

A practical guide to CRU: the recovery and offsetting of state benefits in personal injury claims

Introduction

This article is intended as a practical guide to CRU.

'CRU' is often used as a shorthand for the recovery of state benefits in personal injury claims, and the offsetting of benefits against damages.

CRU is the Compensation Recovery Unit (CRU), which is part of the Department for Work and Pensions, and they look after this process (at least, the recovery of state benefits).

We are basically looking at how state benefits can affect claims for personal injury compensation.

Disclaimer

This article is meant to be a helpful introduction to the subject and is not legal advice to be relied upon. The law changes all the time and the facts of every case are different.

If any solicitors reading this would like some advice, please feel free to contact my clerks.

What is the basic idea behind CRU?

The basic idea behind CRU is as follows.

A person is injured due to someone else's wrongdoing. There could have been an accident, or the person might have developed some sort of disease.

The person may end up claiming state benefits as a result of their injuries. Let's think about a person who can no longer work because of their injuries, or whose capacity to work is reduced. They might end up claiming something like Universal Credit.

However, as well as claiming state benefits, the injured person can potentially bring a claim for compensation. That person we were talking about who has lost the ability to work, or who cannot work as much, could bring a claim for loss of earnings against the tortfeasor.

The danger is that if they do, that they might actually be getting paid twice. The person we have been talking about gets their Universal Credit, but they also end up getting their compensation for loss of earnings. Both the benefits and the compensation are aimed at remedying the same thing – the inability to work. If the person is paid twice, that is a problem.

The other problem is that if the injured person is claiming benefits, because of their injuries we have the state, the taxpayer, paying someone benefits, to help remedy the harm caused by the wrongdoer. Should it not be the wrongdoer who pays?

These two problems are mentioned in *Lowther v Chatwin* [2003] EWCA Civ 729:

“The scheme of the 1997 Act serves two objectives. The first is to ensure that a defendant who is liable to compensate a claimant for an accident, injury or disease reimburses the state for certain benefits paid to the claimant in respect of that accident, injury or disease. The second is to ensure that the benefits recouped from the defendant are offset against the sums received by the claimant so that the claimant does not obtain a double recovery.” [paragraph 3]

The way that the state has dealt with this is to bring in a system to try and solve both of these problems. The basic idea (put in brutally simple terms) is this:

- A Claimant brings a claim for personal injury compensation;
- If the Claimant has been paid state benefits due to the effect of the injuries, the Defendant has to repay those benefits to the state;
- However – the Defendant can then reduce the compensation paid to the Claimant where it overlaps with the benefits which they received.

That is the basic idea. It does take time to get your head around it.

I suppose the reason for calling this system the ‘recovery of state benefits’ is because the government is paying the Claimant state benefits, and then recovering them from the Defendant. We then have the benefits being ‘offset’ against the damages.

Why does CRU matter?

I think it is genuinely true that personal injury lawyers when they are starting out can probably ignore CRU for a while. As we will see, the system only kicks in where benefits have been paid, or are likely to be paid, due to the accident, injury or disease. If you are dealing with fairly low-value claims, with people who have been injured, but have managed to keep working, or who have taken paid sick leave, you may never encounter CRU. But as soon as you start dealing with higher-value cases, where people are being pushed into claiming benefits, CRU becomes really important.

CRU is also the sort of thing where it can have a direct impact on how much money your client receives, or how much money your client is paying out. We are all familiar with the idea of sniffing out every head of loss, even really ugly and difficult ones like loss of pension, to make sure that the client gets the most compensation. You can do all of that, but then mess up CRU, and suddenly your client can end up being harmed.

What is the law governing the recovery and offsetting of state benefits?

The crucial piece of legislation governing the recovery and offsetting of state benefits is the Social Security (Recovery of Benefits) Act 1997. There is other legislation which is important, and I will tell you where to find it later on, but the key one is the 1997 Act.

