Benefits Bulletin
Registered Charity 1164225
Spring 2022

Spring Statement

Here's a round-up of this year's Spring Statement:

- Where benefits are uprated, this continues to be at a rate of 3.1%
- Local Housing Allowance rates are held at 2020/21 levels
- The National Insurance Primary Threshold and the Lower Profits Limit are increased from £9,880 to £12,570 from July 2022
- Self-employed individuals with profits between the Small Profits Threshold and Lower Profits Limit will continue to build up National Insurance credits but will not pay any Class 2 NICs
- A further £500 million for the Household Support Fund (see right)
- A reduction in income tax from April 2024.

In Scotland, the Funeral Support Payment, Young Carer Grant, Best Start Grant and Child Winter Heating Assistance will all be increased by 6%.

Household Support Fund

The additional £500 million represents an increase in the fund for the period April to September 2022. The fund is distributed by local authorities based on national and government guidelines. From April, local authorities must spend at least one third on families with children and one third on pensioners on a low income.

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Disabled Claimants and the DWP

In February 2021 an all-party group of MPs requested that the Equality and Human Rights Commission (EHRC) investigate the deaths of vulnerable claimants by suicide and other causes between 2008 and 2020.

The EHRC has the power to hold organisations to account if they are not making reasonable adjustments to its procedures for disabled claimants – particularly those with mental health conditions and learning difficulties.

DWP officials were questioned by the EHRC about its concerns. The DWP, as a result, took steps to remedy the situation.

These steps fell short, so the EHRC is to draw up a legally binding agreement with the DWP. This agreement will hold them to a plan of action that meets the needs of the claimants the EHRC has identified as vulnerable.

www.equalityhumanrights.com/en/our-work/news/ehrc-taking-action-improve-treatment-disabled-benefit-claimants

Benefit Entitlement for Ukrainians Fleeing Conflict

In response to the ongoing conflict in Ukraine, emergency regulations have been laid which allow immediate access to benefit support for Ukrainians fleeing conflict. This was necessary because although the news reports refer to Ukrainians fleeing as refugees, that is not their status under immigration law, so the existing exemptions for refugees do not apply.

The new rules apply to means-tested benefits and disability benefits, and work by adding a new category to the list of people exempt from the habitual residence test and past presence test.

The habitual residence test exemption applies to claims for Universal Credit, Pension Credit and Housing Benefit, and the past presence test exemption applies to claims for Personal Independence Payment, Disability Living Allowance, Attendance Allowance and Carer's Allowance.

To fall under the exemptions, the person applying must:

- have fled Ukraine in response to the conflict;
- have resided in Ukraine prior to 1 January 2022;
- be coming to the UK under either the Homes for Ukraine Scheme or the Ukraine Family Scheme.

These exemptions do not apply for Ukrainians who are in the UK under other provisions (eg. Pre-settled Status, visitor visa).

To aid advisers who are trying to navigate the new measures and support being put in place, Advice Local have compiled an information page on their website, which also includes information about the Homes for Ukraine scheme. Information for people fleeing the war in Ukraine | Advicelocal

CPAG have also produced a factsheet with free access, which can be found here: Benefits for resettled Ukrainians | CPAG

Energy Rebate Scheme Payments Ignored as Capital

New legislation has been laid to ensure that any payments received through the Energy Rebate Scheme will be ignored as capital for Universal Credit purposes for a period of 12 months from the date the payment is received.

In addition, DWP informed local authorities that the scheme meets the definition of 'local welfare provision' in the Housing Benefit regulations and can be disregarded when calculating entitlement.

Note that in February 2013, a disregard was inserted into legislation for Income Support, Jobseeker's Allowance, Pension Credit, Housing Benefit and Employment and Support Allowance to ensure that local welfare provision would be disregarded.

DWP guidance can be found here: assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062000/adm-04-22.pdf

The Universal Credit (Energy Rebate Scheme Disregard) Regulations 2022 can be found here: www.legislation.gov.uk/uksi/2022/257/contents/made

LA Welfare Direct lite 3/2022 can be found here: www.gov.uk/government/publications/la-welfare-direct-bulletins-2022/la-welfare-direct-lite-32022#council-tax-rebate-schemes

Extension of Jobcentre Plus Restart Scheme to income-based Jobseeker's Allowance Claimants

The Restart Scheme provides jobseekers with enhanced support to find a job for a period of up to 12 months. It applies to claimants who have been unemployed for 9 months or more in England or Wales.

