Benefits Bulletin
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Autumn 2018

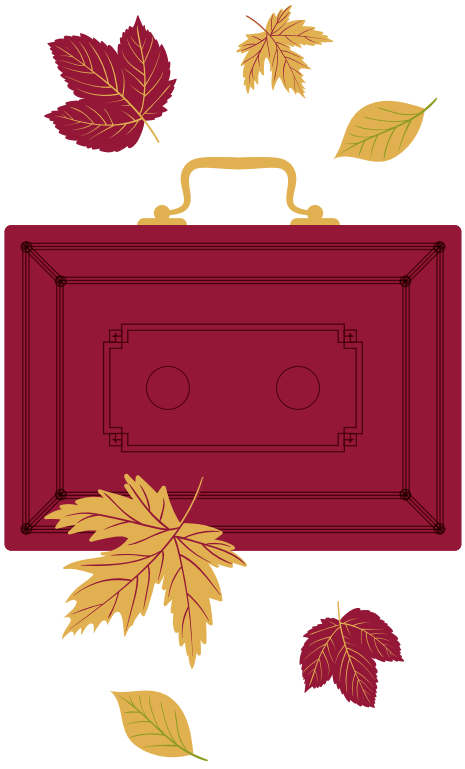
Welfare Rights Budget News: Autumn 2018

Following on from intense speculation in the media about the fate of Universal Credit, the Government, in its Autumn Budget, confirmed what it is going to do about its flagship welfare policy.

Confirmed are changes to the implementation schedule for managed migration. End date pushed further into the future.

Here's what the Budget Document says about it:

"In response to feedback on Universal Credit, the implementation schedule has been updated: it will begin in July 2019, as planned, but will end in December 2023".



Far more riveting, however, are the practical measures introduced to improve the functioning of the benefit and to smooth the managed migration process.

Three of these – the additional two-week payments of income-related benefits, modification of the minimum income floor for the self-employed, and the reduction of debt deductions – were previously the subject of leaks to the BBC. See, for this story, our article in this Bulletin "Speculation or Confirmation".

Here are the changes in detail:

- The amount that households with children and people with disabilities can earn before their Universal Credit award begins to be withdrawn, otherwise known as the work allowance, will be increased by £1,000 from April 2019
- An additional two-week payment of income-related benefits at the start of a Universal Credit claim made after July 2020
- For self-employed people moving to Universal Credit, extending the 12-month grace period before the Minimum Income Floor applies, from July 2019 for those moved to UC under managed migration, and from September 2020 for those moving to UC as a result of a change of circumstances
- Reducing the maximum rate for debt deductions from a UC award from 40% to 30%
- Extending the period over which advance payments are recovered from 12 to 16 months from October 2021
- Providing for the relevant threshold for calculating surplus earnings to remain at the UC nil threshold plus £2,500 until April 2020
- Delaying the transfer of rent support from housing benefit to pension credit by three years to October 2023, to ensure that the transfer aligns with the full implementation of UC.

A year of Universal Credit full service in York

Universal Credit has been available to all new claimants in the York area since July 2017. The introduction of Universal Credit nationally has been overwhelmed with difficulties, so in order to monitor the impact of the roll out in York, the Welfare Benefits Unit carried out a survey of York residents who have made a claim.

The survey has now come to an end and the report is available on the WBU website, alongside the interim report from the initial 6-month period.

The responses received have highlighted some serious concerns with many aspects of Universal Credit, mirroring issues raised across the country.

The major themes raised included: the impact of the initial wait before payment (with 37% of respondents reporting that they turned to a foodbank for help); issues with the claim process (63% of respondents needed help to make a claim), and difficulties with providing sufficient evidence (including repeated requests for information already provided and difficulties supplying accepted proof of rent). Alongside financial difficulties, several respondents also reported that making and maintaining a Universal Credit claim had a detrimental effect on their mental well-being, with one respondent commenting that he felt like 'a product with a barcode'.