The cases where the recovery and offsetting of state benefits applies (Section 1)

Section 1 tells you which cases will involve the recovery and offsetting of state benefits under the Act:

(1) This Act applies in cases where—

- (a) a person makes a payment (whether on his own behalf or not) to or in respect of any other person in consequence of any accident, injury or disease suffered by the other, and*
- (b) any listed benefits have been, or are likely to be, paid to or for the other during the relevant period in respect of the accident, injury or disease.*

We can see that:

- There must have been a payment to the Claimant as a consequence of an accident, injury or disease;
- Importantly, there must be a connection between the payment of the benefits, and the accident, injury or disease.

If the payment of the benefits is completely unrelated to the accident, injury or disease (e.g. if the benefits were being paid beforehand), the system will not kick in.

The concept of the 'relevant period' (Section 3)

Section 3 then tells us the period during which the state benefits can be recovered (the 'relevant period'). This is really important. The Defendant is not required to repay to the DWP the state benefits which are going to be paid to the Claimant right into the distant future. There is a fairly arbitrary limit put on the period:

- With non-disease cases, the relevant period is the period of five years immediately following the day on which the accident or injury occurred;
- With disease cases, the relevant period is the period of five years beginning with the date on which the Claimant first claims a relevant benefit as a result of suffering from the disease.

The relevant period effectively stops as soon as a claim comes to an end (whether through an agreed settlement, or a court hearing).

The five-year relevant period is one of the more obvious boggles when thinking about the recovery and offsetting of state benefits. We were talking earlier about the need to prevent double recovery. But after the first five years, seemingly, a Claimant can have as

much double recovery as they like! They can have their compensation, and any state benefits, with no prospect of the compensation being reduced.

The concept of the 'CRU certificate' (Sections 4 and 5)

We have all probably seen a CRU certificate. A CRU certificate is effectively a document issued by the Department for Work and Pensions which lists all of the potentially recoverable benefits being received by the Claimant.

The CRU certificate usually runs from the start of the 'relevant period', until a date which is usually a few months after the date of the form itself. Most of the benefits on the CRU certificate are therefore those which have already been paid, but the form may also list benefits which are currently being paid and which will be in the future.

The danger would be assuming blindly that the figure on the certificate is what needs to come off the damages. We will talk about how offsetting works in practice shortly, and you will realise that sometimes not all of the figure on the certificate can be offset.

But even just thinking about the raw figures on the CRU certificate, there are some questions which you need to ask:

- Are we sure that the period on the CRU certificate is correct – that it does not start too early, or end too late?
- Are there any benefits which the Claimant was actually receiving prior to the accident, injury or disease?
- Are there any benefits which actually are being paid to a couple (e.g. housing payments)?

Section 4 sets out the process by which the compensator can apply for a certificate.

Section 5 then sets out the information which you will find in the CRU certificate:

- (1) A certificate of recoverable benefits must specify, for each recoverable benefit—*
- (a) the amount which has been or is likely to have been paid on or before a specified date, and*
- (b) if the benefit is paid or likely to be paid after the specified date, the rate and period for which, and the intervals at which, it is or is likely to be so paid.*

The requirement for the compensator to pay the recoverable benefits (Section 6)

Section 6 includes the very hard-edged requirement for the Defendant to pay to the DWP the whole sum on the CRU certificate, with this requirement being triggered (as we will see) by any payment of compensation to the Claimant:

- (1) A person who makes a compensation payment in any case is liable to pay to the Secretary of State an amount equal to the total amount of the recoverable benefits.*

The Defendant can try and reduce the sum being paid to the DWP by asking for the CRU certificate to be reviewed or appealed, and I will discuss this later on. But the starting point is that what is on the CRU certificate is what needs to be paid.

The approach taken to the offsetting of benefits (Sections 8 and 8A)

One important thing to note is that the offsetting of state benefits often only applies to (1) some state benefits, and (2) some heads of loss. We need to know how the offsetting of benefits will work in practice. Which benefits can be set off against which heads of loss?

Section 8 of the Act governs most of the cases which you will encounter. Section 8 points you towards the table in Schedule 2 of the Act, which tells you which heads of loss can be set off against which benefits. We will look at the table shortly. Section 8 effectively says that if a Defendant offsets benefits using the table in Schedule 2, and pays the Claimant the net amount, they have done what they need to do.

