

Enquiry of the month

How backdated Universal Credit 'Limited capability for work-related activity' element is treated in a DRO

We have seen an increasing number of enquiries where clients have received a back date of Universal Credit (UC) Limited capability for work-related activity (LCWRA) element, usually, during the DRO moratorium period. Advisers have been querying how lump sums of LCWRA element received would be viewed by the DRO Team.

Duty to report

Firstly, it is worth remembering that the client must report the lump sum received to the DRO Team as soon as reasonably practicable pursuant to [s251J\(3\)](#) of the Insolvency Act 1986.

Transitional payments

Secondly, it is worth checking exactly the nature of the lump sum. If your client was previously on Employment and Support Allowance (ESA) with a Severe Disability Premium (SDP) and had been migrated onto Universal Credit, and as a result of the migration onto UC the client lost out on SDP payments, then the lump sum could be a transitional payment.

The DRO Team have confirmed that such a payment could be disregarded as property in the same way as lump sums of premiums for ESA.

UC element lump sums during the moratorium

If the lump sum is not a 'transitional payment', our team have discussed with the DRO Team about how backdated lump sums of Limited Capability for Work (LCW) and Limited Capability for Work Related Activity (LCWRA) elements of UC are likely to be viewed in a DRO. We asked for clarity on whether this would be treated similar to ESA, where the disability elements would be disregarded and the [lump sum protocol](#) would apply to non-disability related elements.

Our previous confirmation from the DRO team on this issue is that:

'backdated Limited Capability for Work element of UC would be viewed 'in the same way as backdated ESA'.

Although backdates of the disability and enhanced disability premiums of ESA may be treated differently, it appears that backdates of ESA itself (including work related activity or support group components) are not given any special treatment.

In other words, backdated LCW element would not be ignored if received prior to an application and would be subject to the lump sum protocol if received during the moratorium.

Having received several enquiries of this nature into the service and on investigating further the Limited Capability for Work elements appear to be equivalent to the activity group or support group of ESA, **not equivalent to the disability premiums**, and the premiums are no longer available for people moving from ESA to Universal Credit (see [here](#)).

The DRO Team subsequently confirmed:

"Basically, only the disability element of a backdated benefit payment is disregarded, both

pre and post DRO but they are still treated as income.

If limited capability for work payments are awarded post DRO and the debtor is due to receive a backdated lump sum payment, the debtor would need to advise the DRO team and provide a copy of the award letter. It would then be reviewed to see if revocation action is appropriate.

If the limited capability for work award was made pre DRO you would need to consider the amount awarded and what the payment was made for, this should be detailed in the award letter."

Ultimately, the DRO Team will need to see the award letter to check what the client has received before making a decision on whether to apply the lump sum protocol.

Consultancy query

In one case, the client was in receipt of UC when the DRO was submitted. In April 2019 the DRO was approved. He has recently received a back payment of approximately £3,000 of the LCWRA element. The client then reported this lump sum and the DRO Team has stated that in line with their policy they will revoke the DRO.

This appears to confirm that the DRO Team does not disregard the LCWRA element in the same way as lump sums of premiums in ESA, but that the lump sum protocol would apply instead (see page 32 of the DRO A – Z Guide for details on the lump sum protocol).

Summary

- Your client has a duty to report the change in income and backdated payments of LCWRA element to the DRO Team.
- They should provide the DRO Team with a copy of the award letter to allow them to decide on whether the lump sum protocol would apply.
- There is a possibility the DRO would be revoked, as it seems LCW / LCWRA elements are not equivalent 'disability premiums' under ESA.
- However, if somehow the lump sum is in relation to 'transitional payments', the DRO Team might disregard it. Again, the DRO Team will need to see the award letter.