With the process of managed migration due to start in 2019 – when all claimants on 'legacy benefits' will be moved across onto Universal Credit – it is imperative that these findings and concerns are listened to and acted upon.

To see the full report, please visit the resources section of the WBU website **www.welfare-benefits-unit.org.uk**

Speculation or Confirmation?

There's been much in the media recently about Universal Credit – the newspapers, the radio, the television. And the internet. It follows on from a recent debate held in the House of Commons on its roll out.

In that debate, Work and Pensions Secretary Esther McVey informed MP's and the nation that the managed migration process will not start in January 2019, but later in the year. The roll out will increase in its intensity from 2020.

There then followed a leak of documents to the BBC which confirmed the delay and the prediction that there will be an additional nine months added to the final deadline of March 2013 for the full implementation of Universal Credit.

On a more practical level, the leaked documents contained a series of measures intended to mitigate the effect of migration on claimants. I think this is where the question "speculation or confirmation?" really applies.

The measures include:

- Continuing payments of Employment and Support Allowance, Income Support and Jobseekers Allowance for two weeks following a claim for Universal Credit
- Reducing the maximum amount of deductions for Universal Credit advance payments from 40 per cent to 30 per cent, and
- Reforming the treatment of self-employed earnings under Universal Credit.

It's a shame the documents didn't contain a little bit more detail about that last point, the self-employed earnings. These, no doubt, will come out into the daylight in regulations. They did say, however, that the adjusted time-table may itself be subject to change due to legal challenges and policy issues.

The DWP refused to commit to anything, but instead said *"We will publish full plans for the next stage of Universal Credit roll out, including managed migration, in due course. Anything before that point is speculation, and we do not comment on leaks"*.

That point in time arrived on 29th October 2018, with the announcement of the Autumn Budget. The above three measures were included in it, as well as several others. For further details, see our article on the Budget in this issue of the Bulletin.

The "Fairer for Carers" Campaign

Carers UK, the foremost national charity representing unpaid carers, is launching a campaign to increase the amount of Carers Allowance.

The campaign has been prompted by the enlightened approach taken by the Scottish government to its carers.

Scotland is taking control of some of their own social security benefits. This will eventually include Carers Allowance. As an interim measure, the Scottish Government is introducing a lump sum Carers Allowance Supplement paid every six months.

What these changes amount to is an increase in the amount of Carers Allowance to £73.10, the same rate as Jobseekers Allowance. This will be achieved through disregarding the Supplement as income for means-tested benefits. It's an increase of £8.50 per week for Scottish carers.

The generous move by the Scottish Government has highlighted two important facts about carers allowance, and these form the backbone to the campaign.

The first is the creation of a geographical disparity. Scottish carers will get more than their English counterparts.

The second is the fillip the current situation has given to the opinion held by carers and advisers for many years: the level of Carer Allowance is pitiably low. Carers UK say that the unpaid care provided by carers in the UK is worth over £132 billion per year. Perhaps this is why 1.2 million carers are living in poverty.

Supporting the campaign is easy. Go to the Carers UK website (www.carersuk.org), navigate your way to the "fairer for carers" page, click on "ADD YOUR VOICE TO OUR CAMPAIGN", fill in the blanks, click, again, on "ADD YOUR SUPPORT" and a copy of a letter is sent to the Secretary of State, telling them exactly what you think of the current unsustainable situation.

Appeal Statistics for the First Half of 2018

Two sets of statistics published by the Ministry of Justice give us an idea of the chances of success for advisers and their clients at appeal hearings.

I emphasize, *appeal hearings*. That is, a hearing before an independent tribunal, consisting, at least for PIP claims, of a legally qualified chairperson, a medical specialist (usually a GP), and a person with experience of disability. It's a nicely balanced arrangement that runs right down the middle of the judge's waistcoat, with knowledge on one side and experience on the other, ensuring a balanced and informed consideration of the issues raised by the appeal.

