

**BENEFITS**

# A helping hand

*Stephanie Prior outlines the range of easily overlooked benefits potentially available to claimants and examines the mechanics of CRU certificates*



*Stephanie Prior  
is a solicitor at  
Charles Russell LLP*

**'The benefits system will always remain complex. Claimants will often be unaware of their entitlement to benefits and also the implications involved in the CRU certificate recoupment process during the lifespan of their case.'**

**P**rior to their compensation claim, a claimant may have been employed or self-employed and reasonably self-sufficient. As a consequence of their injury, they may not be able to function as they did before and may be incapable of work, and thus reliant on the benefit system.

The benefit and tax credit system is awash with information for us to absorb. It is fast changing and often very complex. It is difficult to keep up to date with what is available to individuals.

There are three main types of benefits and tax credits and these can be split into the following categories:

**Contributory benefits**

To be eligible for these a person must have paid sufficient national insurance contributions and be available for work or retired. Individual income or capital will not be taken into consideration for eligibility but if a person is claiming for a retirement pension, a widowed parent's allowance, a bereavement allowance, a contribution-based jobseeker's allowance and/or incapacity benefit then an individual's earnings or occupational pension may be taken into consideration.

**Non-contributory benefits**

To qualify for these benefits an assessment is carried out on the person's need and earnings. An occupational pension may be taken into consideration only if the person is claiming for child benefit, a carer's allowance, a disability living allowance, industrial injuries benefits or maternity allowance.

Employers will pay statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption

pay subject to a person qualifying under the benefits scheme.

There are also other benefits called earnings-replacement benefits, which are contributory and non-contributory benefits that are paid to compensate a person who is unable to work, ie because of unemployment, sickness, pregnancy etc. A person can receive as many of these benefits as they qualify for, including:

- contribution-based jobseeker's allowance;
- maternity allowance;
- incapacity benefit;
- carer's allowance; and
- retirement pension.

**Means-tested benefits and tax credits**

An assessment is made before a person qualifies for any of these benefits, which include income support, income-based jobseeker's allowance, pension credit, housing benefit, council tax benefit, working tax credit and child tax credit.

**Department for Work and Pensions (DWP)**

The DWP is the administrator of most benefits. However, HMRC deals with most benefits relating to children and sickness, and local authorities have responsibility for housing and council tax benefits.

The law on the recovery of benefits is complex and contained in many statutes. In short, a person should not be remunerated twice in respect of an accident, injury or disease. If the defendant

## BENEFITS

responsible has made a payment of compensation agreed on or after 6 October 1997 in respect of that accident, injury or disease, and if recoverable benefits have been paid to the claimant (because of it), then these benefits should be repaid.

A certificate of recoverable benefits must be applied for by the defendant before any payment can be made. The payment made by the defendant must equate to the amount of recoverable benefits referred to on that CRU certificate. The CRU certificate must be produced by the DWP within 28 days from the date the DWP receives the initial request for the certificate.

### The relevant period

In some circumstances, the defendant will be able to deduct some or all of the amount that they have had to pay in relation to the CRU certificate from the compensation awarded to the claimant. In some instances, the amount of compensation relating to a particular head of damages, eg care and attendance, is less than the amount of corresponding benefit but the defendant is still responsible for paying the full amount. Any deduction from the claimant's damages as a result of recoverable benefits due to be repaid must be communicated to the claimant. It must also be remembered that no deduction can be made from an award of general damages in the offsetting process, and retirement pensions or bereavement benefits are not recoverable benefits and cannot be used in the offsetting process either. There are also various compensation payments that are exempt as defined in Schedule 1 to the Social Security (Recovery of Benefits) Act 1997.

If an interim payment award is made by the defendant, they will be liable to repay to the DWP all recoverable benefits paid up to the date of the interim payment. In these circumstances it is sensible to request an up-to-date CRU certificate after the payment has been made.

If there are multiple defendants in the action, it is usual for them to act together so that only one payment is made to the claimant and the DWP.

### Reviews and appeals

The DWP can review information contained within the CRU certificate if a request to do so is made in writing. A review can be made at any time to the DWP in relation to amounts shown in

the CRU certificate and the CRU certificate can be amended if it can be shown that a mistake has been made in relation to the figures referred to in it.

The defendant has an equal right to appeal a CRU certificate once they have paid the claimant their compensation and they have paid the total amount of recoverable benefits due to the DWP. The appeal must be made within one month of the money being paid to the DWP. Sometimes a certificate will be revoked if it can be shown that there is no recoverable benefit due to the Secretary of State.

The benefits system will always remain complex. Claimants will often be unaware of their entitlement to benefits and also the implications involved in the CRU certificate recoupment process during the lifespan of their case. A practical solution is to regularly review the law relating to benefits and familiarise yourself with the benefits system as far as you are able to.

### Benefits

Benefits that you may wish to bring to your clients' attention include:

#### Bereavement payments

Some benefits are overlooked. One particular example of this type of benefit is bereavement payment. This is a one-off payment, which is not taxable and must be made within 12 months of death. The applicant must be under pension age when their spouse died, or if over pension age must not have been entitled to Category A retirement pension at the time of the death. Contribution conditions apply and there is no entitlement if at the date of the spouse's death the applicant was living with someone else.

#### Widowed parent's allowance

Another benefit worth mentioning is the widowed parent's allowance. The applicant must be a widow(er) whose spouse died on or after 9 April 2001, or a man who lost his wife before 9 April 2001 and was under the age of 65 on 9 April 2001.

Contribution conditions apply and the applicant must be expecting a baby by her late spouse or be entitled to child benefit for the child of both parties or a child of the family. This benefit is taxable and may be topped up with other benefits. It will automatically stop if the applicant remarries and is suspended if the applicant cohabits.

#### Bereavement allowance

Bereavement allowance is for any person whose spouse/civil partner died on or after 9 April 2001. There are contribution conditions attached to this benefit and the applicant must not be entitled to a widowed parent's allowance and must be over 45 but under pensionable age on the date of death. It is payment for 52 weeks, is taxable and may be topped up by other means-tested benefits. It is paid even if the applicant is working, although the entitlement to this ends at pension age or if the applicant remarries. It is suspended if the applicant cohabits.

#### Funeral expenses payment

This is a payment that the benefits agency agrees is sufficient to cover certain specified expenses and must be claimed within three months of the death. The payment is made to the partner or parent of the deceased, or a close friend or relative who has reasonably taken on the responsibility of the funeral costs. The person applying for the benefit must already be receiving a qualifying benefit.

#### Cold-weather payments

This payment relates to 'when the average temperature where you live is recorded as, or forecast to be, zero degrees Celsius or below, over seven consecutive days during the period from 1 November to 31 March'. The person applying for the payment has to meet specific criteria and the payment is £8.50 per week of cold weather.

#### Winter fuel payments

This is paid to a person aged 60 by the third Monday in September. Again there are specific qualifying criteria but, if these are met, the payment is £100 to £300 dependent on the applicant's age.

#### Miscellaneous loans and grants

Community care grants, budgeting loans and crisis loans are available to those who qualify based on their budget. The purpose of these loans is to meet the needs of a person in community care, meet any intermittent expenses or meet immediate short-term needs, including medical, optical and surgical equipment, as well as expenses in connection with court proceedings. These grants/loans are interest free and repayable at fixed rates based on the person's personal financial circumstances. ■