



Benefit Updates and Campaigning News

All the staff and trustees at Surrey Welfare Rights Unit wish you a happy Christmas, New Year, and hopefully a fantastic 2022! We would like to thank our funders, supporters, and partners. We have all coped with another challenging year, and for our clients, they have had to deal with additional stresses such as benefit cuts, inadequate administration of benefits, and uncertainty about the future of welfare payments. We will continue to challenge errors, injustices and discrimination. We will target our efforts, and work with our partners, to make sure those who face disadvantage in social security matters, have access to expert advice, advocacy and support.

Reminder! Pension-aged UC claimants receiving a disability benefit are treated as Having LCWRA

We are seeing cases where mixed aged couples claiming UC, are not receiving the LCWRA element as part of their maximum UC amount, despite the pension aged claimant being entitled to Attendance Allowance, DLA Higher Rate Care Component or the enhanced rate of PIP Daily Living.

Under Schedule 9 of the UC Regulations (2013) pension aged claimants with the one of the above benefits in payment are treated as having Limited Capability for Work and Work Related Activity and are therefore entitled to the LCWRA element – for most claimants paid after a waiting time of three assessment periods.

Note that either rate of AA qualifies for the element, but only higher rate of DLA Care or enhanced rate of PIP Daily Living.

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Support for Mortgage Interest (SMI) interest rate changes

SMI is a loan and the interest charged by the DWP on that loan is currently 0.6%. The rate can change up to twice a year. This means there may be further changes in January 2022.

The interest rate used to calculate how much SMI you get is currently 2.09%.

For further information see <https://www.gov.uk/support-for-mortgage-interest/what-youll-get>

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Audio Recordings of Face to Face PIP Health Assessments to be available

Minister for Disabled People, Health and Work, Chloe Smith, said on 16 September 2021 that audio recordings of PIP face to face health assessments will be available as “soon as is reasonably practical.”

In her answer to Parliament she said:

“The Department continues to work closely with both Independent Assessment Services and Capita to deliver an audio recording service for PIP face to face assessments that removes the requirement for the claimant to provide the equipment. Arrangements are being finalised and we hope to have this in place as soon as practicably possible.”

Ms Smith continued -

“Claimants are not penalised if they are unwilling to attend an assessment until their request for audio recording can be fulfilled. Any claimants who request an audio recording of their face to face assessment will be given the option of waiting for this to be implemented before their assessment takes place”

We would suggest caution when choosing to delay a PIP assessment as this will also delay any decision. If an award is being reviewed there could be an issue with previous awards ending prior to a decision on the review, resulting in an interruption to a PIP award. This could impact on premiums being paid to the claimant or carers continuing to receive Carers Allowance/ Income Support/ Carers Element.

Source: <https://questions-statements.parliament.uk/written-questions/detail/2021-09-16/50783>

Closure of Post Office card accounts now extended

The Post Office Card Accounts (POCa) scheme was previously set to end in November 2021. This time frame has now been extended for 12 months to ensure everyone has the time to make alternative arrangements.

DWP are writing to all those claimants who currently receive payment into a POCa, telling them the service is ending and encouraging those who are able to open a bank account to do so.

Those who remain unable to access such services will be migrated onto a new Payment Exception Service.

Under this new service pensioners and benefit claimants are able to choose how they receive their payments. These methods include the delivery of digital vouchers via:

- a SMS
- an email
- a unique barcode displayed on a mobile phone

In addition, all those claimants who are migrated from POCa to the new service will receive a reusable mag stripe plastic card, which can be used to receive their benefits in cash from more than 28,000 PayPoint retail outlets or 11,500 Post Office branches. Work has been undertaken to identify those most at risk in order to provide vulnerable claimants with additional support before the move to the new system.

Extension of Covid related easements to ESA

The expiry dates for Covid-19-related easements to Employment and Support Allowance (ESA) has been extended from 12 November 2021 until 24 March 2022.

The Employment and Support Allowance and Universal Credit (Coronavirus Disease) (Amendment) Regulations 2021 (SI.No.1158/2021) extend provisions within the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 from 12 November 2021 until 24 March 2022.