I don't mean *mandatory reconsiderations* – that additional and obligatory requirement for an internal review of the decision by the DWP, which usually results in a confirmation of their original decision. The intention behind the introduction of MR's was to limit the number of disputed decisions reaching the Courts Service. It's quite rightly been described as an additional and unnecessary stage in the legal process, one that may amount in some cases to a disincentive to pursue justice. Just 12% of mandatory reconsiderations of ESA work capability assessments over the period October 2013 to March 2017 resulted in a changed decision favorable to the claimant.

The latest statistics cover the period January to March, and April to June. For all appeals cleared at hearing, and not adjourned, 66% had the initial decision revised in favour of the claimant. This is up by 2% on the same period in 2017.

For Personal Independence Payment, the overturn rate at appeal for both quarters was 71%. For Employment and Support Allowance, the overturn rate was 70% in the January quarter, and 71% in the April quarter.

I think these figures, for those advisers who are able to pursue appeals for their clients, will tend to increase the number of times when, for cases that are 50-50 and that could go either way, the adviser says to the client:

"Ok. Let's go for it".

Universal Credit in Full Service Areas: Local Authority Guidance Published

This guidance (HB Circular A7/2018, available on gov.uk) is a revised version of earlier guidance published on 14th September 2018. Something was missing in the earlier version, and this omission has been remedied.

The document covers the three different options available to claimants who need help with housing costs in a Universal Credit full service area; when there is a requirement to claim Universal Credit housing costs, when a new claim for Housing Benefit will be accepted and when Housing Benefit could stay in payment after a change of circumstances.

The key principle is this: if a claimant in a Universal Credit Full Service (UCFS) area has a change of circumstances that means they would have normally made a claim for one of the legacy benefits, such as Housing Benefit, they will not be allowed to, and their only option will be to claim Universal Credit. There are of course some grey areas, and the following exceptions may apply. Legacy benefit claims will still be accepted in full service areas from claimants who:

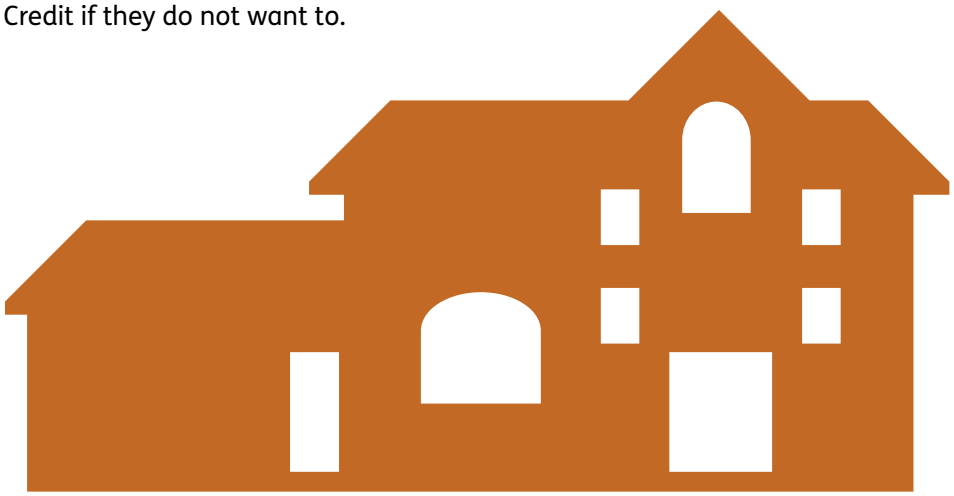
- live in specified or temporary accommodation
- have not previously claimed UC and have three or more children (until 31 January 2019)
- are a member of a couple and one partner has reached Pension Credit age

The guidance is especially enlightening where it applies this principle to a list of circumstances in an annex, at the end. We write it up in full here because this one, of all the many enquiries we get on the advice line these days, is probably *the* most common.

Can I avoid Universal Credit?

