Informing Progress - Shaping the Future

FOIL UPDATE 13th September 2021

Universal Credit

A joint FOIL and APIL call for evidence

As a personal injury litigator (insurer or solicitor, Claimant or Defendant), following changes to the benefit regime over the last two years, it's likely that you have dealt with a claim on which a Certificate of Recoverable Benefits (CRB) has been issued which details a high or apparently unjust sum for 'Universal Credit', considerably higher than the sums which would have been recovered under the old benefits regime.

FOIL and APIL are working together to gather information from their members on cases involving the issue of a CRB containing high or apparently unjust levels of Universal Credit. Armed with that information FOIL and APIL will consider what steps can be taken to ensure that sums to be repaid by compensators and/or deducted from Claimant damages are just and fair and in accordance with the Social Security (Recovery of Benefits) Act 1997.

Do you have a case with a high or apparently unjust level of 'Universal Credit' on the CRB? If so, please share your experience with FOIL or APIL.

Armed with as such information, FOIL and APIL aim to work together to determine the extent to which the DWP's current ability to recoup such benefit is legitimate or might be challenged.

That starts with APIL and FOIL knowing what is happening on your cases. Can you help?

How CRU works

It is an accepted principle of personal injury litigation that it should not cost the state anything when one person negligently causes another to suffer losses. The state will help injured people in the short term but it expects repayment.

Victims of accidents who suffer a reduction in earnings capacity whilst injured, for instance, might claim benefits during any 'reduced capacity' period. At the conclusion of their compensation claim the benefits they received must be repaid to the state by the compensator; the state requires the compensator to pay for people to be 'off sick'. If the injured person succeeds with a claim for lost earnings, the compensator can reduce the amount they are required to pay for lost earnings by the amount they are required to repay to the state; the benefits received will have essentially acted as an interim payment received ahead of the loss of earnings claim successfully concluding and the state, which made that interim payment, expects it back.

The Issue:

Before Universal Credit, the injured person might have been entitled to one of the three types of benefits in place of earnings, being

Income Support	Job Seekers Allowance	Employment and Support Allowance

The CRB would detail what particular benefit the injured party received, over what period and how much. The compensator would then repay that sum and deduct the value of that repayment from any loss of earnings claim.

Post the introduction of Universal Credit, the CRB will not detail an 'earnings related' benefit from those listed above, but will record a single payment on the CRB of Universal Credit, which covers earnings-related benefits previously paid by way of the three benefits listed above, and three other benefits which provide payments for housing costs and to augment the family income. The three other benefits 'lumped together' with the earnings-related benefit are:

Housing Benefit	Child Tax Credit	Working Tax Credit

The problem

The above three benefits have never been considered repayable before or capable of being offset against claims for loss of earnings.

Naturally, being a cluster of benefits rather than a single benefit, and including benefits usually paid at large sums (i.e. housing benefits), Universal Credit – as a repayable benefit – is typically significantly higher than pre-Universal Credit repayable benefits.

The effect

Compensators are having to pay large sums to the CRU relative to the sums paid pre-Universal Credit.

Injured persons are having large portions of their loss of earnings claims 'wiped out' as compensators are entitled to deduct what they are required to repay to the state for Universal Credit from loss of earnings claims.

What do FOIL and APIL plan to do?

APIL and FOIL wish to initially know the extent of the problem and to hear of some of the most extreme cases.

APIL and FOIL will then consider what avenues exist to require the state to consider the legitimacy of the post Universal Credit position or to challenge the current repayment obligation.

If you have a relevant case please contact:
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