeah. And we should expect it to be at that decision maker stage. But we obviously know that in practice that doesn't always happen. And so, you know, sometimes these responses or these lists are not coming to light until the person would appeal to the first tier tribunal.

David Stickland: [00:13:41] Very good, thanks both. And just a reminder to everybody that we if you want to look back on last month's Benefitscast, we discussed some of this and Will give some useful examples as to what might constitute substantial risk. So that's on our website if you want to look back on that. Great, thanks. Thanks. Both. Will turn it back to your second item I think.

Will Hadwen: [00:13:59] So I've also got a bit of case law at this time. It's PIP and it's a case called WG versus Secretary of State for Work and Pensions. And this is about what it means to be able to do an activity "safely". And you might remember that there's a bit of the PIP regulations that says you can only be taken to do something if you can do it safely. And that means, um, in a manner that's unlikely to cause harm to you or to another person. And there's a bit of relatively old case law now RJ that talked about what that harm was or needed to be. And it said usefully, it doesn't mean there's something that really has to be more likely to happen. That's not the test. Um, even if it's not so likely to happen, what we're looking for is a possibility of harm. A possibility of harm, which you wouldn't ignore. So something which even if it's the probability of it is very low, the severity of the consequence might be so high that you would still take it into account. Like if you're going to slip in the bath, you, you might think I'm not, I'm very unlikely to slip in the bath, but nevertheless, if you have some sort of disability, that might be a risk that you would be sensible not to ignore and just have somebody outside the door in case. So that's what RJ said. Let's, we look at the likelihood of the harm and the severity and we weigh those up. So that a low risk of, say, falling over and knocking yourself out is as relevant as a high risk of a more minor injury. But the tribunal in this case that I'm talking about just now, WG. They went very wrong because they assumed that because RJ is about someone who has epilepsy and has that without any warnings of the seizures coming on, and because the claimant in WG didn't have that sort of condition and was talking about fainting episodes, that they would didn't need to apply the principles, and that that was clearly an error of law. It hadn't understood the test in RJ, which doesn't rely on having someone having a particular condition. Um, it's not necessarily something to do with the loss of consciousness. It could be any sort of disability that makes an activity less safe.

David Stickland: [00:16:27] Okay.

Will Hadwen: [00:16:28] Um, and so they, they failed to consider whether she was at risk specifically in relation to preparing food. But I think it could probably have been made out in other activities as well.

David Stickland: [00:16:39] Right. Okay. Good.

Will Hadwen: [00:16:42] There's a number of other errors that they make. And I, I would say it's well worth having a read of this case just because some of the errors that the tribunals make are so easy to fall into. And it's something that if you do a lot of representation, it'd be quite useful to you and think, okay, great. Um, but what I've picked out from it is just that reminder that, um, the risk is not about, um, a specific condition, but whether a condition means it's more likely that there's a risk of harm, either a very high risk, which may not be that likely or a very high likelihood of a smaller risk.

David Stickland: [00:17:22] Okay. Great. Thanks. So as you say, clearly there was an error of law in this case. The um test wasn't applied correctly. Thinking about whether there's a possibility of harm rather than a likelihood or a probability. Um and people can take a look at the decision which of course we'll post in our sources. Um, and I guess it's helpful to remind people that, you know, this is in the context of regulation 4 whether you can do something reliably rather than whether you can sort of do it absolutely and it's, and we should remind people that it's not just about whether you can do it safely. There's other aspects to this within regulation 4 Will, isn't there.

Will Hadwen: [00:18:02] Yeah. That's right, that's right. And those ones that you, you'll have come across if you've been on our PIP course. Um the other ones are, can you do it repeatedly so as often as reasonably required. Mhm. Uh, can you do it to an acceptable standard. So what's the outcome of what you're doing. Um, and um, can you do it within a reasonable time? And something else that comes up with in WG actually is that she allowed lots of extra time to get to a place that she didn't know. Mhm. Um, and again, the tribunal seemed to sort of more or less have ignored that. And, um, assumed that if she left extra time for journeys, because that wasn't to avoid overwhelming psychological distress, it wasn't relevant. Well, that was incorrect because you don't have to be, um, worried about overwhelming psychological distress to get points in, um, that activity, which is mobility activity one. So there's more than one error here. Okay. Um, and two of which happened to relate to the reliability criteria.

David Stickland: [00:19:08] Mhm. Great. Thanks. Some really good stuff there. We've had some good discussions. Um, I think we've got, I think two more items from you, Kate, and one more from you Will, um, in the time that we've got Kate i wonder if you could briefly tell us about your second item.