Section 8(A) includes different rules for payments under the Diffuse Mesothelioma Payment Scheme. I am going to pass over these for the purpose of this article. The main thing to bear in mind is that here, it is the gross amount of the compensation payment (regardless of the individual components) which is reduced by the recoverable benefits.

The state benefits which can be offset against compensation (Schedule 2)

Schedule 2 includes a helpful table showing which benefits can be held against which heads of loss. The table is reproduced below:

Head of compensation	Benefit
'Compensation for earnings lost during the relevant period'	Universal credit Disablement pension payable under section 103 of the Social Security Contributions and Benefits Act 1992 Employment and support allowance Incapacity benefit Income support Invalidity pension and allowance Jobseeker's allowance Reduced earnings allowance Severe disablement allowance Sickness benefit Statutory sick pay Unemployability supplement Unemployment benefit
'Compensation for cost of care incurred during the relevant period'	Attendance allowance Daily living component of personal independence payment

	Care component of disability living allowance Disablement pension increase payable under section 104 or 105 of the Social Security Contributions and Benefits Act 1992
'Compensation for loss of mobility during the relevant period'	Mobility allowance Mobility component of personal independence payment Mobility component of disability living allowance

We can see that there are some heads of loss which do not fall within the scope of Schedule 2, and which cannot be used for offsetting. These include (but are not limited to) the following:

- Pain, suffering and loss of amenity;
- Future loss of earnings (including *Smith v Manchester*);
- Loss of congenial employment
- Future care;
- Future loss of mobility;
- Future medical expenses;
- Future gardening, cleaning etc.

In order to offset a head of loss against a state benefit, you have to be able to match up a head of loss in the left-hand column against a benefit in the right-hand column.

The difficulties with Universal Credit

One of the benefits which is recoverable is Universal Credit. This is a benefit which started to be implemented in 2013, and which effectively replaced six older benefits:

- Child Tax Credit
- Working Tax Credit
- Income Support
- Income-based Jobseeker's Allowance.
- Housing Benefit
- Income-related Employment Support Allowance.

The problem for our purposes is that some of these benefits (Child Tax Credit, Housing Benefit, and also Working Tax Credit) were not recoverable, but they have now been swept into a benefit (Universal Credit) which is recoverable. Child Tax Credit and Housing Benefit can also be quite big sums of money. This generates very big CRU certificates, where a large chunk of the benefits have no connection to the accident, injury or disease.

This can cause real barriers to settlement. Imagine a Claimant who pursues a claim for £2,000 of general damages, and £1,000 of loss of earnings, but where the CRU certificate includes £30,000 of Universal Credit. The Defendant will not want to settle the claim, because they would then potentially be paying out £30,000 to the Department for Work and Pensions, with most or all of this figure being totally unrelated to the harm that they caused.

I am not aware of any easy answer to this problem. There might be grounds for a review or appeal of the CRU certificate, but my understanding is that the DWP are not able to provide details of how the Universal Credit for a given Claimant is being broken down, and without that, it is going to be difficult to show that a certificate should be amended. A review or appeal might be easiest where there has been a joint application by a couple.

I will deal with reviewing and appealing CRU certificates later on.

The approach to contributory negligence

There is nothing in the 1997 Act to change the overall approach where there is a finding of contributory negligence (or where the parties agree between themselves a liability split). Where there is contributory negligence, the damages being paid to the Claimant will be reduced to take account of their own negligence. However, the Defendant is still required to pay the whole sum on the CRU certificate to the DWP. This seems unfair to the Defendant. But this can also be a problem for the Claimant. The Claimant is receiving less damages, but the benefits which can be offset against those damages are unchanged.

Again, I am not aware of any easy answer to this.

The potential unfairness about contributory negligence was one of the many things insurers were complaining about in the case of *Aviva Insurance Ltd & Anor v Secretary of State for Work and Pensions* [2022] EWCA Civ 15.