Well, in the circumstances shown in Annex A (overleaf), according to the guidance, you can't. It's worth noting that although changes of circumstances such as the ones in the annex are commonly referred to as 'triggering' UC, it is not an automatic system. Claimants do not have the option to claim legacy benefits, but they are not forced to claim Universal Credit if they do not want to.

And once the person has claimed Universal Credit, there's no turning back. The guidance states: *"...once a claim to universal credit has been made the gateway to legacy benefits is closed. In practice, the universal credit claim triggers the termination notice (known as an HB stop notice). Even if a claimant withdraws or ends their universal credit claim (regardless of whether they have received payment), they cannot choose to claim, re-claim or seek re-instatement of a legacy benefit. This continues to apply irrespective of whether the legacy benefit termination has been actioned 'on time'."*



Annex A: Circumstances in which a new UC claim is required in a UCFS area

Circumstance for new UC claim	Additional information and exceptions
Move from in work to unemployment, and also claimants whose hours reduce to less than 16 hours per week	Claimants subsequently claim UC (because JSA(IB) is abolished in their area). Claimants may also apply and qualify for new style JSA – contribution-based only – alongside UC1.
Move from out of work to employment / self-employment	**Exception:** Claimants who already have an award of CTC can apply for WTC. The award of WTC is a change of circumstances to the existing Tax Credits award, so they do not need to claim UC.
Move from ESA(IR) to jobseeking	**Example:** The claimant's ESA(IR) award is terminated as they are found not to have LCW. The claimant subsequently claims UC (because JSA(IB) is abolished in their area) and must remain on UC even where any subsequent appeal against the ESA disallowance is found in their favour. **Exception:** Claimant does not claim UC during mandatory reconsideration period and, on appealing, is then awarded ESA pending appeal (a new claim not required); where subsequent appeal is allowed, they remain on ESA(IR).
Move from ESA to employment / self-employment	**Exception:** Claimants that already have CTC can continue to claim tax credits. This is because a new claim to WTC in these circumstances is not prevented under UCFS rules and so they do not need to claim UC.
Move from unemployed (in other words, IS or JSA(IB)) to being sick	Claimants may apply and qualify for new style ESA – contributory only – alongside UC.
Become responsible for a child for the first time	**Exception:** Claimants who already have an award of WTC can claim CTC. This is because a new claim to CTC in these circumstances is not prevented under UCFS rules and so they do not need to claim UC.
Existing HB claimant who moves from one LA to a new LA in a UCFS area	**Exception:** Only claimants who move into specified accommodation or temporary accommodation can continue to make a new claim for HB. Claimants with 3 or more children can continue to make a new claim for HB up to 31 January 2019.
Income Support award ends because the claimant no longer satisfied the conditions of entitlement	**Examples:** The claimant is no longer a carer. The claimant is a lone parent whose youngest child reaches age 5.
Claimant receiving a legacy benefit or tax credits forms a couple with a UC claimant	They will not be able to remain on their existing benefits or tax credits and, on forming the couple, are treated as making a joint UC claim with their new partner.

New Style Employment and Support Allowance and Universal Credit

A frequent topic on our advice line in recent months has been New Style Employment and Support Allowance (ESA); whether you can claim it alongside Universal Credit (UC) and if so, why you would bother?

Universal Credit replaces income-related Employment and Support Allowance, but not contributory ESA. In a full-service area, contributory ESA is now called New Style ESA, and it can be claimed by itself, or alongside an award of Universal Credit. As the amount of New Style ESA you receive is deducted from your Universal Credit award in full, it can be difficult to understand why people should go through the process to claim both.

Although there are some changes to New Style ESA in a UC area (such as rules about sanctions), the qualifying criteria remains the same.

As well as having a limited capability for work, you must have:

1. Paid at least 26 weeks of Class 1 or Class 2 national insurance contributions on earnings at the lower earnings limit in one of the last two complete tax years before the start of the relevant benefit year
2. Paid or been credited with Class 1 or Class 2 National Insurance contributions on earnings 50 times the lower earnings limit in each of the last two complete tax years before the start of the relevant benefit year.