Originally just for Universal Credit claimants, from 14 March 2022, the Restart Scheme has been extended to include those in receipt of income-based Jobseeker's Allowance.

The amendments insert the Scheme into the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 regulations, as a scheme in which a claimant may be required to participate in under Section 17A of the Jobseeker's Act 1995.

The amendments also remove reference to the Work Programme which no longer operates.

See The Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) (Amendment) Regulations 2022/154 SI.No.154/2022

The explanatory memorandum also notes that authorisation will be given to a range of providers to exercise functions of the Secretary of State in operation of the scheme – for this, see: explanatory memorandum to the regulations

Local Welfare Provision Disregarded as Capital for Universal Credit Purposes

Hot on the heels of the new legislation which disregards the Energy Rebate Scheme payment from Universal Credit capital calculations, additional regulations have been laid which ensures that going forward, local welfare provision will always be disregarded from Universal Credit assessments for 12 months from payment.

Such payments would not be included as income as they are not specified in reg 66 of The Universal Credit Regulations 2013 but were omitted from the list of capital to be disregarded in Schedule 10, until now.

As the explanatory memorandum points out:

There is no policy intention for such payments to be taken into account as capital for the purposes of Universal Credit, and there is no justification for Universal Credit treating these payments differently from how they are treated in legacy benefits.

The Universal Credit (Local Welfare Provision Disregard) (Amendment) Regulations 2022 are available here: www.legislation.gov.uk/uksi/2022/448/contents/made

"Way to Work", Work Search and Availability Requirements

On 27th January the Government launched a new campaign – the "Way to Work" campaign. It aims to move 500,000 people into jobs by June 2022. The campaign has been raised in response to the end of the pandemic and an increase in the number of job vacancies.

The policy will be implemented by Jobcentre Plus work coaches, assisted by a change to the "permitted period" rule.

The permitted period rule has been around for years – at least thirty, by my reckoning. Take, for example, this extract from the 1992/93 edition of CPAG's "Rights guide to non-means-tested benefits", under the heading "Restricting your availability" on page 12. It concerns what was then called Unemployment Benefit. It says that, where you are required to be available for work, you can restrict your availability where "you have a "usual occupation" and the restrictions relate to that. This exception only applies during a short period of not more than 13 weeks from the time you first claim Unemployment Benefit."

For claimants on their way to work in 2022 the permitted period rule has been shortened from 13 weeks to 4. As it affects Jobseeker's Allowance (the successor to Unemployment Benefit) and Universal Credit (the would-be successor to almost the whole shebang) the new rule was brought into force on 8 February 2022 by two sets of regulations, one for each benefit.

The DWP outlined the practical implications of the campaign through their press release.

The press release can be found here: www.gov.uk/government/news/new-jobs-mission-to-get-500-000-into-work

Have your clients been affected by the 4-week rule for claimants under the Way to Work scheme? The Public Law Project wants to hear from you. You can let them know how your clients have been impacted by completing this survey: http://surveymonkey.co.uk/r/X6YZH5Y

Changes to the Terminal Illness Rules

From 4th April 2022, the terminal illness definition for Universal Credit and Employment and Support Allowance has changed. The new regulations provide that death must be reasonably expected within twelve months, rather than the existing six. This change follows years of campaigning.

Equivalent rules to extend the timescale from six to twelve months for Personal Independence Payment, Attendance Allowance and Disability Living Allowance will be brought in when parliamentary time allows. However, it is worth noting that the terminal illness definition for the purposes of Scottish disability benefits (Child Disability Payment and Adult Disability Payment) includes no reference to a timescale.

Further to the regulations becoming operative on 4th April, guidance on the regulations was published on the same day. The guidance states that there are now two procedures for benefit administration for claimants at end of life.

The first is the one we are familiar with, for the disability benefits. It's called the "SRTI" (Special Rules for Terminal Illness) procedure involving the DS1500 form and the six months timescale.