The approach to divisible injuries

There are similar problems where a Defendant is only responsible for part of the injury (e.g. in claims involving divisible injuries) – the Defendant ends up being lumbered with the whole of the CRU certificate, despite only being responsible for a small fraction of the damage.

CRU and Part 36 offers

A good understanding of CRU becomes really important for Part 36 offers. We need to be able to put together Part 36 offers which deal with CRU, and which are compliant with the rules. We also need to know how Part 36 offers which refer to CRU work in practice, and in particular, whether they have been beaten or not.

The rules governing offers made by Defendants

CPR 36.20 sets out how Part 36 offers made by Defendants should deal with CRU.

Interestingly, there are no similar requirements for Claimants, but Claimants should still try to make Part 36 offers which explicitly deal with CRU, to avoid any uncertainty.

CPR 36.20(3) makes clear that a Defendant making a Part 36 offer must make clear in the offer whether the offer is gross of CRU, or net of CRU. I will say more about what these terms mean shortly:

- (3) A defendant who makes a Part 36 offer must, where relevant, state either—
- (a) that the offer is made without regard to any liability for recoverable amounts [i.e. **net of CRU**]; or
 - (b) that it is intended to include any deductible amounts [i.e. **gross of CRU**].

Where an offer is being expressed as gross of CRU, CPR 36.20(5) makes clear that the Defendant needs to include in the offer a breakdown of the overall sum being offered, how much this is being reduced by, and how much is left over:

- (4) Where paragraph (3)(b) applies, paragraphs (5) to (9) will apply to the Part 36 offer.
- (5) Before making the Part 36 offer, the offeror must apply for a certificate.
- (6) Subject to paragraph (7), the Part 36 offer must state—
 - (a) the gross amount of compensation;
 - (b) the name and amount of any deductible amounts by which the gross amount is reduced; and
 - (c) the net amount of compensation.

CPR 36.20(7) then tells the Defendant what to do if they are not in possession of a current CRU certificate by the time they are making their offer:

- (7) If at the time the offeror makes the Part 36 offer, the offeror has applied for, but has not received, a certificate, the offeror must clarify the offer by stating the matters referred to in paragraph (6)(b) and (c) not more than 7 days after receipt of the certificate.

The distinction between offers 'gross of CRU' and offers 'net of CRU'

I think there is often quite a lot of confusion about what the terms 'gross of CRU' and 'net of CRU' mean. Practitioners who are experienced will know instinctively what these terms mean, but it can be difficult for more junior practitioners to work this out.

Helpfully, the Court of Appeal attempted to define the term 'net of CRU' in the case of *Crooks v Hendricks Lovell Ltd* [2016] EWCA Civ 8:

"...what do the words "net of CRU" mean? The natural meaning of the expression "net of" in a context such as this is familiar. It is that the amount stated to be "net of" something else is the amount that remains after a deduction of tax or other contributions. The appropriate definitions in the New Shorter Oxford English Dictionary (4th edn.) is "(of an

amount, weight, etc.) free from or not subject to any deduction, remaining after all necessary deductions have been made; (of a price) to be paid in full, not reduceable; Construing the expression "net of CRU" as "remaining after all necessary deductions of benefit [under the statutory scheme administered by the CRU]" seems to me to make good sense in an offer under CPR 36.15(3)(a) – an offer "made without regard to any liability for recoverable amounts". This, I believe, is the meaning of the words "net of CRU" in Hendricks Lovell's Part 36 offer. They cannot sensibly be read in any other way. [paragraph 26]

The way I would define each of these terms (for a Defendant's offer) is as follows:

Net of CRU: The Claimant is being made an offer which effectively means that they get the sum being offered in their hand. The Defendant will have to pay the figure on the CRU certificate to the DWP, but the Defendant is not going to try and reduce the sum being offered to the Claimant on account of the offsetting of recoverable benefits.

Gross of CRU: The Claimant is being made an offer which means that they may only get part of the overall sum being offered. The overall sum being offered may have to be reduced to take account of the offsetting of recoverable benefits:

- If the Defendant knows how much of a reduction there will be, they will have to provide a breakdown as part of the offer.
- If the Defendant does not know how much of a reduction there will be, they will have to tell the Claimant within seven days of receiving the CRU certificate.

