



Welfare Writes

Summer 2020

Face-to-face assessment suspension continues for health and disability benefits

- Face-to-face assessments to remain suspended, but kept under review
- Some review and reassessment activity to gradually resume from July 2020 for PIP and DLA
- Clients are encouraged not to delay making claims as all benefits remain open and telephone and paper based assessments are in place where appropriate.

This temporary suspension will remain in place following a consideration of the latest public health guidance. Any changes will be announced in due course. Clients are reminded that all services remain open and they are encouraged to make a claim if they believe they need support, or to update the DWP on a change of their circumstances.

DWP will shortly be restarting review and renewal activity in PIP and DLA, starting with those claims which were already underway when this activity was suspended.

What this means for claimants:

Anyone who makes a new claim or is due an assessment will be contacted, if necessary, to discuss next steps, which could involve either telephone or paper-based assessments.

DWP will be writing out to some PIP and DLA claimants asking them to complete paperwork to resume their reviews, reassessments and renewals. For PIP cases where paperwork has already been returned, claimants may be contacted by one of their Assessment Providers.

<https://www.gov.uk/government/news/face-to-face-assessment-suspension-continues-for-health-and-disability-benefits>



In this issue:

- ⇒ Brexit and benefit claims
- ⇒ Changes to Job Retention Scheme
- ⇒ Earnings in UC and court challenges
- ⇒ Recovery of debts
- ⇒ Return of conditionality
- ⇒ Changes to SSP

The newsletter of Surrey Welfare Rights Unit

Suspension of conditionality and benefit sanctions ends

Confirming the reintroduction of conditionality in a written parliamentary answer, Employment Minister Mims Davies said— 'From 1 July we will reintroduce the requirement for claimants of Universal Credit, New-Style and legacy Jobseeker's Allowance to accept a claimant commitment as part of any new claim. For existing claimants, we will review and update their claimant commitment as capacity allows. This is so we can provide tailored support to help them find work or increase hours.

Claimant commitments must be reasonable for the 'new normal', acknowledging the reality of a person's local jobs market and personal circumstances to prepare them for getting back into work.'

Ms Davies also confirmed that, from this month, claimants will be able to make an appointment with their work coach if they can't get the help they want online or over the phone.

From 14 July DWP confirms that it is testing 30 minute telephone appointments for claimant commitment interviews

The Employment Minister also advises that Department is 'rapidly making provisions to return to face-to-face appointments with work coaches'. She further stated that-

'As we re-introduce claimant commitments we are initially conducting these interviews by phone and testing a 30-minute commitment appointment. We will evaluate this testing and as with all policies we will keep this continually under review. Jobcentre Plus offices continue to remain open to help vulnerable claimants who may not be able to access support through the phone or their journal.

The work search reviews will continue with the timings of the existing intervention regime where work coaches have the option to pick from a range of appointment lengths'.

The government updated gov.uk on 1 July to remove the wording 'You will not get a sanction if you cannot keep to your claimant commitment because of Coronavirus (COVID-19)' from pages relating to, for example, refugees, prison leavers, homeless people, people with a disability or health condition, couples and families.

New Centralised DWP Complaints Team

From 9th July 2020, the DWP have established a centralised team to handle complaints. They say that complaints will be triaged and the most serious or from vulnerable clients will be prioritised. They also comment that it removes the requirement for the complainant to escalate their complaint if they were not satisfied with the initial response.

The option to take the complaint to the Independent Case Examiner and then the Parliamentary Health and Service Ombudsman remains.

At the time of writing the details online about how to complain do not appear to have been amended. <https://www.gov.uk/government/organisations/department-for-work-pensions/about/complaints-procedure#how-to-complain>

Recovery of Debts restarts

The DWP has advised that the 3 month suspension of recovery of benefit overpayments and Social Fund loans has now ended. Claimants will be notified in writing or via their journal that payments are to recommence.