Kate Anstee: [00:19:24] Yes, certainly. Okay, so this is a very recent Citizens Advice report, uh, about Universal Credit and domestic abuse. A spotlight report, um, I think from last week or the week before. But in summary, and of course, you know, uh, we want to give it the sort of the air time it deserves. Um, but it's a brilliant report and obviously suggest everybody goes and reads it. But the, the, the kind of main issues that came out from, from a lot of the research and following the violence against women and girls reports and things like that. And there were six key areas of problems. Okay. So first of all, joint claims for people, uh, with one payment into a single bank account. Okay. Claiming Universal Credit. So the claims process itself, the amount of evidence that somebody might need to provide, for example, if somebody fled a situation, they might not have any ID, they might not have any bank accounts, they might have been other issues around, um, you know the abuser using fraudulently and having made claims and things like that. So claiming UC the claims process very difficult, barriers to tailored support. So there's an onus on the on the claimant to disclose information in order to access appropriate support. So that misses opportunities to have natural conversations and to provide urgent support. And as Will said earlier, there's a there's a very high threshold to be met of what you disclose and who to and how that's disclosed. Housing cost support, uh, big issue. Um, the DWP have the, uh, discretion or at least it's even in the regulations. Should I say that say, for example, there's a 50% each joint liability for tenancy and the victim survivor stays in the property, they can fund all of the housing costs, but often they'll only give 50%. Um, and of course, things around the LHA rate. And then the final one is inaccessible assets. So, uh, somebody might have assets, but they cannot access those assets. Uh, that might, may mean they have to have contact between, um, the person that they fled from. And so that might be an unsafe conversation. But also people cannot often access their assets when there's a separation involved anyway. So those are the six key problem areas that were identified.

David Stickland: [00:21:54] Mhm. Great. Thank you. Yeah. Like you say, I think the report does a really good job of explaining why the current rules are not working and how they're insufficient and are often missed and of course we'll include that in our sources as well. We'll encourage everybody to have a, a really good read of that. Great. Thanks, Kate. Will? So your, uh, final item, I think.

Will Hadwen: [00:22:22] Yes. My, my final one is about assessment recordings. So, uh, there was a press release recently saying that recordings of both your PIP assessment and your work capability assessment will be made by default. So in other words, if you don't want it recorded, that's what you have to ask for. The guidance on this is really interesting and we have put that in the sources. So you can go and have a look at it. Um, and I think having read that and having heard from Kate some experiences, I would still recommend that if you know, you want a recording, tell the assessment provider in advance.

Kate Anstee: [00:23:01] Definitely.

Will Hadwen: [00:23:02] And if you don't want to be recorded, tell them in advance or, or if for some reason during the assessment you feel uncomfortable, you can say it then as well. Okay. But ask for what you want is the basic message. Um, because I'm not sure that this, the spirit of this guidance is really getting through.

David Stickland: [00:23:19] Okay. That's good. Thank you. So yeah, be explicit. You know, make a, make a choice. You can make that choice either way to opt in or to opt out, although it should be that you only have to, it should be that you only have to opt out. But yeah.

Kate Anstee: [00:23:33] The default automatic. But yeah, I don't think that's happening.

Will Hadwen: [00:23:37] Yeah. And then the other thing briefly is to get your assessment recording afterwards. The simplest way, which is absolutely fine if you're digitally able, is to get a link sent to your phone. And then if it's a smartphone, you can download the transcript. Um, but I did notice in the guidance that it does bear in mind that some people won't have a smartphone and they can submit an access request to get that information because of course it's personal information about them.

David Stickland: [00:24:03] Great. Thanks. And Will, what would be your sort of advice for people who are maybe staff advisors, volunteers out there who may not be that familiar with the rules either within PIP or within the work capability assessment, what would be your sort of advice in terms if someone was to come to them and say, look, I've got this, I've got this assessment. Um, you know, I'm not too sure what questions I'm going to be asked. What, how would you sort of suggest people go about sort of signposting people to sort of resources that might help?

Will Hadwen: [00:24:33] Yeah. Well there's two aspects to this. One is the actual rules, the actual descriptors as we call them, which attract points in PIP and also in the work capability assessment. There's several resources that you can go to to go through those with the claimant. So for example, benefits and work have a PIP test. And they also have a test that's called the ESA test. But it also works equally well for work capability assessment in UC. Right. You can look on the Citizens Advice site and you can look on the Disability Rights UK site. And then quite a few local authorities have good leaflets about these tests as well. Advice Now is another site that I often recommend to people. But in practice when you actually go to the assessment, you're going to be asked questions that don't seem to relate to these legal tests at all. You're going to be asked questions like, um, what hobbies do you have? Describe your typical day. Do you drive? Do you have a pet? Do you watch TV, these kind of things. So they're asking about the activities, but in a very indirect way. So it's always worth having a think about how you would respond to those questions. Bearing in mind the the underlying test, right.