Trying to work out whether an offer has been beaten or not

We may need to know whether a Part 36 offer has been beaten. We can compare the offer to the judgment, but how does this work with CRU? Do you look at the gross figures in the offer and the judgment, or the net figures once benefits have been offset?

The Court of Appeal provided some useful guidance in the case of *Crooks*. We have a long section which deals with Defendants making offers net of CRU:

"It follows that when an offer [net of CRU] has to be compared to damages awarded by the court so that the court can resolve the question in CPR 36.14, it is necessary to consider the amount of damages in the judgment award after any corresponding adjustments for recoverable benefit have been made to it. The words "without regard to any liability for recoverable amounts" do not mean that the court is to have no regard to the amount of recoverable benefit when deciding whether or not the claimant has obtained a judgment more advantageous than the defendant's Part 36 offer. In undertaking that task the court must obviously have regard to any necessary subtraction of the final figure for recoverable benefit from the total figure in the judgment award. Otherwise, it would not be comparing like with like." [paragraph 27]

We then have a shorter section which deals with Defendants making offers gross of CRU:

“By contrast, an offer made under CPR 36.15(3)(b), which deliberately includes “any deductible amounts”, would have to be compared to the total amount of the judgment award without such adjustment.” [paragraph 27]

I am not sure how that squares with CPR 36.20(8). This states that if a Defendant makes a Part 36 offer which is gross of CRU, and the Claimant fails to beat the net amount of compensation which is offered, they will be taken to have failed to beat the offer as a whole:

(8) For the purposes of rule 36.17(1)(a), a claimant fails to recover more than any sum offered (including a lump sum offered under rule 36.6) if the claimant fails upon judgment being entered to recover a sum, once deductible amounts identified in the judgment have been deducted, greater than the net amount stated under paragraph (6)(c).

The way I would try and work out whether an offer (again, a Defendant’s offer) has been beaten is as follows:

Net of CRU: We compare the sum which the Judge gives the Claimant in their hand (that is, after any deductions of recoverable benefits), to the sum which the Defendant wanted to give them in their hand.

Gross of CRU: This is not very clear – *Crooks* suggests that you compare the overall judgment sum (that is, before any deductions of recoverable benefits) to the gross sum which the Defendant offered, but I prefer CPR 36.20(8), which suggests that for a Defendant’s offer, you look at the net figures (as you would for an offer net of CRU).

The possibility of the CRU certificate being challenged

I will say more later on about the possibility of applying to review or appeal the CRU certificate. However, one can imagine a situation where a claim goes to trial, a Part 36 offer has potentially been beaten, the Claimant or Defendant want to challenge the CRU certificate, and the outcome of that challenge may have a bearing on whether the offer has been beaten. I suspect that the only thing that could be done in such a situation is to invite the Judge to adjourn the hearing until after the outcome of the challenge to the CRU certificate is known. That is what happened in the above case of *Crooks*.

CRU and interim payments

Interim payments in general

One important thing to note is that interim payments trigger the need to pay the sum on the CRU certificate. Even where a Defendant makes an interim payment which is very small, or very early, the need to pay the sum on the CRU certificate is still triggered.

If the interim payment is made within the relevant period (the five-year period we discussed earlier), there may still be further sums which need to be paid between the interim payment being made, and the five-year period coming to an end. The relevant

period only comes to an end if a payment is made in 'final discharge' of the claim (see section 3 of the 1997 Act).

The difficulties for Claimants where interim payments are contested

There is a particular problem which can arise for Claimants where they want an interim payment, the Defendant does not want to give it them, they have to make an application, and there is a hefty CRU certificate in the background.

CPR 25.20 puts a limit on how much the Court will be willing to order:

(1) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

CPR 25.24(4) makes clear that the payment to the Claimant must be net of recoverable benefits:

(4) The payment made to the claimant must be the net amount but for the purpose of calculating the payment after the final judgment, the gross amount of the interim payment must be used.