Until 24 March 2022, ESA claimants who meet the eligibility conditions and are infected with Covid-19, or self-isolating in line with government guidance, or are looking after a child (or qualifying young person) who falls into either of these categories -

- ⇒ can be treated as having limited capability for work for the purposes of ESA without the requirement to provide any medical evidence or undergo a work capability assessment;
- ⇒ can receive ESA from day one of the claim without the need to serve waiting days.

[SI.No.1158/2021](#) is available from [legislation.gov.uk](https://www.legislation.gov.uk)

Recent Changes Round-Up

Possibly in an attempt to divert attention away from the removal of the £20 per week Universal Credit uplift, the Chancellor did make some welcome changes to Universal Credit for those in work, introduced from 24 November 2021. The taper amount is reducing from 63% to 55% meaning that for every £1 earned, UC claimants will keep 45p. Work Allowances will increase by £500 per year (£42 per month) meaning they will be £335 per month for those getting rent support in their UC and £557 for those without rent support. Remember though that only some households are entitled to a Work Allowance; when there is an adult in the UC claim who has limited capability for work, or there is a child or qualifying young person in the UC claim.

However, these measures have no impact for the 1.7 million Universal Credit claimants who are sick, disabled or Carers. It also has no impact on those UC claimants who are unemployed, or for those on legacy benefits like Employment Support Allowance, Income Support and Jobseekers Allowance.

An increase to the National Living Wage (those 23 and over) to £9.50 per hour from April 2022 as well as increases in the National Minimum Wage:

	Hourly Rates
Age 21- 22	£9.18
Age 18 - 20	£6.83
Age 16 - 17	£4.81

The continuation of the temporary increase in the surplus earnings threshold to £2,500 for Universal Credit claimants is extended until April 2023, when the threshold will reduce to £300.

Government announced it was bringing forward exemptions to the Local Housing Allowance shared accommodation rate for victims of domestic abuse and victims of modern slavery from October 2023 to October 2022.

The new housing element of Pension Credit in place of Pension Age Housing Benefit is now intended to take effect from April 2025 (previously April 2023) to align with the full rollout of Universal Credit.

£2.6 billion for the DWP to 'transform how customers interact with the welfare system' (This includes money for additional Work Coaches, Help to Claim replacement contract, programmes like Kickstart and Access to Work, as well as money to tackle fraud and error and capital expenditure on DWP buildings).

Following the Johnson Court case, the government has changed the legislation to resolve the problem with Universal Credit (UC) associated with two monthly payments being made in one Assessment Period (AP). Two payments in one AP meant a reduced or nil UC award in the AP in which the two payments were received and in a subsequent or previous AP with no earned income the potential for the application of the benefit cap and the loss of a work allowance resulting in less UC being awarded overall. Two monthly payments in an AP can happen routinely where a claimant is paid close to the end of an AP, particularly when the employer pays ahead of a weekend or a Bank Holiday.

The government introduced legislation to allow the second monthly payment in an AP to be reallocated to the appropriate Assessment Period. This legislation came into force in November 2020. A further recent announcement confirmed that the process has been automated so that a second monthly payment in an AP is reassigned to the following AP. Hopefully this will reduce the number of requests for revision to apply Johnson correctly.

Jobseekers Allowance with SDP

We are seeing more cases than usual in which clients in receipt of PIP, and who have also been in receipt of old-style Jobseekers Allowance (JSA) for rather a long time with the Severe Disability Premium (SDP) included in their award, are now facing the transition to UC. This will often be prompted by the resumption of more stringent requirements to look for work. Claimants who are not able to fulfil their jobseeking requirements because of ill health or disability will not continue to be entitled to JSA. These clients would, under the legacy regime, have moved seamlessly to ESA and retained their SDP. With a move to UC the only option is to try to achieve a reduced claimant commitment, pending a Work Capability Assessment.

Claimants in receipt of Income-Based JSA with an SDP should be awarded the transitional SDP element in their UC award. However, this will be eroded if they are later awarded the LCWRA element. For claimants who only have limited capability for work there is no new awards of LCW element, so the transitional element will continue. The claimant may not be as well off as they would have been on legacy benefits.

Claimants in this situation should claim UC within one month of the end of the JSA award, to preserve entitlement to the SDP transitional element. They can request backdating in their journal as soon as the claim has been made up to the end of the JSA award, provided it is within one month. New claimants should provide a medical certificate at the beginning of the UC claim to start the process of a work capability assessment. They should also ask for easements in the claimant commitment on the basis of their ill-health or disability as they will probably be in the all work-related requirements group when the claim is made.