The new procedure, for UC and ESA, is called the "SREL" (Special Rules for End of Life) procedure, involving the use of a new form, the SR1 form and the twelve months timescale.

The guidance can be found at: www.gov.uk/government/publications/dwp-factual-medical-reports-guidance-for-healthcare-professionals/the-special-rules-how-the-benefit-system-supports-people-nearing-the-end-of-life

The government press release can be found here: Fast-tracked benefit access extended to more nearing end of life – GOV.UK (www.gov.uk)

Surplus Earnings and Universal Credit

Further extension of the higher £2,500 disregard when assessing surplus earnings for Universal Credit

The Secretary of State has determined that the higher £2,500 cushion continues until 31 March 2023.

Note. Surplus earnings may apply to future periods where entitlement ends due to increased earnings and Universal Credit is reclaimed within 6 months. The 'de-minimis' amount is added into the threshold, above which surplus earnings are generated. The amount has been temporarily increased from £300 since 2018. As and when the amount reduces to £300, many more claimants will be affected.

Deposited paper DEP2022-0217 – Deposited papers - UK Parliament

Welfare Writes...

An E-mail to Stakeholders

On 1st April an e-mail from the DWP was sent to its stakeholders on the subject of Fuel Direct.

Fuel Direct is used by approximately 100,000 claimants across a range of benefits. Its purpose is to aid claimant budgeting and to prevent energy arrears from escalating.

The purpose of the e-mail wasn't to refresh the memories of its stakeholders as to what Fuel Direct is and does, in the event that they'd forgotten. It was to advise them of a tweak to the scheme.

The tweak is required in response to an unprecedented increase in fuel prices.

The unprecedented increase in fuel prices requires a change in policy.

Here's an extract from the e-mail:

"We have therefore secured cross Government agreement to introduce a temporary policy aimed at ensuring claimants are given greater control over how their benefit is allocated."

The change requires secondary legislation to alter the Claims and Payments regs.

These have been laid and will result in DWP no longer accepting requests for ongoing consumption payments from energy suppliers for either new arrangements or increased payments for DWP claimants.

Coming into force on 26 April 2022 and staying in place until 6 April 2023, these regulations mean that energy companies will not be able to request a new deduction from benefits for ongoing energy usage.

Although energy suppliers will not be able to make new arrangements (nor increase current ones), it is worth noting the following:

- Claimants will still be able to request ongoing consumption payments if they choose to do so, or increase/alter any payments already in place;
- Existing arrangements will remain in place unless the claimant asks for it to be changed;
- Energy suppliers may still apply for a deduction for arrears of fuel costs.

The newly laid regulations can be found here: www.legislation.gov.uk/uksi/2022/428/contents/made

Research Report Finally Sees the Light of Day

In our last *Welfare Writes...* we reported on the long running saga of the DWP's refusal to release a research report by the National Centre for Social Research on disabled people's experience of the benefits system.

Stephen Timms, chair of the Social Security Advisory Committee finally got hold of a copy and published it on the internet in early February.

It can be found at: https://committees.parliament.uk/publications/8745/documents/88599/default/

Digital Signatures

From 6 April 2022, the requirement for a fit note for benefit purposes to be completed and signed in ink or 'other indelible substance' has been expanded to allow fit-notes to be issued and signed digitally.

The pre-exiting form continues to be available, alongside the new electronic format.

To this end, the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2022 (SI.No.298/2022) has been published.

CPIP/737/2021 – tribunal's detailed decision-making misses the mark

The appellant in this case had a diagnosis of autistic spectrum disorder. It manifested itself in severe anxiety, especially when out of doors. For a person with such a diagnosis a common combination of components for the award of PIP will consist of the standard or enhanced rate of the daily living component and the standard rate of the mobility component.

In this case, however, and despite the appellant being awarded the enhanced rate of the daily living component, only four points were awarded for the mobility – the four points to be found in descriptor 1(b): *Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.*

As we know, four points, for one or several of the mobility descriptors, isn't sufficient for an award.

What were the indicators to the contrary – to the possibility of sufficient points for an award?

