



Welfare Reform and Work Bill Clauses 7 and 8: the Benefit Cap

House of Commons Bill Committee Stage Briefing

This briefing examines Clauses 7 and 8 of the Welfare Reform and Work Bill which cover the reduction of the level of the benefit cap and the process of setting the level of the cap in future. We are concerned that the cap has the potential to have a negative impact on children. This briefing outlines these concerns and proposes measure for mitigating the negative effects on children.

Summary of proposals

The benefit cap was first introduced in the Welfare Reform Act 2012 to limit the total amount of benefits that a workless families could receive to £26,000 p.a (£18,200 for households without dependent children). This bill proposes to reduce the cap to £20,000 p.a (or £13,400), apart from in Greater London where the cap will be £23,000 p.a (or £15,410). The Secretary of State is given the power to review the future level of the benefit cap. Currently, the cap is implemented by reducing the amount of housing benefit paid to a household, apart from Universal Credit claimants who can have their total award reduced.

We are concerned about the impact that such income cuts will have on low income families. To date, more than twice as many children have been hit by the cap as adults. The cap breaks the link between need and entitlement, that is, families will receive less than Parliament, in its setting of benefit levels, has decided is essential to meet their subsistence needs. It also has the power to effectively override regulations on who should be expected to seek work if starting work is the only means for a family to become uncapped. This means that families can be left without sufficient income to meet their basic needs, such as food and warmth.

Policy objectives of the benefit cap

The government laid out the following objectives for the reduction in the level of the cap:

“The objective of the policy change is to build on the successes of the existing benefit cap, as shown by evaluation evidence. By doing this the policy will: 1. Further improve work incentives for those on benefits 2. Promote even greater fairness between those on out of work benefits and tax payers in employment (who largely support the current benefit cap), whilst providing support to the most vulnerable 3. Further reduce benefit expenditure and continue to help tackle the financial deficit.”¹

The Memorandum to the Joint Committee on Human Rights on the Welfare Reform and Work Bill goes even further on the objectives and necessity of the cap:

¹ Department for Work and Pensions, Welfare Reform and Work Bill: Impact Assessment for the benefit cap, 2015



“Reducing the benefit cap is necessary to ensure the economic wellbeing of the country and ensure people are always better off in work than on benefits”²

We question the extent to which the cap has achieved each of these objectives, but more importantly, question whether impoverishment is an appropriate policy tool, regardless of effectiveness.

Further improve work incentives for those on benefits

The benefit cap is based on the premise that is needed in order to ensure that parents will be better off working than on benefits. But this is a false premise. The social security system is *already* designed to make people better off when they move into work. The tables in appendix A compare the income of households out of work, without the cap, out of work with the cap applied, working on minimum wage and working on median earnings. These tables show that even without the cap these families would be substantially better off in work: both their total income from net earnings and benefits and their disposable income (after rent) would be substantially higher if they were working than it is if they are not. For example, even without the cap, a lone parent with 4 children will be better off by over £65 a week working 16 hours a week on minimum wage.

The Impact Assessment draws on DWP research into the effect of the benefit cap (which was peer reviewed by the IFS) as evidence that the cap is acting as work incentive and that capped households are more likely to move into work. However, the research found that the proportion of households that moved into work (measured by numbers that opened a working tax credit claim) was only 4.7 percentage points higher amongst capped households than for the control group. The IFS concluded that the analysis told us “that the large majority of affected claimants responded neither by moving into work nor by moving house.”³ International comparisons⁴ show that sanctions have limited long-term effect in enabling people to move into work, although they do have an effect in causing exits from benefits. By contrast there is substantial evidence of the positive impact that individualised and supportive employment support can have to enable people to move into work.⁵

Promote even greater fairness between those on out of work benefits and tax payers in employment

The question of the cap’s ‘fairness’ has been highly contested since its introduction. As many have pointed out it was based from the outset on a false comparison between an out of work family’s *income* and an in-work family’s *earnings*, ignoring in the process the various top-ups from the state that those in work may also receive such as child benefit, tax credits and housing benefit. Table 1 illustrates the point looking at median earnings and income in 2011/12 (the only year this data was released for). While the reduction in the level of the benefit cap ends the direct link with earnings, the discussion of median earnings in the Human Rights Memorandum suggests they are still considered in setting the level of the cap:

