Universal Credit and the CRU

Who benefits?

February 2019

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Summary

The introduction of Universal Credit will impact the operation of the Compensation Recovery Unit, compensators and claimants alike.

The issue of recoverability of benefits within personal injury claims does not appear to have been considered by the Government when creating the Universal Credit regime, and therefore there may be unintended consequences within the compensatory framework.

At the date of publication, no formal guidance has been issued by the CRU on the impact of the introduction of Universal Credit, and any information received is a result of direct requests to the CRU for clarification.

Introduction

A claimant is injured as a result of an accident and is unable to work. The claimant needs to claim benefits from the Department of Work and Pensions. The claimant also chooses to make a claim against the party they consider to be responsible for their injury.

Does the claimant have to repay the benefits to the DWP?

The Social Security (Recovery of Benefits) Act 1997 ("the Act") states that if the claimant makes a successful claim for compensation as a result of an injury or disease claim, then **any benefits** they claimed as a direct result of the accident **may be deducted from the compensation they receive**.

The Act is a measure to prevent claimants receiving financial compensation from both the DWP and the party responsible for causing the injury, ensuring that a 'double recovery' does not take place.

Any compensation received for general damages – the amount paid for the claimant's pain, suffering and loss of amenity - is protected, but some benefits paid can be deducted from certain heads of loss in special damages.

The Compensation Recovery Unit ("CRU") is tasked with recovering social security benefits in those cases.

How does the Compensation Recovery Unit work?

On being notified of a claim, the insurer of the proposed defendant (the "compensator") notifies the CRU of the relevant details of the claim.

The CRU then issues a Certificate of Recoverable Benefit ("Certificate"). Updated certificates will continue to be issued throughout the claim up to settlement.

The Certificate lists those benefits received by a claimant as a direct consequence of the incident, and have accrued during the relevant period.

The relevant period begins either:

- the day following the accident, or
- In disease cases, the day on which a recoverable benefit is claimed as a result of the disease.

The relevant period ends either:

- the date of the final compensation payment, or
- an agreed date between the compensator and claimant where an earlier payment is treated as concluding the claim, or
- five years after the date of the accident.

How does the Compensation Recovery Unit work?

The heads of loss against which these accrued benefits can be offset by a compensator (to prevent double recovery by the claimant) are:

1. Loss of earnings
2. Cost of care
3. Loss of mobility

The DWP sets out the whole range of benefits which can be offset against these heads of loss on its website, and they are also set out in Schedule 2 of the Social Security (Recovery of Benefits) Act 1997. The words "Universal Credit" were inserted into Schedule 2 by the Welfare Reform Act 2012, specifically enabling Universal Credit to be offset from loss of earnings.

There are also certain protected heads of loss which may not be offset against any benefits including:

- Damages for pain, suffering and loss of amenity
- Loss of future earnings
- Cost of future care
- Loss of future mobility
- Loss of expectation of life and bereavement
- Loss of amenities of life
- Loss of congenial employment
- Loss of benefits associated with injured party's work

It should be noted at this stage that if a claim is made and subsequently withdrawn, dismissed or discontinued, then there is no requirement for the compensator to pay those sums sought by the CRU.

The process

Compensator (insurer) receives a compensation claim

↓

Compensator notifies CRU within 14 days (using form CRU1) – CRU requires injured person's name, address, DOB, NI number

↓

CRU issues a Certificate where mandatory information has been provided and no recoverable benefits have been identified

↓

Compensator receives acknowledgment of notification (form CRU4) if a Certificate cannot be issued immediately

↓

When compensator paying compensation, returns form CRU4 to apply for a Certificate

↓

Compensator receives acknowledgement of notification (form CRU5) within 14 days

The process (cont.)

Receive Certificate by date given on form CRU5 (a copy of the Certificate is sent to the injured person or their representative)

Compensator pays compensation? In the event of any deductions having been made, the injured person must be informed of this

Compensator notifies CRU of the date any compensation payment is made in final discharge of the claim

Compensator is liable to pay to CRU the total amount of recoverable benefits paid in the relevant period and/or recoverable lump sums (relating to industrial disease)

Compensator pays CRU the total amount of recoverable benefits and/or lump sum shown on the Certificate (may be pursued and enforced as a debt through the courts from the 15th day after compensation paid)

Why does Universal Credit matter?

Universal Credit is the consolidation of payments of six individual weekly benefits into one single monthly payment, and is being introduced in stages across the United Kingdom.

It was detailed within the Welfare Reform Act 2012, with the intention of being simpler than the existing system of benefits and tax credits, and to 'make work pay'.

The Department of Work and Pensions expected the national roll-out of the full digital service for new online applications for Universal Credit to be completed by December 2018. An area with "full digital service" is an area where everyone who would have ordinarily made a new claim for any of the six benefits listed below, will now have to claim Universal Credit online instead.

In October 2018, the Government announced the switchover for existing benefit claimants to Universal Credit will be gradual, starting in 2019 with "no more than 10,000 people" to ensure the system is working.