The first, as we mentioned above, was the award of the enhanced rate daily living component.

The second was a clear and unambiguous recommendation, from the DWP, in their written submission, that ten points should be awarded under descriptor 1(e) *Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.*

The appellant's appointee, his mother, not unexpectedly, agreed.

The two parties were singing from the same hymn-sheet, in harmony, and with quite a bit of volume.

So why didn't the tribunal hear them?

It must have heard (or read) something, as it gave a detailed and laudable account of its own decision-making in respect of descriptor 1(b). It couldn't, however, have heard everything, as it said nothing about the DWP's recommendation on descriptor 1(e).

This, therefore, was the issue that came before the Upper Tribunal: was the First-tier Tribunal obliged to explain why it hadn't considered the DWP's recommendation?

The Judge, Judge Church, allowed the claimant's appeal and remitted it for rehearing for further findings of fact.

Two things could have happened here. Either the tribunal wasn't aware that the DWP had agreed with the appellant, on the matter of descriptor 1(e), and it continued to believe, throughout the proceedings, that the two parties weren't in agreement. Or the tribunal was aware of their agreement, but omitted to say anything about it in its decision notice.

Whatever the explanation, both possibilities amounted to an error of law and required remission to a lower tribunal.

[2022] UKUT 58 (AAC) / CH/1970/2019 – Housing Benefit, size criteria and additional room for a "qualifying parent carer"

This case looks at the additional bedroom criteria for foster carers with intermittent placements of young people under and over the age of 18.

As we know, in the social rented sector the size criteria lead to a reduction in Housing Benefit where the claimant has more bedrooms than the rules allow. Under regulation B13 paragraph (5) of the Housing Benefit Regulations 2006, the number of bedrooms relates to adults and children who occupy the accommodation as their home. An additional bedroom is allocated under paragraph (6)(b) where the claimant is a 'qualifying parent or carer'. This is defined in regulation 2 as:

'a person who has a bedroom in the dwelling they occupy as their home additional to those used by the persons who occupy the dwelling as their home and who—

(a) has a child or qualifying young person placed with them as mentioned in regulation 21(3) who by virtue of that provision is not treated as occupying their dwelling; or

(b) has been approved as a foster parent under regulation 27 of the Fostering Services (England) Regulations 2011 ... but does not have a child or qualifying young person placed with them and has not had a child or qualifying young person placed with them for a period which does not exceed 52 weeks.

In this case, the single claimant lived in 3 bed housing association accommodation. She was a foster carer, with approval first issued under regulation 28 of the Fostering Services Regulations, with re-approval under regulation 27 in March 2018. The approval was for female placements up to age 18, with a preference for age 16 to 18.

The claimant had several young people placed with her, with gaps between placements.

Initially, Housing Benefit was subject to a 25% under-occupancy reduction for two excess bedrooms, reduced to 14% in June 2013, the claimant being an approved foster carer, entitled to one additional room as a 'qualifying parent or carer' under regulation B13 (6)(b).

Correspondence was exchanged, over several years, about the details of foster placements.

On 26 October 2018 the Council decided that the claimant had failed to provide evidence and the 25% deduction was applied from 1 April 2013 to 6 August 2018, generating an overpayment of £6,471.06.

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A First-tier Tribunal allowed the claimant's appeal, accepting that the claimant had been a foster carer since around 2010, with re-approval in 2018, and therefore entitled to an extra bedroom with the applicable deduction limited to 14%.

The Council appealed to the Upper Tribunal, pointing out that two of the placements had attained the age of 18 and so were no longer placed under the provisions of the Children Act 1989.

Upper Tribunal Judge Ovey decided that, as the claimant was an approved foster carer throughout, the deduction should be 14% throughout each placement where the young person was under age 18, and for the following 52 weeks. During periods where the person placed had attained age 18, a room would be allocated for them as a person occupying the accommodation as their home but making it necessary to ascertain whether a non-dependent deduction applies.

The Upper Tribunal therefore allowed the Council's appeal, but referred the case back to First-tier Tribunal with directions to determine:

- the dates on which each young woman was placed in the claimant's home;
- the date of birth of each young woman;
- whether they were a 'qualifying young person'; and
- if they were aged 18 or over, their status in respect of employment, incapacity or receipt of benefits.