Where the figure on the CRU certificate is large, it may be difficult to show that the payment to the Claimant, being the net amount, still represents a reasonable proportion of the likely judgment. The CRU certificate needs to be considered carefully for such applications.

CRU and judgments

The key thing to ensure is that any judgment where CRU is relevant actually deals with CRU. It is very easy, at the end of a long day, to essentially forget to take account of CRU. This does not stop the Defendant offsetting benefits against the damages, in my view, but if there is any disagreement at all about how much should be offset, or the consequences that flow from it (e.g. interest, Part 36 offers) it is likely to need an application under the slip rule.

Section 15 of the Social Security (Recovery of Benefits) Act 1997 makes clear that whenever a court ends up making an award of damages in a case where CRU is relevant, the court must provide a breakdown of the compensation awarded:

(1) This section applies where a court makes an order for a compensation payment to be made in any case, unless the order is made with the consent of the injured person and the person by whom the payment is to be made.

(2) The court must, in the case of each head of compensation listed in column 1 of Schedule 2 to which any of the compensation payment is attributable, specify in the order the amount of the compensation payment which is attributable to that head.

Paragraph 5.1 of PD40B effectively says the same, but makes clear that the court should record the amounts being set off, and then order payment of the balance:

5.1 In a final judgment where some or all of the damages awarded –
(1) fall under the heads of damage set out in column 1 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 ('the 1997 Act') in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule; and
(2) where the defendant has paid to the Secretary of State the recoverable benefits in accordance with the certificate (as defined in rule 36.20(1)(e)),
there will be stated in the preamble to the judgment or order the amount awarded under each head of damage and the amount by which it has been reduced in accordance with section 8 of and Schedule 2 to the 1997 Act.

[...]

5.2 The judgment or order should then provide for entry of judgment and payment of the balance.

CRU and settlements

The main thing to ensure when a settlement happens is that there is an up-to-date CRU certificate, and the parties know how any settlement is going to be affected by CRU.

Another thing to bear in mind is that if the CRU certificate is challenged, and the figure on the CRU certificate is reduced, the amount which the Defendant can offset from the Claimant's damages will probably be reduced, and if so, the Defendant will ordinarily have to pay the additional money to the Claimant (*Bruce v Genesis Fast Foods* [2003] EWHC 788).

Any settlement agreement should make clear who gets the benefit of any revision to the CRU certificate.

It is always prudent to include recitals in any settlement agreement making clear the following:

- The basis of settlement;
- The sums being deducted on behalf of CRU (for which damages / over which period);
- Whether either party is going to challenge the CRU certificate, and if so, who gets the benefit of the challenge (if the CRU certificate is varied).

How can CRU certificates be challenged?

I have mentioned about a hundred times so far the possibility of challenging a CRU certificate, and so it is time for me to explain what this actually involves.

The default position is that the Defendant, upon making a compensation payment to the Claimant, has to pay the whole sum on the CRU certificate to the DWP (subject to any benefits being set off).

Most of the time, that will be fine. But sometimes there may be a reason to try and challenge the figure on the CRU certificate.

There might be a temporal mismatch between the head of loss and the benefits. Let's imagine there is an accident in 2020, loss of earnings in 2021, and then some Universal

Credit being paid in 2024. In theory, the Universal Credit could be set off against the loss of earnings, but should it be? The Claimant might want to challenge that.

There might be an injury which is expressly time-limited. Let's say a Claimant suffers an acceleration injury where the period of acceleration is two years. There is then a huge CRU certificate, with benefits being paid across the full five years. The Defendant doesn't want to pay the DWP five years' worth of benefits. The Claimant, equally, doesn't want to have five years' worth of benefits set off against their damages.

The Claimant might have been claiming benefits that they were not entitled to. Imagine a case where surveillance evidence is obtained which proves that the Claimant was not as injured as they said they were. If the claim still somehow succeeds, and it is clear that the Claimant had been claiming benefits that they were not entitled to, the Defendant will not want to pay them to the DWP.