They now plan to complete this process by December 2023.

Universal Credit will replace the following benefits:

1. Child Tax Credit
2. Housing Benefit
3. Income Support
4. Income-based Jobseeker’s Allowance
5. Income-related Employment and Support Allowance
6. Working Tax Credit

Why does Universal Credit matter?

Universal Credit can now also be claimed jointly by couples, subject to the relevant guidelines, and in many cases is paid into a single account, whether joint or otherwise.

Recent Government figures from August 2018 suggested that just 20 of 85,000 households receiving Universal Credit payments for partners had the payment split between the two individuals. A split claim between partners can currently only be sought in 'exceptional circumstances'.

This element of Universal Credit has been subject to significant criticism from the Works and Pensions Committee for leaving domestic abuse victims at risk of controlling partners who receive the single Universal Credit payment for the couple.

Universal Credit and the CRU

Of the six benefits listed above being replaced by the single Universal Credit (UC), there are three benefits which can be **offset** by compensators against **loss of earnings** claims.

An amendment to Schedule 2 of the Social Security (Recovery of Benefits) Act 1997 was introduced by secondary legislation of the Welfare Reform Act 2012 confirming that UC can be setoff against loss of earnings claims only.

1. *Income Support*
2. *Employment and Support Allowance ("ESA")*
3. *Jobseeker's Allowance ("JSA")*

The remaining three benefits to be replaced by Universal Credit **cannot be offset** against any head of loss:

1. *Housing Benefit*
2. *Working Tax Credit*
3. *Child Tax Credit*

Under the current system, if a claimant was in receipt of both JSA and Housing Benefit for example, the JSA payment would be listed on the CRU certificate as recoverable. The Housing Benefit would not.

If a loss of earnings claim was successful, the JSA payments could be offset against the loss of earnings claim as appropriate. If there was no loss of earnings claim, the compensator would remain liable for repaying it in full.

Universal Credit and the CRU

Where the amount of compensation agreed in respect of the loss of earnings claims is less than the amount of JSA to be recovered, then the compensator is also liable to pay the difference.

As stated above, in the alternative, if there was no loss of earnings claim, then CRU would still seek recovery of the JSA payment in full.

So far, so good.

When a claimant is moved to the Universal Credit system, they no longer receive payments for JSA and Housing Benefit on a weekly basis, but receive a single monthly payment (whether as an individual or as a couple). The payment is not broken down in any way, and it is based on an assessment of the claimant's circumstances.

This means that a single UC payment figure is listed on the Certificate, irrespective of how that single payment might reflect the previous benefits which were being received by the claimant.

This figure will not indicate how any previous payments for those six benefits have been integrated into the single payment, as those benefits are no longer deemed to exist.

We have sought clarification from CRU regarding whether the UC payment can be broken down, and they initially responded as follows:

Universal Credit and the CRU

"UC is a monthly paid benefit which cannot be broken down further into weeks or days. Where there is a change of circumstances within a relevant assessment period (i.e. accident related sick note is submitted) the full months UC benefit is recoverable...

UC is paid 'in respect of' an incident if it is paid on the basis of the claimant being incapable of work due to the incident, even if the claimant would have been paid UC on some other basis if the accident had not happened.

Additionally the amount of UC on the Certificate can only be offset against the injured person's compensation in respect of loss of earnings during the relevant period (The Social Security (Recovery of Benefits) Act 1997 Section 8 Schedule 2)

You will appreciate that the advice contained in this letter cannot be taken as definitive interpretation of the law, that will ultimately be a matter for the courts…"

After we followed this up further, it was made clear that the CRU has no access to any form of breakdown and it is their expectation that the sum listed on the certificate is to be repaid in its entirety:

"The Welfare Reform Act 2012 introduced a fundamental change to the social security system. UC is a single benefit payable to households who meet the entitlement criteria and awards are calculated at the end of each assessment period using the maximum total entitlement less appropriate deductions.

There are also legal mechanisms, such as the benefit cap, which operates on that calculation. Attempting to extract individual components from the calculation would be misleading, ignoring the interaction between the different stages of the calculation and not correctly reflecting how the new benefit is designed on the legislation and it operates in practice."

This brings with it some consequences which may not have been considered.

What does it mean in practice?

As a demonstrable example, we have seen a CRU Certificate where the claimant is currently in receipt of Universal Credit, having previously received payments of Employment and Support Allowance. The financial result of the change to Universal Credit and the consequences for CRU recoveries are worthy of note:

- Prior to the change to Universal Credit, the claimant received the Employment and Support Allowance payments totalling £57.90 a week.
- The payment was then changed to Universal Credit – as Employment and Support Allowance is one of the six benefits to be brought into the remit of the single UC payment.
- This payment now totalled £600+ a month (around £150+ a week).

Using the example above, the weekly Employment and Support Allowance sum represents only around a third of the weekly equivalent UC sum now being sought in recovery by the CRU.

The CRU position is that this entire UC sum is recoverable, and will not (and cannot) be reduced to reflect the relative value of the previous recoverable benefit.