² Department of Work and Pension, Memorandum to the Joint Committee on Human Rights: the Welfare Reform and Work Bill 2015, 2015

³ Coping with the cap?, Carl Emmerson and Robert Joyce, IFS, Dec 2014

⁴ Welfare Sanctions and Conditionality in the UK, Beth Watts, Suzanne Fitzpatrick, Glen Bramley, David Watkins, JRF, 2014

⁵ For example, <http://childpolicyinfo.childreninscotland.org.uk/index/news-app?story=3276> showed that the New Deal for Lone Parents doubled lone parents chances of getting a job.

The cap ... reflects the broader economic situation around 4 out of 10 households earn less than £23,000 in London, whilst around 4 out of 10 households in GB (excluding London) earn less than £20,000⁶

Table 1 Comparing incomes and earnings

Median weekly earnings and total income, where the head of the benefit unit is aged below state pension age within Great Britain, 2011/12.

	All	Single no children	Lone parents	Couples no children	Couples with children
Earnings (net of income tax and NICs)	420	270	200	590	600
Earnings (gross of income tax and NICs)	520	330	230	730	750
Total income (net of income tax and NICs)	490	280	400	640	670
Total income (gross of income tax and NICs)	600	340	420	790	820

Source: Benefit unit median weekly earnings and total income for Great Britain, Family Resource Survey, DWP, August 2013

This can also be seen in the tables in Appendix A comparing income for individual families in and out of work. Crucially, as can be seen from these tables, all families would still receive substantial amounts in benefits if they were working, in the form of housing benefit, tax credits and child benefit. For example, a lone parent with 4 children working at 16 hours a week on minimum wage will receive £561.24 a week in benefits (compared to £601.63 not working without the cap). The cap includes child benefit and child tax credit, both paid to families in and out of work recognising the additional costs that children bring to a household.

We would also question whether a measure that has had a disproportionate impact on lone parents, children and BAME groups can be considered fair. Up to May 2015, over 220,000 children have been affected by the benefit cap compared to 86,659 adults. Whilst we recognise the intention of the benefit cap to instigate behaviour change in adults, this is clearly not the expectation of the children who have also been affected. 56 per cent of capped families to May 2015 are headed by a lone parent⁷, a group already at increased risk of poverty⁸ and who face greater barriers to the work place because they are parenting alone.

⁶ Department of Work and Pension, Memorandum to the Joint Committee on Human Rights: the Welfare Reform and Work Bill 2015, 2015

⁷ Benefit cap: number of households capped to May 2015, DWP, 2015

⁸ Households below average income, DWP, 2015

Further reduce benefit expenditure and continue to help tackle the financial deficit

The reduction in the level of the benefit cap is projected to save almost £500m by 2020-21, less than 4 per cent of the total savings to the social security budget. Evidence from the first two years of implementation suggests that savings overall to the public purse will be even less than this, and may even have presented a cost to date. Some of the savings to the housing benefit bill are offset by additional funding through discretionary housing payments. On top of this, there are a large number of additional costs, predominantly falling to councils, which are harder to quantify. These include: the costs of providing temporary housing for priority need households made homeless by the cap; additional support to families hit by the cap to enable them to become ‘uncapped’; and disruption to children’s lives and schooling.

Breach of the UN Convention of the Rights of a Child

The fairness of the cap (at its current level of £26,000) was also considered recently by the Supreme Court.⁹ In arguments, it became clear that the government’s intention in introducing a cap was not to create parity between in- and out-of-work families but instead, to ensure that the income of out-of-work households was always *lower* to reinforce work incentives. The judgement called into question the fairness of the cap with three of the five judges finding that in introducing the cap, the Government failed to comply with the UN Convention of the Rights of the Child, and two finding that it breached Article 14 of the European Convention on Human Rights. In the judgement, Lord Kerr said that “*it cannot be in the best interests of the children affected by the cap to deprive them of the means of having adequate food, clothing warmth and housing*” and Lady Hale said the cap deprived children of “*the basic necessities of life*” and made them “*suffer from a situation which is not of their making and which they themselves can do nothing about*”. Lord Carnwath – who provided the crucial swing vote dismissing the appeal - said that he hoped the Government would address the breaches of children’s rights in its review of the benefit cap.