The full case details can be found here: www.gov.uk/administrative-appeals-tribunal-decisions/waltham-forest-lbc-v-po-hb-2022-ukut-58-aac

CIS/222/2021 – Re-instatement of Income Support, revision and appeal rules

This case considers the scope to revise and appeal against a decision to terminate Income Support. In particular, it considers whether a relevant change of circumstances has occurred since the decision appealed against was made.

The client received Income Support and Carer's Allowance as the carer for a disabled friend. The friend's entitlement to Disability Living Allowance ended on 18 July 2018, on a transfer to Personal Independence Payment. No award PIP was made on the transfer. The client's entitlement to Carer's Allowance was then terminated from 23 July 2018 . Her award of Income Support was terminated from 20 September 2018 by a decision dated 15 August 2018.

The friend successfully appealed against the decision to terminate PIP and the enhanced rate care component was reinstated on 8 July 2019, resulting in their continuous entitlement during the period in question.

On 9 July 2019 the client contacted Income Support and asked for her award to be re-instated. She was told that the award had been correctly closed and was advised to claim Universal Credit, which she did not do.

On 22 July 2019 she contacted Carer's Allowance who re-instated her award of that benefit with effect from 23 July 2018.

On 6 September 2019 the client contacted Income Support again, and they again advised her to claim Universal Credit. Apparently, no formal decision was made or issued.

On 4 December 2019 an advisor acting for the client wrote to Income Support requesting a revision of the decision of 15 August 2018 to terminate Income Support.

The DWP issued a Mandatory Reconsideration Notice dated 21 January 2021, stating that there was no error in the decision to terminate.

An appeal was submitted on 11 February 2020.

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The First-tier Tribunal rejected the appeal, accepting the Secretary of State's argument that the decision of 15 August 2018 could not be revised under regulation 3 (1) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (any grounds revision) as it was correct at the date it was made. Regulation 3 (9) prevents revision under 3 (1) where a relevant change of circumstances has occurred since the decision was made. Under Section 12 (8)(b) of the Social Security Act 1998, a First-tier Tribunal shall not take account of any circumstances not obtaining at the time the decision was made.

At the Upper Tribunal the judge considered whether the Tribunal had any jurisdiction to hear the appeal, given that the Mandatory Reconsideration decision related to a request to revise submitted more than 13 months after the date it was made. If the adviser's letter of 4 December is taken as the application for revision, the First-tier Tribunal had no jurisdiction to hear the appeal. However, Upper Tribunal Judge Rowland notes that it was open to the Secretary of State to treat the claimant as having made an application for revision when she contacted the Department on 9 July or 6 September 2013 as within the absolute 13-month time limit. There is no requirement for application for revision to be in writing and within the absolute 13-month time limit, and the Judge is satisfied that that would have been appropriate.

In relation to whether the Tribunal were prevented from taking account of a change of circumstances since the decision was made, Judge Rowland accepts the making of a decision that a claimant is entitled to benefit over a specific period is not in itself a material change... "rather, the decision is declaratory of a state of affairs that is to be taken as always having existed throughout that period." The decision of 15 August 2018 appeared to be correct at the time it was made However, following the awarding of the daily living component of Personal Independence Payment from 18 July 2018 and the decision of 30 August 2019 re-awarding the claimant Carer's Allowance from 23 July 2018, the decision was clearly wrong when it was made.

C7/21-22(ESA) – First-tier Tribunal fails to take account of distinguished case-law lineage

We regularly feature Northern Ireland cases in our Bulletin. They come with the following reminder: Northern Ireland cases, while persuasive, do not set a binding precedent outside their region, despite the legislation upon which it is based being the same.

The substance of the case involves the valuation of property within a particular set of common circumstances: the separation and estrangement of couples.

Initial arrangements often involve part-ownership – usually one half for each of the parties, although different proportions might apply.

And one of the parties no longer occupies the property as their home.

In this instance, the non-resident claimant had established a half interest in the former home. The decision on its value by the Department took the claimant over the capital limit for income-related Employment and Support Allowance.