Offers and settlement

Part 36 offers in personal injury or disease claims can be made gross or net of any CRU liability. Making an offer gross of any CRU liability, means that the CRU liability will be paid from the offer sum and not, as in the case of a net offer, as an additional liability for the compensator.

Dependent on whether an offer is made gross or net of CRU liability, the rollout of UC could have some interesting effects on a claim both with or without loss of earnings:

- Any offer made to a claimant expressed as gross of recoverable benefits (and then accepted) could result in reduced compensation amounts for the claimant. We would expect solicitors to be alive to this point, yet it remains to be seen whether or not claimant firms will accept gross offers inclusive of Universal Credit recoverable benefits at the same level as before – or whether they will try to apply a 'premium' to acknowledge the change in the amount of recoverable benefits.

- There is an increased risk to compensators and legal representatives that any offers made net of UC repayments, will result in additional liability for the compensator – and possibly involve the undertaking of a CRU appeal on what is still an emerging issue. On a claim where there is a significant UC repayment outstanding, this sum could be substantial.

- As stated above, couples can now make joint claims for UC. A single individual over 25 can receive up to £317.82 per month. A couple where one or both of the individuals are over 25 can receive (jointly) up to £498.89 a month.

Offers and settlement

- We would expect a system that is fair to compensators would only require them to repay those sums payable to an individual claimant only (i.e. a maximum of £317.82 per month).

- The CRU has not yet provided specific guidance concerning whether UC payments made to a couple can be broken down. However, based on their second response set out on page 13, it would appear that a compensator will be expected to repay the entirety of UC payments made to a couple over the relevant period.

CRU Appeals

Ordinarily, should the compensator become aware during the claim, that the Certificate has an error or that the amount of benefits being recovered is incorrect, then the compensator may seek a review. The review should set out where the alleged error lies or why the benefits sought are incorrect.

In limited circumstances, once the claim has settled in its entirety, and any CRU liability has been paid, the compensator can make an appeal to the Appeals Tribunal, albeit the appeal papers are initially filed with CRU.

It may be the case the claimant received benefits for a period of time, which extended beyond the prognosis period for the injury sustained. Other examples might be that the claimant received benefits to which they were not entitled, or that the rate shown on the Certificate was incorrect.

In these circumstances, the recovery sought by the CRU cannot be said to relate to the claim against the compensator, and might therefore result in a successful appeal which can result in a partial or full refund. If the appeal is successful, then those monies recovered are returned to the compensator.

CRU Appeals

As it stands, the CRU has made it clear that they have no methodology or ability to break the UC payments down; indeed their guidance stated that "*attempting to extract individual components from the calculation would be misleading.*"

The onus therefore potentially now lies with compensators and their legal representatives to access the claimant's benefit records for the purpose of a CRU appeal. However, based on the guidance received from the CRU, if the dispute relates to the disparity between those benefits a claimant may have previously received under the previous system and Universal Credit, then any appeal is doomed to fail.

The appeal process might be more fruitful for those compensators who are required to pay additional sums back to the CRU as part of a settlement involving Universal Credit, where the period sought was beyond the prognosis period of the injury or alleged incorrect rates.

It remains to be seen, whether or not an appeal (or a preliminary review) on the ssue of how the recovery of Universal Credit is managed would be considered by the Appeals Tribunal. Provided that the UC sum to be recovered is line with the period of injury, and the rates are not incorrect, then it is difficult to see on what basis an appeal could be made. Currently, our repeated enquiries have provided no indication of how appeals of this nature will be managed under the new regime.

The system has clearly been designed in this manner, albeit it seems unlikely that the impact of the change to Universal Credit on the settlement of personal injury claims will have been high on the Government's agenda when dealing with the reforms.

The future

The introduction of Universal Credit has been greeted in some quarters with dismay, particularly those with concerns about domestic abuse victims, whilst others have praised it as a necessary change to ensure that those working will be in a better position than those who do not.

From a compensator's perspective, the introduction of Universal Credit on a broader level is likely to be welcomed, as it will encourage those who can return to work to do so and has the effect of reducing loss of earnings claims where offsettable.

However, for those who are unable to work due to the severity of their injuries, then Universal Credit will have an impact albeit on the smaller scale of case by case offers and settlement.

The single biggest beneficiary to the change is the Government, who will see the sums recovered on a Universal Credit Certificate increase when compared to those Certificates issued as part of the existing benefit regime. Depending on the circumstances and the basis of any settlement offer, any detriment from the change will be borne by the claimant or the compensator.

In the apparent absence of the possibility of apportionment of the former , we may see some satellite litigation on this point once the complete rollout of UC occurs. It is possible, that the DWP will provide further formal guidance on this issue in the near future, and that apportionment of the Universal Credit payment will be possible, albeit we are doubtful this will come to fruition.

In the meantime, claims handlers and both compensators and their legal representatives will have to be mindful as to the precise terms of any Part 36 offers so as not to incur additional liabilities, and claimants will have to be alive to the increased sums capable of being recovered.

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