Potential impact on homelessness and housing affordability

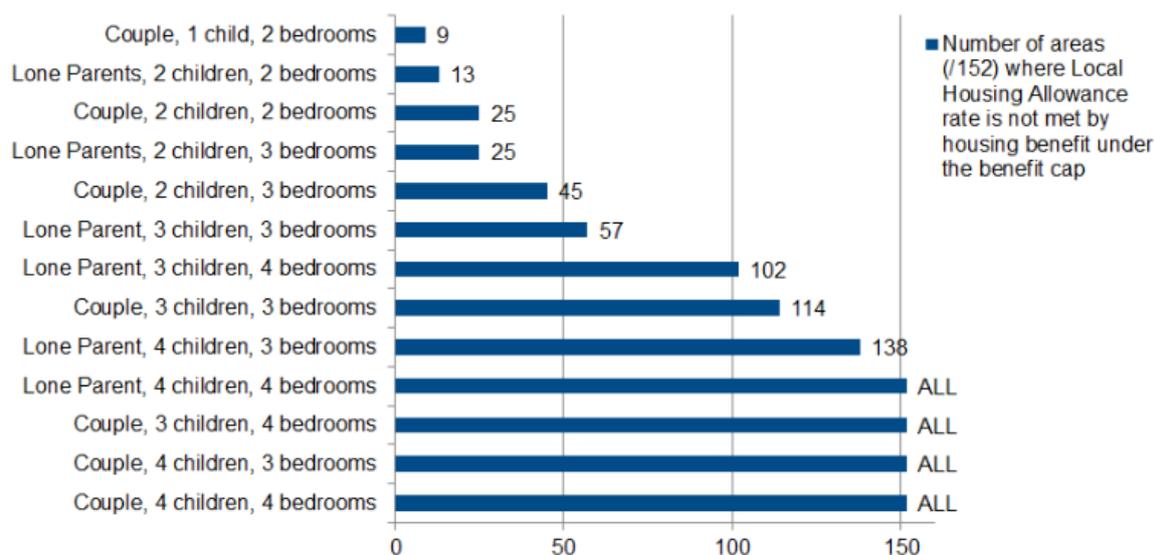
The benefit cap has already had an impact on reducing the ability of affected families to afford suitable housing and increasing homelessness, and we should expect any reduction to the level of the cap to have an even more acute effect. This issue is covered in greater detail a submission by Shelter and other organisations on housing aspects of the Welfare Reform and Work Bill. Citizen’s Advice¹⁰ has modelled the impact that reducing the cap to £23,000 could have on housing affordability (this does not consider the further reduction to £20,000 outside of London). For households renting in the private sector, the vast majority of the country will be unaffordable for couples with three or more children and for lone parents with four or more children, but considerably smaller families will find large parts of the country unaffordable. It is worth noting that even fewer areas will be affordable under a £20,000 cap (see Table 2). Shelter¹¹ has also raised concerns that even families with just one child could struggle to find housing within the cap even in not traditionally expensive areas such as Tottenham and Catford.

⁹ R(SG and others) v SSWP formerly JS and others

¹⁰ Citizens Impact Assessment: Lowering the Benefit Cap, Citizen’s Advice, 2015

¹¹ <http://blog.shelter.org.uk/2015/05/the-benefit-cap-who-and-where/>

Table 2: Number of areas where LHA rate is not be housing benefit under a £23,000 benefit cap



For families hit by the cap, there is a high risk that they will not be able to afford rent payments and will be made homeless. The Homelessness Act 2010 places a duty on local authorities to house priority need households. The benefit cap makes it very difficult – and in some cases impossible – for councils to fulfil the duties placed on them by this act, as it can reduce housing benefit entitlement to as little as 50 pence.