Note: the first contribution condition can be applied to any tax year for carers, some disabled people claiming Working Tax Credit and for spouses and civil partner of members of HM Forces on assignments outside the UK at any time from April 2010.

Claiming New Style ESA alongside UC

For people who meet the contribution conditions and need a means-tested top up (e.g. for help with rent or children), there is the option of claiming New Style ESA alongside UC.

Possible benefits of claiming both:

- ESA claims can be backdated for 3 months with no need to show good cause whereas Universal Credit claims can only be backdated for a maximum of a month in very limited circumstances
- ESA is paid fortnightly which may help some claimants with budgeting
- An ESA award entitles you to Class 1 national insurance credits (which help towards State Pension, Bereavement Support Payment, New Style ESA and JSA) whereas a UC award only entitles you to Class 3 credits (which help with State Pension only)
- An ESA claim means that you are treated as having limited capability for work while you wait for your work capability assessment, although in this situation you are not treated as having limited capability for Universal Credit until you have been assessed
- ESA will remain in payment if a change in your circumstances means that you are no longer entitled to UC (e.g. if a partner finds work and your income is too high). This provides some stability of income.

Things to consider:

- New Style ESA is taxable. This may affect claimants or households who have other income

Note: although we have tried to be thorough, this is not an exhaustive list – if you can think of any positives or negatives that are not included here, please do let us know.

Work capability assessment practicalities

Claiming when you have an existing award

If you already have an award of new style ESA and have been through the work capability process when you make a claim for Universal Credit, you are treated as having limited capability for work/work-related activity from the first monthly assessment period, without having to undergo another assessment. The same principle applies if you

have already been assessed as having limited capability for work through a Universal Credit award and subsequently make a claim for new style ESA. In practice, we hear that this is not always happening; please keep an eye out to ensure that your clients receive the money that they are entitled to and do not have to attend unnecessary medical examinations.

Claiming simultaneously

If you claim new style ESA and UC at the same time, there are two things to consider. Firstly, the rule which allows you to be treated as having limited capability for work while you are awaiting a work capability assessment in ESA does not apply under Universal Credit. Therefore, you may be subject to work-related requirements under Universal Credit while you are waiting for your assessment to be carried out, even if you are simultaneously being treated as having limited capability for work in your ESA award. Universal Credit work coaches can use their discretion to vary the work-related requirements of claimants in this position (please note the word discretion – it is not guaranteed). Remember to advise your clients that work coaches are unable to exercise their discretion if they are not aware of the situation – we hear of claimants who do not want to make contact for fear of something going wrong with their claim.

Secondly, there may be procedural difficulties around having to complete a medical questionnaire for both ESA and UC. We have heard several accounts of claimants being sent both an ESA50 and a UC50 to complete, however we have not heard of any cases where claimants have had to attend two medical assessments. The Universal Credit regulations state that a work capability assessment can be carried about where it falls to be determined for the first time whether a claimant is fit for work, or where the DWP believe there may have been a relevant change or circumstances.

In cases where a claimant had applied for both benefits, we would hope that once UC or ESA were aware of a pending assessment for the other benefit, no second medical would be arranged, but it is not yet clear whether there is a robust internal process for this situation. The Universal Credit guidance states that 'where both Universal Credit and New Style ESA are in payment, the same WCA is used'[1] .

New Style ESA and transitions from income-related ESA to UC are an area which has been plagued with difficulties from the initial roll out of UC; caused by lack of understanding on the part of claimants, advisers and the DWP themselves. The DWP have acknowledged this, and guidance and knowledge are growing. If you come across cases where you need further support, please get in touch on our advice line. You also have the option of escalating cases through your local DWP partnership manger, who can be contacted when all other routes of communication have failed to resolve a particular claimants' problem.