Recovery will re-start automatically for those who have direct deductions from benefit or pay via Direct Debit. Those paying by other means, for example, standing order, are being asked to recommence payments. Clients who had a direct earnings attachment before the pause will be asked if they want an alternative repayment arrangement.

Client's experiencing "real financial hardship" can contact Debt Management on 0800 916 0647 to request a deferral. They will need to provide a financial statement and evidence of the effect of recovery on the welfare of the client or anyone in their household. A decision to defer is discretionary. Clients unhappy with a decision can make a complaint. Contact Citizens Advice for help.

Details of how the DWP administers benefit recovery can be found here. <https://www.gov.uk/government/publications/benefit-overpayment-recovery-staff-guide>

DWP not challenging Court of Appeal UC Decision

The Court of Appeal on 22nd June 2020 has found that the way Universal Credit rigidly applies rules around earned income to be “irrational”. The Secretary of State for Work and Pensions has indicated that she will not challenge the ruling.

Four female employees who claim Universal Credit, have successfully demonstrated that they have been financially disadvantaged by the way Universal Credit applies the earned income to their claims.

Universal Credit deducts 63% of earned income received in any monthly assessment period (less a work allowance, if applicable) from the Universal Credit Maximum Amount. For those whose pay date can vary, this can result in two payments of monthly earnings within 1 monthly assessment period and potentially no payment of earnings in another:

- This results in Reduced UC entitlement (or even a nil entitlement) in an assessment period
- Only one work allowance being disregarded from the earnings. If the earnings were spread over two assessment periods, two work allowances would have applied
- Variable amount of UC in different assessment periods making budgeting challenging

“ Between them, the claimants fell into rent arrears, defaulted on council tax, incurred bank overdraft charges, borrowed money and even become reliant on food banks to make ends meet. One of the mothers had to decline a promotion and put her professional aspirations on ice because of the way the UC system treated her earnings.” - CPAG

It has not been made clear as yet what changes the government will make in the light of this ruling. In the meantime, claimants in similar positions should request a Mandatory Reconsideration and, if unsuccessful, appeal the Universal Credit decision, quoting this case (see below). Claimants who are paid fortnightly or four weekly should also challenge such decisions although this case dealt with variable monthly payments.

SSWP v Johnson, Woods, Barrett & Stewart [2020]
EWCA Civ788

The full Judgement can be found here:

<https://www.bailii.org/ew/cases/EWCA/Civ/2020/778.html>

Another Court decision on UC and earnings

After the Court of Appeal’s decision in Johnson, a High Court judgement given on 20th July 2020 has found that the application of the benefit cap for a UC claimant who works 16 hours per week at the minimum wage but who is paid 4 weekly rather than monthly, is irrational.

Ms Pantellerisco was paid £525.44 every 4 weeks (at the 2019/20 national living wage rate of £8.21 per hour). The earnings exemption for the benefit cap, while based on 16 hours work per week at national living wage, was set at £569.23 (again 2019/20 rates) because it is calculated on a monthly basis.

Over the course of a year, her UC was calculated using earnings of £525.44 for 11 UC Assessment Periods. She is therefore benefit capped for 11 out of 12 Assessment Periods. A claimant working 16 hours per week at the minimum wage but paid calendar monthly, would not be benefit capped and their UC award would remain constant.

The claimant tried to get her employer to pay her monthly but this was simply not possible. Nor could she increase her hours of work given her childcare responsibilities and her own health (she suffers from fibromyalgia). Being subject to the benefit cap meant that she has been forced to rely on a local foodbank and her children’s school for assistance with food, school uniforms and payment of gas and electricity bills.

In its judgment, the High Court accepted that the Court of Appeal's reasoning in Johnson in relation to irrationality applied equally to, if not more forcefully, to the situation in this case. It also found that the SSWP's approach of treating the first claimant's earned income in 11 out of 12 assessment periods as only being her earnings for 28 days (even though she worked a full month) and so subjecting her to the benefit cap in those assessment periods was an approach that no reasonable Secretary of State would have taken.