The Claimant might have given an unreliable account as to the effect of their injuries. The Defendant might have been able to prove during a trial that the Claimant was not as injured as they suggested they were. If it becomes clear that the benefits being paid were unrelated to the effects of the accident, injury or disease, the Defendant will again not want to pay them back to the DWP.

There might be benefits which are actually being paid to another person. This might be the case if there was a joint application.

The answer may be to go back to the DWP and see if the figure can be amended.

Reviewing a CRU certificate

The Claimant or Defendant can ask the DWP to review a CRU certificate at any time.

The grounds for reviewing a CRU certificate are set out as follows:

1. *"the Certificate was issued in ignorance of, or based on a mistake as to, a material fact"*
2. *"A mistake was made (whether in computation or otherwise) in the preparation of the Certificate"*
3. *"Incorrect or insufficient information was supplied to the Secretary of State by the person who applied for the Certificate and, as a result, the amount of benefit or lump sum payment specified in the Certificate was less than it would have been had the information supplied been correct or sufficient"*
4. *"A ground for appeal is satisfied under Section 11 of the 1997 Act"*

The grounds of appeal under Section 11 of the 1997 Act are as follows:

1. *"[t]hat any amount, rate or period specified in the certificate is incorrect"*
2. *"listed benefits which have been, or are likely to be, paid otherwise than in respect of the accident, injury or disease in question have been brought into account"*

3. *“listed benefits which have not been, and are not likely to be, paid to the injured person during the relevant period have been brought into account”*
4. *“[t]he payment on the basis of which the certificate was issued is not a payment within section 1(1)(a)”*

Boiling these down, we effectively have the following:

- The Claimant did not actually receive the benefits the DWP think they did;
- The calculations in the CRU certificate were based on incorrect information;
- There has been some sort of calculation error;
- Crucially – the benefits were paid other than in respect of the accident, injury or disease in question.

Once the review is complete, the DWP can either uphold the CRU certificate, amend it, or issue a fresh one.

The DWP helpfully say that the CRU certificate will only be amended to increase the amount of recoverable benefits if the person who applied for the certificate misled the DWP. If this happens, the compensator will have to pay any difference to the DWP.

Appealing a CRU certificate

The Claimant or Defendant can appeal a CRU certificate, but only after the claim has concluded, and after the full sum on the CRU certificate has been paid.

There is a two-stage process:

- There must first be a request to the DWP for a ‘Mandatory Reconsideration’ within 1 month of the sum on the CRU certificate being paid;
- Assuming the Mandatory Reconsideration is unsuccessful, there can then be an appeal sent to HMCTS, within 1 month of the written reasons for the Mandatory Reconsideration being provided.

The appeal will require documentary evidence to be provided – statements of case, medical evidence, witness evidence and so on.

The grounds of appeal under Section 11 of the 1997 Act have been set out above.

The appeal will eventually be heard by the First-tier Tribunal (Social Security and Child Support), whether in person or on the papers.

Some worked examples

Example 1: a simple settlement gross of CRU

The Defendant offers the Claimant a figure of £100,000 gross of CRU.

The Defendant helpfully makes clear in their Part 36 offer that the offer includes £75,000 for pain, suffering and loss of amenity, and £25,000 for past loss of earnings.

There is a CRU certificate which includes £50,000 of Universal Credit, which has been paid during the relevant period.

Thinking this through:

- The Universal Credit can be offset against the past loss of earnings, but not the PSLA;
- The most that can be offset is therefore £25,000.

The Defendant therefore puts in their offer the following:

- Gross figure: £100,000
- Deductions: £25,000
- Net figure: £75,000

The Claimant accepts it and everything is fine.

The Defendant pays the £50,000 on the CRU certificate to the DWP, but as we have seen, they can reduce the damages being paid to the Claimant by £25,000.

Example 2: a simple settlement net of CRU

The Defendant in the above case instead decides to offer the Claimant a figure of £75,000 net of CRU.

The Claimant thinks, great, I will get £75,000 in my pocket, and so they accept it.

The Defendant still has to pay the £50,000 on the CRU certificate to the DWP.