The benefit cap also hits households who are already homeless and living in temporary accommodation. Temporary accommodation (TA) is often more expensive than other forms of housing, and when local authorities are required to house larger families or find adequate accommodation in high rent areas, they will struggle to find TA that does not bring the household within the confines of the ‘cap’. As a result, families who are accepted as homeless and then placed in TA could be made homeless again due to their inability to cover their costs as a result of the benefit cap. The perversity of this situation was recognised by Lord Freud during the passage of the Welfare Reform Act when he stated:

‘We need to get a solution to this so that we do not have a ludicrous go-round of people moving into expensive temporary accommodation which they can no longer pay for because of the cap.’¹²

Discretionary housing payments (DHP) are used to prevent this situation. We welcome the increase in DHP funding announced (£800m will be provided over the course of the next five years), but DHPs cover a range of circumstances and are finite and unstable. We would expect demand on DHP funding to increase significantly as a result of the lowering of the cap, to the point that it will not be possible for councils to house homeless families in affordable accommodation.

Work incentives and work conditionality

For families hit by the cap, the options that have been discussed for managing the drop in income are limited: move into work; move to cheaper accommodation; or absorb the shortfall through tighter

¹² House of Lords Debate, 23 January 2012, c893

budgeting. As already discussed, for many families, it will not be possible to find alternative accommodation that will bring their income below benefit cap levels. We would also dispute whether it was possible for families to absorb the shortfall in income. There is an expectation that benefits are set at a rate that provides claimants and their children with a minimum level of subsistence, a 'minimum income'.¹³ Even without the benefit cap, benefit levels are set below the relative poverty line (after housing costs). For example, a couple with two children over 14 will receive 61 per cent of the poverty line in benefits. It is hard to see how families already living significantly below the poverty line could be expected to further tighten budgets.

This means that for many families moving into work is the only way to cope with the benefit cap. We would argue that for these families, the benefit cap goes beyond just incentivising work to instead mandating work. The vast majority of families hit by the benefit cap to date are not mandated to work in recognition of caring responsibilities or health conditions – in May 15 just 15 per cent of capped households were claiming jobseekers allowance.¹⁴ Some parents have even found that they have had job seeking conditions attached to a discretionary housing payment award.

Lone parents are currently not expected to seek work until their youngest child turns 5. However, up until May 15 37 per cent of households capped to date were lone parents with a child under 5 and almost half of point in time capped households in May 15 were lone parents with children under 5 suggesting these households are less likely to move off the cap. This is unsurprising given the barriers faced by this group. There is a shortage of part-time flexible jobs, and the affordable, suitable childcare that would enable them to access these roles. These issues are covered in more detail in Gingerbread's briefing on amendments 69 and 70.

Setting the level of the benefit cap in future

The bill sets out that in future the Secretary of State will review the level of the cap to determine whether an increase or decrease is appropriate, at a minimum of once per parliament, but more frequently if considered appropriate (clause 8 (1)). In carrying out this review, the only obligation is that s/he takes into account the national economic situation and "any other matters that the Secretary of State considers relevant" (clause 8 (1) (3)). Given that this is a highly political decision with implications for the functioning of the welfare state, we are concerned about the lack of parliamentary scrutiny and clarity on the criteria that will be used for determining the level of the cap. Supporting documents¹⁵ state that the level is to be set by secondary legislation so that they can be "implemented fairly quickly" (para 37).

We are concerned that this procedure is not suitable given the significance of the level of the benefit cap to the functioning of the social security system. The benefit cap breaks the link between need and entitlement for all working age claimants who are not entitled to a benefit that will make them exempt, thus overriding other tests for entitlement. The link to average earnings has also been broken, and so it is unclear how the current proposed level has been decided on and also how future levels will be decided. Therefore, the decision for setting the level of the cap should be subject to clear criteria and democratic accountability.

¹³ For example, Beveridge 1942, paragraph 27 or HL Deb 13 September 2011 Col 629

¹⁴ Benefit cap: number of households capped to May 2015, DWP, 2015

¹⁵ Welfare Reform and Work Bill: Memorandum from the Department for Work and Pensions, House of Lords Select Committee on Delegated Powers and Regulatory Reform

Option for amendments to the benefit cap

We are opposed to the benefit cap on principle. For that reason, we would support the amendments that have currently been tabled that remove the reduction in the level of the cap (amendments 25, 26, 27).

The Impact Assessment¹⁶ outlined three options that were considered for the cap: applying the cap to all working age benefit recipients; leaving the cap at £26,000; or lowering the cap to £20,000 in Great Britain and £23,000 in Greater London. It is disappointing that consideration was not given to further exemptions that could have limited negative impacts on vulnerable groups, particularly children. We urge the committee to consider the following options that could provide protection for these groups.