Claimants in similar positions should request a Mandatory Reconsideration and, if unsuccessful, an appeal of their Universal Credit decision, quoting this case:

Pantellerisco and others v SSWP CO/3572/2019

Job Retention Scheme changes

The Government's Job Retention Scheme closed to new entrants on 10 June 2020. The scheme will come to an end on 31 October 2020, as previously announced. Since 1 July, businesses using the Government's furlough scheme have been able to bring furloughed employees back part-time. Even if they don't, the Government will continue to pay 80% of staff salaries during June and July.

Your employer is responsible for paying your wages for the time you are working. It will also decide the hours and shift patterns you will work when you go back. There is no limit on the number of hours you can work. The amount of time you work each week can also vary over the month, with employers varying it week by week. When you are working, you should be paid your normal wage for those hours. For the hours you're not working, you will be covered by furlough pay, so you will get at least 80% of your normal wage. If you stay on furlough until October, you will not see any changes in terms of how much you are paid or when, you will still get a minimum of 80% of your normal wage.

The changes are more to do with adjustments to what the state covers and what your employer has to cover:

Month	State contribution	Employer contribution
June and July	80% of salaries, plus national insurance and pension contribution	Nothing
August	80% of wages, up to a cap of £2,500 month	NI and pension contributions
September	70% of wages, up to a cap of £2,190 month	NI, pension contributions and 10% of wages to make up 80% of the total, up to a cap of £2,500 month.
October	60% of wages, up to a cap of £1,875 month	NI, pension contributions and 20% of wages to make up 80% of the total, up to a cap of £2,500 month

Guidance on recovering DHPs following bedroom tax cases

As a result of litigation that successfully argued that the imposition of the bedroom tax discriminated against disabled adults in certain circumstances the law was changed from 1 April 2017 to included entitlement to an additional bedroom for some disabled claimants. Litigation continued to determine how Housing Benefit rules on the bedroom tax should be applied to decisions that were appealed that pre-date the change in the law. In the Supreme Court case *RR –v– The Secretary of State for Work and Pensions*, it was decided that Housing Benefit without the spare room subsidy could be paid before the 1 April 2017 even though the HB rules at the time did not allow it.

While *RR* was passing through the courts a number of look-a-like appeals were filed, and stayed, awaiting the outcome. These stayed appeals will be decided in line with the Supreme Court case. This will mean that local authorities will be paying Housing Benefit arrears to claimants in these circumstances. Many of the claimants who are successful in their stayed appeal will have received Discretionary Housing Payments (DHPs) to cover the shortfall in rent while the question was being decided through the courts. Guidance has been issued to local authorities on whether these DHPs can be recovered. The guidance says that if the DHP was paid appropriately at the time, this cannot be offset against backdated Housing Benefit payments that cover the same period. The LA will need to rely on their rules for recovering DHPs which require either an error when deciding the application for payment, or misrepresentation or the failure to disclose a material fact, whether fraudulently or otherwise by the claimant. The guidance also says that current DHPs should not be reduced just to effectively recover amounts already paid. It did, however, suggest that lump sum back-payments of HB may for some local schemes mean that DHPs going forward are affected.

The guidance appears to suggest that there is no clear mechanism for Local Authorities to recover DHPs paid to cover rent shortfalls in these circumstances. Contact SWRU if clients in this situation are being asked to repay DHPs.

Legacy benefit run-on extended

From the 22 July legacy benefit claimants who make a claim for Universal Credit will get a 2-week run-on of their existing DWP means tested benefit. This is in addition to the 2-week Housing Benefit run-on that HB claimants should also receive.

The relevant award of Income Support, Income based Jobseekers Allowance and Income-related Employment and Support Allowance will be calculated as usual taking into account relevant earnings, unearned income and benefit income. This contrasts with the full HB award that is paid during the 2-week run-on that arises because UC is a benefit that passports to full HB.