Benefit Up-rating in 2022

From April 2022 benefits will be uprated by 3.1%, including State Pensions, which will not be increased by wages growth instead, as the "triple lock" is suspended for 2022/23.

The earnings limit for Carer's Allowance will also increase by 3.1% to £132.00 per week, which is lower than the increase % in the national minimum wage rates.

Permitted Work Higher Limit increases to £152.00.

There are no increases to Local Housing Allowances, capital rules or the benefit cap.

Cohabiting partners and Bereavement Benefits

In 2018 the Supreme Court declared it was incompatible with the European Convention on Human Rights to preclude any entitlement to Widowed Parent's Allowance by a surviving unmarried partner. A draft remedial order has been made under section 10 of the Human Rights Act 1998, but it has not yet been finalised. If approved the changes will apply retrospectively from 30 August 2018.

As a result, it is understood that bereavement payments are still not being awarded to unmarried partners. In a recent Upper Tribunal decision concerning a cohabiting partner refused Bereavement Support Payments in a claim made before 30 August 2018, Judge Rowland decided that the appeal should be left open to allow the claimant to benefit from any changes in the remedial order if it is changed. This would suggest that First Tier Tribunals with similar cases should consider postponing the decision rather than making a negative decision while the remedial action has not yet been put into effect.

UPFRONT CHILDCARE COSTS - SALVATO

On 13 October 2021, the Court of Appeal held that 'Proof of Payment Rule' requiring Universal Credit claimants to pay for childcare upfront is not unlawful.

Ms Salvato was a single working mother receiving Universal Credit and eligible for the childcare element. The 'Proof of Payment Rule' - which requires childcare is paid upfront (under regulation 33(1)(za) of the Universal Credit Regulations 2013) - meant that she could not afford to pay her childcare costs and as a result she got into debt and had to reduce her hours.

She brought a claim for judicial review in the High Court - [2021] EWHC 102 (Admin) - which held that the Proof of Payment Rule discriminated indirectly against women, was not objectively justifiable, and therefore was incompatible with Article 14 of the European Convention on Human Rights (ECHR) read with Article 8 and/or Article 1 of Protocol 1 (A1P1). In addition, the Court held that, insofar as it precluded a system based on liability to pay (like the housing costs element), the Rule was irrational.

The Secretary of State for Work and Pensions appealed to the Court of Appeal. The Court of Appeal allowed the appeal as while the Rule does indirectly discriminate against women, it is objectively justifiable and not irrational.

[Salvato, R \(On the Application Of\) v The Secretary of State for Work and Pensions \[2021\] EWCA Civ 1482](#)

4 x Weekly Pay and the Benefit Cap—Pantellerisco

On 8 October 2021, the Court of Appeal held that it was not irrational for the Secretary of State not to modify the earnings-related exemption to the benefit cap to address what it described the 'pay cycle effect.' In September 2019 CPAG took judicial review proceedings on behalf of Ms Pantellerisco and other workers on UC who are disadvantaged as they are subject to the benefit cap for 11 months out of 12. This is because they are paid 4-weekly even though the monthly equivalent earnings are above the threshold for the benefit cap not to apply.

The case was heard in the High Court in May 2020 with judgment given in Ms Pantellerisco's favour on 20 July 2020. The Secretary of State appealed and the Court of Appeal ruled in favour of the DWP in October 2021.

Permission to appeal to the Supreme Court was refused by the Court of Appeal and the claimants are looking to apply for permission direct from the Supreme Court once they have public funding to do so.

R (Pantellerisco and others) v SSWP [2020] EWHC 1944 (Admin); R (Pantellerisco and others) v SSWP [2021] EWCA Civ 1454

CPAG are encouraging advisers 'to request a mandatory reconsideration and subsequently appeal decisions of the kind described above and then request that the appeal be stayed behind any onward appeal by Ms Pantellerisco to the Supreme Court.'

Temporary Changes to Fit Notes

Just announced by the Government in <https://www.gov.uk/government/publications/universal-credit-if-you-have-a-disability-or-health-condition-quick-guide/universal-credit-if-you-have-a-disability-or-health-condition>

You do not have to provide a fit note (sick note) for Universal Credit until 27 January 2022. This will not affect your claim.