Align the benefit cap with job seeking conditionality

Many families hit by the benefit cap will find that starting work is the only way to become ‘uncapped’ as there are no suitable housing options within the level of the cap. As already discussed, lone parents face additional barriers to work, which is reflected in the expectations that they are not mandated to start work until their youngest child turns 5 (proposed to be reduced to 3) and in guidance around jobseeking expectations for lone parents with older children. **Amendment 69** exempts claimants who would not otherwise be expected to seek work by virtue of the benefit they are claiming and **amendment 70** provides the same provision under universal credit.

There is evidence that a number of local authorities are making job-seeking a condition of the award of discretionary housing support to applicants who are not required in law to job-search or to be available for work. In recognition of parents’ caring role, guidance for jobcentre staff limits the conditions that can be placed on parents claiming jobseekers allowance. There is no such protection within the conditionality imposed as part of a DHP award. The following clause would prevent this from happening in future:

New Clause

Clause 7, page 10, after line 18, insert –

“Section 69 of the Child Support, Pensions and Social Security Act 2000 is amended as follows.

“After subsection (2), insert –

(2A) A relevant authority may not impose any conditions on persons claiming or receiving discretionary housing payments other than those imposed under subsection (2).”

Remove children’s benefits from the cap

Child tax credit and child benefit are paid to working and workless families recognising the additional costs that raising a child brings for a family. Removing one or both of these benefits from the cap would help to protect children – who have already been disproportionately hit and who are unable to take action to exempt themselves from the cap – from negative effects. **Amendment 30** proposes that child benefit is removed and **amendment 31** that child tax credit is removed.

¹⁶ Department for Work and Pensions, Welfare Reform and Work Bill: Impact Assessment for the benefit cap, 2015

Protect children under 5 from the cap

Children under 5 are more vulnerable than older children and require additional care until they start school. The effect of being deprived of necessities can have a more profound negative effect at this young age. For this reason, children should be exempt from the cap until they start school.

Amendment

Clause 7, page 9, after line 6 insert –

“() Regulations under this section must provide for an exemption from the application of the benefit cap for persons responsible for the care of a child aged below 5.”

Exempt temporary accommodation

Households are placed in temporary accommodation as a result of being deemed homeless and priority need, and so are recognised as being vulnerable. Temporary accommodation is often more expensive than other forms of housing, and when local authorities are required to house larger families or find adequate accommodation in high rent areas, they will struggle to find temporary accommodation that does not bring households within the confines of the cap. As a result, families who are accepted as homeless and then placed in temporary accommodation could be made homeless again due to their inability to cover their costs as a result of the benefit cap, regardless of their vulnerability. **Amendment 67** exempts households living in temporary accommodation.

Protect victims of domestic violence from the cap

The benefit cap can act as a disincentive for victims of domestic violence to flee, with their children, from the violence and abuse they are suffering at home. Although most refuges are already exempt from the cap, victims who move with their children into temporary accommodation or private rented accommodation have little control over their rent and are therefore more likely to be hit by the benefit cap. Further, the housing benefit regulations allow for payments to two homes for a period following domestic violence in certain circumstances, but this makes it even more likely that the victim will be affected by the benefit cap. This amendment would allow domestic violence victims a period of time to recover and make appropriate arrangements before the benefit cap is applied.

Amendment

Clause 7, page 9, after line 6 insert –

“() Regulations under this section must provide for an exemption from the application of the benefit cap for persons who have separated from a partner following an incident or incidents of domestic violence within the preceding 9 months.”

Consider rights of the child when reviewing the level of the cap

The Supreme Court judgement on the benefit cap¹⁷ highlighted the potential that the cap has to infringe on the rights of the child. In order to ensure that these rights are considered as the level of the cap is decided, the Children’s Commissioner for each devolved nation should report on the impact of the benefit of the cap, as is proposed in **amendment 74**. This would help to put children’s rights and needs at the forefront of the policy development.

Ensure the level of the cap is uprated in line with prices

The cap is currently set at an arbitrary amount which will lose value if it is not uprated in line with costs and rents. The Bill as drafted would grant the Secretary of State a broad power to decrease the

¹⁷ R(SG and others) v SSWP formerly JS and others

level of the cap by statutory instrument passed by affirmative resolution for any reason he considers relevant. This amendment would require him to seek primary legislation before doing so, but allow for increases as prices and/or average earnings rise.