If the existing old-style JSA or ESA award includes a contribution-based element, then this converts to the new-style equivalent from the date of the UC claim. This continues to be paid and is included as unearned income in the UC award calculation. It is only the IRESA or IBJSA top-up that continues to be paid for two weeks but stops at the end of the run-on period. The IS award similarly continues for the extra two weeks.

Run-on payments of IS, IRESA and IBJSA are not counted in the total of benefits received when determining if the benefit cap applies.

Video Tribunal Hearings

All face to face hearings have been replaced by telephone or other remote hearing technology, in line with coronavirus (COVID-19) tribunals guidance.

An update on progress towards the introduction of video hearings for Social Security and Child Support appeals has outlined how this will work with judges determining if cases are suitable for video hearings, taking account of issues including the benefit under appeal and any difficulty the claimant has in using the technology.

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-06-22/62390/>

REACHING PENSION AGE ON UNIVERSAL CREDIT

Universal Credit (UC) ends when a single claimant, or both joint claimants have reached state pension age. In this situation there is no payment in the last Assessment Period (AP) unless a claim for Pension Credit (PC) has been made in advance. This means that, although PC can be backdated to the day after UC ended, as UC is not paid from the start of the AP in which pension age is reached there can still be a gap in entitlement to benefit. If the claimant reaches pension age towards the end of an Assessment Period this can be significant, particularly when housing costs are included in the award.

UC claimants whose entitlement will end because of reaching retirement age should be advised to make an advance claim for Pension Credit to avoid this happening. If an advance Pension Credit claim has been made before they turn pension age then a pro-rated amount of UC is paid in the final Assessment Period.

From 25 November 2020 the government has introducing legislation to allow a UC award to continue to the end of the AP in which retirement age is reached and entitlement ends. This allows the UC award as well as Pension Credit and Housing Benefit to be paid from the date pension age is reached to the end of the UC Assessment Period in which it is reached. At the end of that AP, the UC award ends and the PC and HB awards continue. The UC award will not be taken into account as income for the PC or HB calculations.

Court rules destitution policy unlawful

In a new judgment, issued on 7th May this year the High Court ruled that the government's 'no recourse to public funds' (NRPF) policy regime is unlawful in cases where the applicant is not yet suffering, but will imminently suffer, inhuman or degrading treatment without recourse. Prior to this decision, discretion was only decided on actual destitution grounds.

It is a very detailed decision and can be found here: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/1299.html>

Brexit, EEA Nationals and benefit entitlement

We are moving towards the end of the transition period, the 31 December 2020. The government has signalled that there will be a new points-based immigration system in place from the 1 January 2021. It has been suggested that EU freedom of movement rights to reside will also end at this time.

If EU freedom of movement ends then all EEA nationals and their family members will need to have either settled or pre-settled status in order to legally remain in the country. Although settled status is a right to reside that gives entitlement to means tested benefits, pre-settled status does not. There are ongoing litigations that are trying to challenge the lack of benefit entitlement for those with pre-settled status but they may take some time to be finally decided and may not be successful.

EEA national clients and their family members should be encouraged to apply to the settlement scheme. This includes EEA national children. Ideally they should apply before the end of the transition period or they may find themselves with a gap in their right to reside. The final date for applying to the settlement scheme is the 30 June 2021.

There is a real possibility that benefit claimants who only achieve pre-settled status will not be able to claim benefits after the end of the year. For couples if one partner has settled status and the other has pre-settled status benefit awards may reduce.

SWRU are considering what action to take to raise this issue. We are particularly concerned that many low-income families could suddenly lose entitlement to the benefits they have receiving when freedom of movement ends if they do not have settled status. There are challenges passing through the courts that are attempting to pre-settled status to be accepted as a right to reside that gives entitlement to means tested benefits.