Time Limit for Sure Start Maternity Grants Extended

From 18th October 2018, the time limit for claiming a Sure Start Maternity Grant (SSMG) was extended from 3 months to 6 months.

This has always been a problematic area for advisers. For other benefits and other situations, there's a bit of leeway: extension of time limits, backdating, that sort of thing.

But for SSMG's, it's different.

As our good friend and wise guide, the Welfare Benefits and Tax Credits Handbook, says, about SSMG's, in chapter 37, page 785, of the 2018-19 edition: *"There are strict time limits for claiming".*

One day over the time limit, and that's it. The SSMG has gone forever, or, at least, this particular opportunity for an SSMG, for this particular child. The time limit in these particular circumstances can be so precise because it is determined by the actual date of birth.

Let's look at one reason why extending the time limit is a jolly good idea. In February 2017, a paper was published by the University of London, which showed that between 3% and 4% of women report symptoms of post-traumatic stress disorder in pregnancy and after birth. PTSD can be present in pregnancy as a result of traumatic events such as accidents, violence or natural disasters. Following childbirth, PTSD can also develop after a difficult or traumatic birth. The paper went on to state that as many as 42,000 could be affected by PTSD every year.

This underlines a statement contained in the explanatory memorandum to the regulations as to why the time limit is being extended.

"The change to the Claims and Payments Regulations is a positive change in order to allow claimants that are delayed in making a claim for SSMG due to an extended period of illness for themselves or their child to make a claim."

1. http://data.parliament.uk/DepositedPapers/Files/DEP2017-0556/85_New_style_ESA__JSA_V4.0.pdf

Legal Incoherence – CE/1159/2018

This knotted skein ended up on Judge Jacobs desk. Can't say how long it took him to unravel, but by 4th September 2018, it was a long, straight yarn. No knots anywhere to be seen.

You'll see what I mean when I describe the course of events.

ESA claimant. Goes for a medical. A decision is made, by a DWP decision maker, that the person continues to be entitled to ESA on the basis that he has limited capability for work for scoring 15 points under schedule 2 to the ESA Regs, 2008. This includes 6 points awarded under descriptor 16(c): "engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant". The claimant appealed on the ground that he should have been put into the support group.

Let's make one thing clear, at this point. In cases like this, we need to differentiate between schedule 2 and schedule 3 to the well-worn ESA regs.

Under schedule 2, score 15 points, and you've got limited capability for work. There are other ways of getting limited capability for work, but they don't concern us here.

Under schedule 3, satisfy one of a series of descriptors, and you've got limited capability for work related activity. This one's attracted a lot of attention recently because of the abolition of the financial incentive attached to limited capability for work – the abolition, that is, of the limited capability for work element. Used to be about twenty-eight quid. Or thereabouts.

Schedule 3 is structured by taking the top scoring descriptors in schedule 2 and making a new schedule out of them. It is this structural link which caused the error of law in this case.

At the tribunal, a decision notice was issued which stated that the claimant scored not 6 points under descriptor 16(c), but 9 points for descriptor 16(b).

Fair enough. Seems pretty transparent so far.

But then the tribunal went on to state that because he satisfied this descriptor in schedule 2, he qualified for the support component by satisfying activity 13 in schedule 3, even though to do this, the claimant should have scored 15 points under descriptor 16(a), which he hadn't done.

In other words, the structural and logical link between the two schedules snapped.

The real hero of this story is, as we might have guessed, Judge Jacobs, for the simple fact of making sense of an incomprehensible sequence of events.

But how did he do it?

He did it by identifying three flaws in the first-tier tribunal's reasoning:

- The tribunal revisited the Schedule 2 descriptors, not just the Schedule 3 descriptors
- It resulted in a contradictory decision notice, and it is essential that a decision notice be legally coherent
- It is not possible to separate Schedule 2 and Schedule 3 descriptors – although the appellant may, quite understandably, have presented his case as relating only to Schedule 3, logically and legally the decision on that Schedule followed from the findings of facts relevant to the equivalent descriptor in Schedule 2.