The Department's decision was informed by the Land and Property Services (LPS), who valued it at £22,000.

The claimant employed a solicitor for representation, and the case reached Northern Ireland's equivalent of the Upper Tribunal.

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At this point, the Department supported the appellant's case, but not on the grounds put forward by his solicitors. The Department's ground was this: was there a real-world market for the appellant's half-share in the property occupied by his ex-wife? A real-world view of the market takes into account the ex-wife's willingness to sell, and, if they are unwilling to sell, the likelihood of a court ordering its sale.

The Department went on to cite a series of cases, four in all, the earliest from 2002 and reported, all of whose facts were similar to those of the present case.

The First-tier Tribunal, from which this case sprouted, either did not know of their existence, or knew of their existence but failed to bring them to mind to apply to the facts before them.

The ex-wife, for example, was disabled. She had limited capability for work. The home had been adapted for her needs. And she was unwilling to sell. These were the real-world facts.

In these circumstances, it was unlikely that a court would force a sale.

Commissioner Stockman agreed with the grounds put forward by the Department. The real world, as it pertained to this case, had not been taken into account. A court would be unwilling to force a sale.

So, the capital value of the appellant's share was nil.

C29/21-22 (PIP) – Fixed term awards of PIP and its guidance in the ADM (Advice for Decision Makers) – asserting the independence of tribunals

This is a case from Northern Ireland, so why, you might ask yourself, should we take any notice of it?

What's it got to do with England, or Scotland, or Wales?

Two reasons: the law and the guidance that this case is concerned with is word for word the same in all four regions, and secondly, there were three bright brains presiding over the issues. By that I mean there was not one, but three judges making up the Upper Tribunal.

Although not binding on the other regions of the United Kingdom, the two reasons above make the case highly persuasive.

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But highly persuasive to whom, exactly, and in what circumstances?

To Disability Living Allowance claimants with indefinite awards who are invited to claim Personal Independence Payment, and the subsequent PIP award is no longer indefinite.

Take, for example, the appellant in *C29/21-22(PIP)*. The exact same thing happened to her. She had an indefinite award of DLA, and, on her transfer to PIP, was awarded the benefit, but for five years. Five years only.

The First-tier Tribunal didn't say why it was for five years only, so the claimant took the case to the Social Security Commissioners (as they are still known, in Northern Ireland) on the not unexpected ground of inadequate reasons for time-limiting the award.

The Commissioners' starting point was section 88 of the Welfare Reform Act 2012 (the English equivalent to the Northern Ireland provisions). This section states that PIP awards are to be time-limited as a matter of course, unless the person making the award thinks otherwise, and in thinking otherwise they have regard to... guidance issued under Section 88.

Here's the relevant paragraphs from section 88:

(2) An award of Personal Independence Payment is to be for a fixed term except where the person making the award considers that a fixed term award would be inappropriate.

(3) In deciding whether a fixed term award would be inappropriate, that person must have regard to guidance issued by the Secretary of State.

That guidance can only refer, of course, to the ADM, the Advice for Decision Making, as there was no other guidance mentioned in the case.

The ADM says that when making a decision on the matter, the person making the award should have regard to things like the evidence produced in the PIP assessment, the claimant's own evidence, and any other evidence relating to the claimant's medical condition.

The first thing the tribunal of judges did was to go back a few steps and spotlight their attention not on the guidance, but the person using that guidance to make the award.

Who is this *person making the award?*

Well, I can tell you who they're not.

They're not the three judges and their brilliant brains – the brains brought to bear upon the issue. They distanced themselves from this person, like a friend gone out of fashion.

In the progress of their reasoning, they asked themselves another question: can the person making the award actually be themselves? Because that is what is commonly understood: a tribunal, at whatever level, stands in for the initial decision maker. Why defy that assumption? It's as plain as day and established by a reported decision – R(IB)2/04.

The trio of judges, however, asserted their independence from the person making the decision. And they did it for two reasons.

A tribunal should not, they said, *"be constrained in its remit or deliberations; it cannot be directed as a matter of law to pay specific attention to an extra statutory document drafted by one of the parties".*

An extra statutory document drafted by one of the parties. This is what may compromise the tribunal's independence.