The government could act to prevent this happening, one option is to allow claimants with pre-settled status to claim means tested benefits, another is to introduce transitional protection for existing benefit claimants. It is not clear, however, that these or other options are being considered. Without some government action it is likely that families without settled status will need to consider whether they are able to earn enough as a household to cover all their costs without relying on, for example, UC?

As a start it may be worth contacting your local MP to raise the question of how families currently relying on means tested benefits because of their right to reside under the EU freedom of movement rules will be able to manage if they are only granted pre-settled status and there is no entitlement to UC and other means tested benefits.

Changes to SSP support and Covid-19

Changes to SSP regulations allowed SSP entitlement for people who were shielding. Since 1 August 2020 the Government has ended shielding recommendations for specific groups of people identified as clinically vulnerable and extremely clinically vulnerable. This means SSP can not longer be automatically claimed on shielding grounds for those groups. In areas which are or maybe in the future subject to local lockdown restrictions, the NHS may still issue shielding letters to residents in those areas. The regulations still provide SSP on shielding grounds for those individuals.

Further SSP regulations have been issued which take effect from 5 August 2020 and provide extended entitlement for people who have been instructed to self-isolate, or who have tested positive. The Statutory Sick Pay (General) (Coronavirus Amendment) (No. 5) Regulations 2020 . The 7-day period has been extended to 10 days, and SSP entitlement can continue beyond 10 days until you are no longer experiencing symptoms, or if you are self-isolating, the person you live with is no longer experiencing symptoms.

SWRU News

- ◆ Benefit enquiries can be sent to advice@swru.org We can call you back if you would prefer to discuss your query over the phone, just include your tel number in the email.
- ◆ We are busy writing new e-training modules. Some are already listed on the training page on our website including:
 - * **Brexit and access to UC for EEA nationals**
8 September 10am
 - * **Surplus earnings in Universal Credit**
15 September 10am
- ◆ We can also develop bespoke courses to meet the needs of your team. Delivery platform can be Zoom or Microsoft Teams, whichever is your preference.
- ◆ If you subscribe to SWRU you should have received replacement posters and benefit rates pocket cards, as these had to be amended with the increased Universal Credit, Working Tax Credit and Housing Benefit amounts.



Unit 14A
Monument Way Depot
Monument Way East
Woking
Surrey GU21 5LY

Advice queries
Office queries
Training queries

advice@swru.org
bureau@swru.org
training@swru.org

A member of Citizens Advice
Registered Charity Number 1062826
Registered Company Number 3335128

Summer Food Fund

The Covid Summer Food Fund enables children who are eligible free school meals to also be supported over the summer holiday period. This is in recognition of the effects of the Coronavirus pandemic on families, particularly those receiving support via means tested benefits.

Details about those who are entitled to free school meals, and those with no recourse to public funds who are currently able to claim free school meals can be found on the following sites.

<https://www.gov.uk/apply-free-school-meals>
<https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/guidance-for-the-temporary-extension-of-free-school-meals-eligibility-to-nrpf-groups>

It is an extension of the school meal voucher fund that the Department for Education has been funding during term-time.

Schools had to apply for a £90 voucher for each child that they identified as at least one week before the end of the summer term. This could be increased to £105 if the summer holiday period is 7 weeks long. The vouchers are issued in the form of an e-code which a parent/carer can exchange for an e-giftcard for a specific supermarket.

Supermarkets participating are

- Aldi
- Asda
- Company Shop Group
- Iceland, including The Food Warehouse Stores
- M&S
- McColl's
- Morrisons
- Sainsbury's
- Tesco
- Waitrose

If any parent/carer is experiencing difficulties, they can contact the third party supplier Edenred freeschoolmealsparentscarers@edenred.com

Contact us

If you have any comments or complaints about the service you receive from Surrey Welfare Rights Unit you can discuss them with the Chief Officer at bureau@swru.org