David Stickland: [00:25:49] And maybe using those websites that you suggested to go back to the rules, because everything goes back to, goes back to the rules, to sort of think about how those questions that you're being asked might relate to the criteria. Good. Great. Thanks. Kate? I think we're on to your final item. We've got a few minutes to consider. What is it? Yeah. What's the last one.

Kate Anstee: [00:26:11] Well, we have already discussed it on this, on this Benefitscast. Not this one, but previous ones very recently. So I'm just going to give a little bit of a reiteration of it. It's TR and GD the Secretary of State for Work and Pensions 2025. Right. So basically this was um a three judge panel for, uh the upper tribunal about, um, official error. Okay. So basically we've always known, uh, that you can request a revision within 13 months on any ground. And then if it's beyond 13 months, it has to be what's called an anytime revision, which can only be made on certain grounds. One of them is official error. Okay. But what this case did was I think this is how I describe it, is it lowered the threshold to be able to get your appeal rights opened up. Okay. And basically in in summary there just needs to be a possibility that official error was made. Okay. Just needs to be a possibility. And I know that that sounds like to us advisors, when it first came out, we were like, what? Surely not. But it is that low. The bar is that low. It actually says in the, DMG Decision Makers Guidance Memo 1325, which we can put the link to. It's a really helpful memo, by the way. It actually says that "the decision makers approach should be that no evidence or argument is needed to prove it, but it really merely raises the possibility that an official error took place". Okay.

David Stickland: [00:27:51] Okay.

Kate Anstee: [00:27:52] Um, and it also says, "an application made after 13 months for any time MR will be made if and only if the application raises grounds that if made out, would reveal an official error or another type of any ground revision." So it just needs to raise the possibility. But to be mindful that it does draw the line somewhere, which is you can't just think the decision is wrong. Yeah, you can't just disagree with it because you don't like it. You have to, um, make out a ground that may have existed. The reason why I think, well, it's relevant in so many cases at the moment, but it's, it's, it's particularly relevant because I do feel that there are more and more things that seem to be official error. Um, but, but yeah, so, so yeah, just to sort of to reinforce that the, if you think there's a ground for challenge, go for it and it can open up your appeal rights. And, and the first tier tribunal will be expected to stand in the shoes of the decision maker at the time and make that decision.

David Stickland: [00:28:55] Okay, great. So again, just to be clear, this is potentially this is an opportunity to go back to a decision that may have been made a long time ago when the sort of usual time limits have passed to open up that case all over again, to have it looked at again in full, effectively. And if you're then successful, you get the arrears going all the way back to that decision, right? If you can make the case, you say it doesn't have to be a high bar, but you've still got to sort of make the case for there being official error. So just as we finish, Kate and just because I think we were touching on this before with Will's case, you know, what should people be looking out for potentially that could constitute official error?

Kate Anstee: [00:29:34] So a common official error is where the decision maker has ignored or failed to take into account relevant information at the time that would have made a decision, a different would have made, you know, had an effect on that person's, on the decision at the time. Um, so ignoring medical evidence or might be one example, another example because I'm working on the case at the moment is very similar to GB actually and me thinking about Will's case. So the claimant was awarded, uh, was put in the WRAG, uh, work related activity group back in 2019. Okay. And she contacted the DWP to challenge it. They told us to ignore that letter that she should be in the support group. She was never put into the support group. And they didn't treat that telephone call as a mandatory reconsideration request.

David Stickland: [00:30:20] Right.

Kate Anstee: [00:30:21] And it's been accepted now as official error. So we now have full appeal rights going back seven years, right.

David Stickland: [00:30:26] Because if they had have done, it would have been looked at again. And so clearly that was official error.

Kate Anstee: [00:30:30] And they would have looked at substantial risk. And yet the I IM principles.

David Stickland: [00:30:34] Great. Fabulous.

Will Hadwen: [00:30:34] Another one that I use quite often is the DWP fail to ask sufficient questions to establish that the client's entitlement was correct. This kind of thing comes up a lot in relation to things like additional bedrooms. Um, if the questions weren't asked, then the client can't supply the information, the entitlement goes completely missed. Um, just because the DWP didn't ask a question about um.

David Stickland: [00:31:01] It feels like the DWP, if it feels like they haven't done it properly, it might be worth looking at. You can probably make the case and have this look you know opened up. Yeah.

Will Hadwen: [00:31:12] Yeah there's nothing to lose.

David Stickland: [00:31:13] Fabulous. Well that's a really good place for us to end. Thank you both. Wonderful. Once again. Thanks, everybody for listening. Until next month. See you. Bye.

Kate Anstee: [00:31:21] Thank you.

Will Hadwen: [00:31:22] Bye bye.