There were two possibilities that led to the contradictory decision notice. Either the tribunal did not intend to change the schedule 2 points, in which case the decision notice was wrong. Or, the tribunal did intend to change the points, in which case its written reasons are wrong.

Either way, the lack of clarity amounted to an error of law.

CPIP/1988/2017 – listening exercises and the meaning of "therapy"/activity 7 (communicating verbally) and the Secretary of State's lip-reading concession

This case involves a DLA to PIP transition where deaf claimants regularly appear to lose out under the new regime. It explores descriptor 3, Managing Therapy, and descriptor 7, Communicating Verbally.

The claimant in this case was profoundly deaf. Under Disability Living Allowance she'd been entitled to lower rate mobility component, and middle rate care component.

On transition, she lost the lot.

The first-tier tribunal decided not to award any points under the therapy descriptor, and only 2 points in relation to daily living activity 7b (needs to use an aid or appliance to be able to speak or hear).

The appellant used cochlear implants. She argued that assistance provided by her mother to improve their use, a practice recommended by an audiologist, amounted to therapy under descriptor 3. This could score, depending on the facts, between 2 and 8 points.

The argument over descriptor 7 was relatively more straightforward. The tribunal had ignored caselaw – caselaw in the shape of CPIP/2306/2015. This case established that the ability to lip-reading should be disregarded as a matter of law. This meant that, if communication support is required, 4 or 8 points could have been scored.

Judge Hemingway, of the Upper Tribunal, found in favour of the appellant on both points.

In relation to descriptor 3 (Managing therapy) he said: *"I agree that the evidence about the* [audiology] *exercises was capable of suggesting that it was of a substantively different nature to the mere encouragement to give up a "bad habit", like smoking marijuana, or to take up a good one, such as, for example, tending an allotment or cross country running"*.

Hemingway's comments on the argument from descriptor 7 relate solely to the authority of CPIP/2306/2015. As for as this was concerned, he said: *"It seems to me, speaking more generally but without wishing to actually bind tribunals, that so long as the Secretary of State continues to take the approach she does* [in CPIP 2306/2015] *then tribunals should themselves... adopt and follow that same approach. Such will lead to consistency and desirable predictability"*.

He decided that further findings of fact were required and sent it back to a first-tier tribunal to be reheard.

50th Anniversary Lecture

We welcomed many of you to our 50th Anniversary celebrations on 20 September 2018. Highlights of the evening were the two lectures given by Jonathan Bradshaw, Emeritus Professor of Social Policy at the University of York. and Alison Garnham, CEO of the Child Poverty Action Group (CPAG).

Jonathan Bradshaw has been closely involved with WBU from the beginning. He was our Chair of Trustees for many years. He spoke movingly about the political and social context that led to our inception, in particular, the continuation of poverty in the post-war period and research that revealed the low take-up of welfare benefits. With a rights-based approach to the problem, our founders took the radical step of setting up a welfare rights stall in Silver Street market –as legend has it, between the ladies' hosiery and charity cake stalls - to advise local people about their rights and encourage the take-up of benefits.

Jonathan introduced a film extract from two Panorama programmes on poverty featuring the stall in 1968 and 1969. The film was remarkable both for what had changed (some of the language and attitudes) but also for what has stayed the same (the complexity of benefit claims and inadequate benefit take-up).

It was from that market stall that the Welfare Rights Unit was set up going on to become the Welfare Benefits Unit as it is today. Jonathan named and thanked previous staff, many of whom were present, and the current team.

After identifying the many challenges the Unit faces today, he made a compelling case for a welfare rights service. Increasing the take-up of social security benefits brings in millions of pounds from central government, which is good for the local economy, its well-being, health, education and behaviour.

Jonathan concluded by, in his words, 'waxing lyrical' about the City of York Council and North Yorkshire County Council, thanking them for their commitment to our funding, which has been 'absolutely critical' to our survival and sustained through many generations of officers and councillors of all political hues.