There is no need to ask your GP for a fit note before then. This is to give GPs more time to work on the coronavirus vaccination boosters.

If you are concerned about your health condition, you should continue to see your GP.

This applies for Statutory Sick Pay, ESA, and Universal Credit

Changes to DWP guidance on recoverable hardship payments

The DWP changed its Benefit Overpayment Recovery Guide following a judicial review brought by a client of Public Law Project (PLP).

The DWP guide now makes clear that they can waive any recoverable hardship payments, regardless of whether the claimant meets the requisite earnings threshold.

If a Universal Credit claimant is having deductions taken, they can ask the DWP to waive or reduce their debt even if the sanctions that caused the need for a hardship payment have been set aside.

If the DWP decision maker refuses to exercise their discretion at all, or if they refuse to waive the debt despite evidence of financial or medical hardship, the decision may be challengeable by judicial review. For further information and suggestions about what to include in the waiver request see <https://publiclawproject.org.uk/content/uploads/2021/06/DWP-guidance.pdf>

Misdirection of DWP staff leads to “steady stream” of inappropriate UC claims

For the second year running, the Independent Case Examiner, in her annual report, has highlighted that incorrect “advice” from DWP staff has led to inappropriate claims. These often involve claimants moving from legacy benefits to Universal Credit.

The ICE, Joanna Wallace said “Those that do claim Universal Credit find they can no longer return to claiming legacy benefits. In a number of the cases we examined during this reporting period, we found that confusion or ignorance on the part of staff resulted in customers making inappropriate claims in error.”

The DWP complaints procedure can be a useful tool for welfare benefits advisers, particularly where claimants have been misdirected to the wrong benefit, there have been long delays to claims/ MR requests or other administrative failures. Complaints can lead to ex-gratia payments, compensatory payments or formal apologies.

The ICE report can be found here <https://www.gov.uk/government/publications/dwp-complaints-annual-report-by-the-independent-case-examiner-2020-to-2021/independent-case-examiner-for-the-department-for-work-and-pensions-annual-report-1-april-2020-to-31-march-2021>

A timely reminder of Employment and Support Allowance (ESA) pending appeal

We are seeing a return to decisions ending IRESA because a client has been reassessed and found not to have Limited Capability for Work (LCW) or Limited Capability for Work and Work-Related Activity (LCWRA). The end of an award of a legacy benefit is often a trigger for a claim for Universal Credit. It is, therefore, worth a reminder of the existence of ESA pending appeal for those cases where it appears that the decision on LCW/RA is wrong and needs to be challenged. *If your current claim for ESA was made after 30 March 2015, this rule applies if this is the first time you have failed the WCA or this is the first time you have failed the WCA since a previous decision that you satisfied it.*

There is no need for a new claim for ESA to be made in order to be paid benefit pending appeal - legacy benefits can continue. The DWP reinstates the existing award once an appeal has been lodged. A High Court decision last year established that in this situation the claimant does not need to go through what could be a lengthy Mandatory Reconsideration process before an appeal can be filed. [Memo ADM 21/20](#) sets out the DWP guidance on this issue.

To be awarded ESA pending appeal, the client will need to appeal the decision to stop ESA and provide a medical certificate to the DWP to cover each of the days following the end of the ESA award. This is a requirement for entitlement to ESA pending appeal. Further evidence of how the conditions of entitlement are met can be sent later. ESA pending appeal is paid at the assessment rate, ie: no additional WRAG or Support Component. If the award is old-style ESA, the relevant allowance and premiums will continue to be paid pending appeal. There may be a delay while HMCTS inform DWP that an appeal has been lodged. The client will be awarded a backpayment of ESA to cover the gap. The client will need to continue to send in medical certificates until the end of the appeal process. If the claimant is found to have LCW/RA then the requirement for medical certificates ends.

SWRU TRAINING PROGRAMME

Quick Benefits Calculator - getting to know the basics	12th and 19th January (2 part course) Mornings
PIP - The mobility activities	18 January 10 - 12.30pm
Quick Benefits Calculator - Understanding Tax Credits	26th January 10 - 12.30pm
Introduction to Universal Credit	10th February 9.30 - 12.30pm
Introduction to Welfare Benefits	15th, 17th, 22nd, 24th, and 31st March 10 - 12pm

Further information and online booking at: <https://www.swru.org/training/>



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