Example 3: a complete minefield

I feel evil writing this.

There was an accident on 1 January 2020. The Claimant is a married lady. There has been a 70:30 liability settlement in the Claimant's favour.

The Claimant is claiming the following:

- £50,000 for PSLA;
- £30,000 for care between the date of the accident and the present day;
- £20,000 for loss of earnings suffered in 2023.

The CRU certificate covers the period until 1 June 2024 and includes:

- £10,000 for universal credit in the first year after the accident;
- £20,000 for daily living component of personal independence payment.

What can be offset?

The thought process is as follows:

- Does the liability split mean anything? No, we effectively ignore the liability split.
- The CRU certificate is old – it covers the first 4.5 years after the accident, and so we need to get a CRU certificate which covers the entire period;
- The loss of earnings / the universal credit:
 - o The Claimant is married – are we sure that she did not apply jointly?
 - o Are we sure she wasn't getting Universal Credit before the accident?
 - o The loss of earnings was in 2023, but the universal credit was paid in 2020 – there is a temporal mismatch, does the certificate need to be reviewed?
- The care / daily living component of personal independence payment:
 - o Are you sure the daily living component of personal independence payment wasn't paid before the accident?
 - o The care is between the date of the accident and the present day – presumably some of the care is going to be after the first five years?

The answer is that we cannot be sure what will be offset at the moment.

What about deduction of benefits outside CRU?

You might be thinking, wow, that all sounds complicated, I need a lie down in a darkened room, but at least I now understand how benefits can be deducted from damages!

Unfortunately, there are other ways in which state benefits can be deducted from damages outside the scope of the Social Security (Recovery of Benefits) Act 1997. The best summary of this that I can find is in Kemp & Kemp on Damages, Section 5-111.

The general idea is that where there is an overlap between benefits paid, and damages recovered, the common law does allow the benefits to be offset from the damages, but only to the extent that there is no statutory provision which would apply (see *Hodgson v Trapp*

[1989] AC 807). The overlap being discussed here is where the head of loss is intended to cover the same need as the benefits.

The most obvious statutory provision is the Social Security (Recovery of Benefits) Act 1997, and so we are really thinking about whether the common law allows us to offset benefits which fall outside the scope of the 1997 Act.

Kemp & Kemp explain that the common law cannot be used to offset benefits which could have been offset under the 1997 Act if (for example) they were paid within the

relevant period. So, in other words, if the benefits fall within Schedule 2 of the 1997 Act, but they are being paid after the five-year period, you cannot use common law to offset them.

If there are benefits which would not fall within the 1997 Act, these can be offset. Kemp & Kemp on Damages gives an example of entitlement to a council tax discount as a disabled person. This can also be quite important for military claims, as a lot of the benefits which soldiers receive following injury do not fall within the scope of the 1997 Act.

Is there anything else to mention?

There is a useful document prepared by the Department for Work and Pensions, which is titled 'Recovery of benefits and lump sum payments and NHS charges: technical guidance'

<https://www.gov.uk/government/publications/recovery-of-benefits-and-or-lump-sum-payments-and-nhs-charges-technical-guidance/recovery-of-benefits-and-lump-sum-payments-and-nhs-charges-technical-guidance>

This document not only provides a full list of the statutes which govern the recovery of state benefits, but also provides an excellent summary of how the system as a whole functions.

A few thoughts on CRU

You can probably tell that I am not a great fan of how CRU operates. The scheme probably does a reasonable job overall, in the sense that it recovers a lot of money for the government, but it comes with a lot of unfairness and rough edges:

- Why is recoverability of benefits pinned to the first five years?
- Why do we just blindly assume that benefits in the first five years are due to the accident, injury or disease?
- Why do we ignore contributory negligence?

I tend to think CRU would work a lot better if there is a clean distinction between the damages being assessed or agreed, and the benefits being recovered and offset. I cannot think it would be that difficult to require the parties, or the court, to actually set out what has been awarded or agreed, for what periods and then separately work out what benefits need to come off.

Conclusions

I hope this article has been useful.

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