Furthermore, the tribunal made reference to Article 6 of the European Convention on Human Rights. Article 6 confers on appellants a right to a fair and public hearing... by an impartial tribunal.

Looking forward to... PIP claims review for deaf or hearing-impaired people

On 21 August 2020 Judge Rachel Perez in the Upper Tribunal allowed two appeals from appellants who wore hearing aids due to their hearing impairments.

They claimed Personal Independence Payment and the claims raised a particular issue around the removal of the aids when taking a bath or shower. In neither case did the First-tier Tribunal award any points for this activity, that is, daily living activity 4: washing and bathing.

The issue before Judge Perez was this: were they unable to hear a standard smoke or fire alarm when they had to remove their hearing aids in order to shower and, as a consequence did the claimants require supervision in order to have a bath or shower.

Such an issue inevitably raises questions around remoteness of risk and the criteria under regulation 4 of the PIP Regulations, most notably the criterion of undertaking an activity safely.

In allowing the appeals, Judge Perez opened two routes to points under activity 4. Where a visual alarm takes the place of an aural alarm, two points are available under activity 4(b): *needs to use an aid or appliance to be able to wash or bathe.* If a visual alarm is not practical, then two points may be available under activity 4(c): *needs supervision... to be able to wash or bathe*. Subsequent DWP guidance has confirmed this, and can be found at www.gov.uk/government/publications/personal-independence-payment-changes/risk-and-safety-changes-to-pip-law-from-21-august-2020.

As a result of Judge Perez' decision, the DWP is reviewing claims from deaf or hearing-impaired people made on or after 21 August 2020, to see if there is entitlement under the new ruling. For those whose award predates 21 August 2020, benefit will be backdated, under the anti-test case rules, to that date. For those who claimed after 21 August, benefit will be backdated to date of claim.

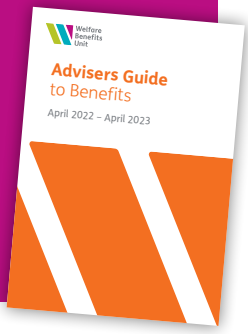
As with previous additional entitlement reviews carried out by the Department, we urge our advisers to remain alert for cases not picked up by the review.

Advisers Guide to Benefits 2022/23

Regularly receiving positive feedback such as a recent end of year comment *"Don't know what I'd do without my Benefits handbook and rates card"* – our Advisers Guide to Benefits is written for people who give information and advice as part of their work. The concise annual guide provides an overview of benefit criteria including Universal Credit, disability benefits and additional help available. Its clear format makes it ideal for quick reference, and the compact style is handy whether in the office, out and about or for home working.

The 2022/23 Guides are now available. Order your copy today online at www.welfare-benefits-unit.org.uk/publications/advisers-guide/

"Up to date information written in a clear and understandable way"



Training Programme April to September 2022

"Really great combination of delivered information and practice exercises made complex information easy to learn"

Are you new to welfare benefits, in need of a refresher, or looking to expand your knowledge? Whatever your level of experience or particular interest, take a look at our upcoming courses and come and join our *"friendly supportive and extremely knowledgeable"* tutors.

Our new programme of online training for April to September 2022 is available to book.

Book your course today at www.welfare-benefits-unit.org.uk/training/

Upcoming Training

Introduction to Benefits: Wednesday and Thursday 27 and 28 April and 4, 5, 11, 12 May, 10am to 12.30pm ***fully booked***

Universal Credit and Housing Costs: Thursday 26 May, 10am to 12:30pm

Universal Credit and Work: Thursday 26 May, 1:30pm to 4pm

Benefits for Disabled Young People including students: Tuesday 7 June, 10am to 4pm

Introduction to Benefits: Thursday 9, 16 and 23 June, 10am to 4pm ***new date***

Introduction to Benefits: Thursday 7, 14 and 21 July, 10am to 4pm

Limited Capability for Work (ESA and UC): Wednesday 15 September, 10am to 4pm

Introduction to Universal Credit: Wednesday 21 and Thursday 22 September, 10am to 12:30pm

All our courses are run online via Zoom.

Welfare Benefits Unit

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