Amendment:

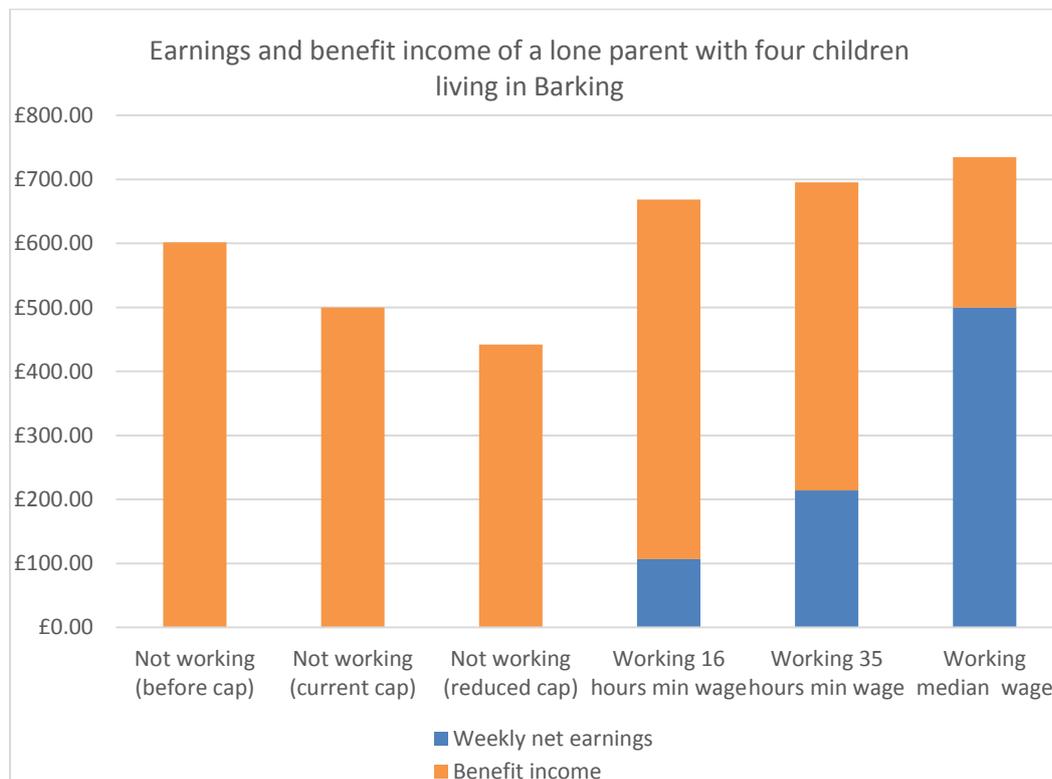
Clause 8, page 10, line 24, remove “or decrease”

For further information on any issues raised in this briefing please contact Megan Jarvie at mjarvie@cpag.org.uk or on 020 7812 5210.



Appendix A: Comparison of weekly earnings, benefits and income of a lone parent with 4 children whether they are in or out of work

	Not working (before cap)	Not working (current cap)	Not working (reduced cap)	Working 16 hours min wage	Working 35 hours min wage	Working median wage
Weekly gross earnings	£0.00	£0.00	£0.00	£107.20	£234.50	£655.00
Weekly net earnings	£0.00	£0.00	£0.00	£107.00	£214.00	£500.00
IS/JSA	£73.10	£73.10	£73.10	£0.00	£0.00	£0.00
Child benefit	£61.80	£61.80	£61.80	£61.80	£61.80	£61.80
Tax Credits	£224.33	£224.33	£224.33	£300.67	£270.72	£98.32
Housing benefit	£242.40	£140.77	£83.08	£198.87	£148.78	£74.95
Benefit income	£601.63	£500.00	£442.31	£561.34	£481.31	£235.07
Total income	£601.63	£500.00	£442.31	£668.34	£695.31	£735.07



Assumptions:

Median wage is median household earnings net of tax and NI i.e. £500.

Lone parent is over 18

Thresholds and rates as at 16th Sept 2015

Family in work is not claiming childcare element of working tax credit