His description of the history and continued need for the service left us feeling inspired to be part of the Unit and optimistic about its continued survival.

York Child Poverty Action Group set up what became the Welfare Benefits Unit and Alison Garnham, CPAG's CEO, gave us a fact-filled overview of contemporary child poverty in the UK.

In what could have been dispiriting detail, she related how child poverty is once again on the rise. Clear evidence on the ground from housing providers, doctors, teachers and advice workers tells the same story of more families trapped in poverty.

But her description of the impact of CPAG's food bank project showed just how much welfare benefits advice can reduce poverty, even in the current environment. In two years, two advice workers at Tower Hamlets foodbank secured £4.2m in unpaid benefits. This was a stunning example of how income maximisation, through good welfare benefits advice, can tackle poverty. Prevention being far better than any attempt at cure.

Her predictions for the future were that the poverty gap will grow; the 2015 benefit cuts were biting; and UC will make many worse off.

Alison's point was that child poverty is not one of those social issues that is complex or intractable. She called on the government to develop a strategy to reduce it rather than continue its denial of the problem. She ended with CPAG's practical proposals for solving child poverty, including restoring the link between benefit and need; fixing UC problems before continuing its roll-out; and restoring the value of child benefit.

Like Jonathan, her clear message was that advice services were crucial to the work of reducing child poverty.

It was good to be able to enjoy the evening (and the canapes) with so many of you afterwards.

Illustrious personnel – from earlier years

Fallibility in the Decision-making Process – CE/1272/201

This is a remarkable appeal to the Upper Tribunal.

Remarkable because the journey there, stopping at several bus stops along the way, as it went round the houses, was quite unnecessary.

I mean transparently unnecessary – to the extent that Judge Wikeley was able to remake the decision himself, without remitting it downstairs to another first-tier tribunal. In a world where anything is possible (especially the absurd), this new tribunal, with clear, unambiguous directions from above, might even have repeated the mistake, given what happened here.

The claimant, aged 25, had learning difficulties, dyslexia, and an aching ankle. He was in receipt of the middle rate of the care component of Disability Living Allowance. In September 2016 he began a two-year full-time course at a local college. At approximately the same time, he applied for and was awarded Employment and Support Allowance. In January 2017 he was called in for a medical. Scored zero points. ESA stopped.

The claimant, with the help of a support worker, asked for a mandatory reconsideration. In the mandatory reconsideration, the support worker stated that the claimant was not a qualifying young person, he was a full-time student, he was in receipt of Disability Living Allowance middle rate care component, and therefore he should be treated as having limited capability for work.

The DWP refused the MR, saying that *"the award of DLA has no impact on determining an individual's ability to work"*. The claimant appealed, and scored nine points at the hearing. But nine points isn't enough to establish limited capability of work, even though, in this instance, the appellant didn't have to score them. The tribunal didn't entertain the notion that a claimant, under certain statutory regulations (most notably, Regulation 33(2) to the ESA Regulations, 2008), can be treated as having limited capability for work, without having to undergo the rigmarole of a work capability assessment.

This is what surprised Judge Wikeley. He gave the first-tier tribunal some quarter by saying that *"There are all sorts of relatively obscure by-ways in social security law which do not arise on a daily basis in tribunal hearings. This was arguably one such case"*.

Anyhow, Judge Wikeley's attitude to this sequence of events was ultimately one of disappointment. The claimant's representative had blown their trumpet four times: at the mandatory reconsideration, in the notice of appeal, in the post-hearing application for a set aside, and in a subsequent application for permission to appeal.

Blew that trumpet real loud, they did.

It appears that no-one at the DWP or the Tribunal Service heard it.

Welfare Benefits Unit

Welfare Benefits Unit Advice Line 01904 642512
Monday – Thursday, 9am – 5pm | Friday, 9am – 4.30pm
Available to advisers in North Yorkshire and York
Please do not give this number to members of the public

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