

Secondary Legislation Scrutiny Committee  
House of Lords  
SW1A 0PW

Dear Lord Goodlad,

## **Submission regarding the Benefit Cap (Housing Benefit) regulations 2012**

Shelter opposes plans to impose a total cap on household benefits, applied via a reduction in housing benefit. Housing costs vary considerably by tenure and location, meaning that the cap will disproportionately impact households in the south-east and larger families who are entitled to higher amounts of child-related benefits.

We have welcomed confirmation that Discretionary Housing Payments will not be included in the cap. We are also supportive of the 39 week grace period, having called for similar protection during the passage of the bill. However, in other respects we are disappointed that the regulations fail to recognise many of the concerns raised about the benefit cap during the passage of the Welfare Reform Act.

**Our main practical concern is about how the cap will function for homeless households living in temporary accommodation** where rents are high and people have little scope to reduce their housing costs. The government has not been clear about how this will work.

We also believe that:

- Housing benefit should be assessed outside the cap to recognise unavoidable differences in housing costs caused by tenure and region.
- The cap should be set according to average household income rather than earnings. This is because households on average wages are still entitled to other benefits and tax credits meaning that the cap is not based on a like-for-like comparison with the resources available to families on average wages.
- To reduce the risk of error and unnecessary burden on local authorities the cap should only be implemented as part of Universal Credit and not separately.

### **Calculating the cap**

The inclusion of housing benefit in the cap will unfairly penalise households living in more expensive regions and increase the risk of homelessness. The DWP has acknowledged that the high proportion of losers in London is due to higher rents in the capital. Despite this the government has failed to propose any mitigation to recognise additional housing costs, beyond cash-limited and unpredictable Discretionary Housing Payments (DHP).

**Until there's a home for everyone**

We welcome confirmation that DHP will not be included in income assessed under the cap. This will ensure that some safety net remains to protect households against arrears, eviction and homelessness. However, DHPs will not be able to protect every household affected by losses and local authorities will have to make difficult choices within a limited budget. The use and effectiveness of DHPs to prevent homelessness should be included in the one year review of the cap.

Throughout the passage of the Welfare Reform Act, Shelter questioned whether £500 per week was the most appropriate figure at which to set the cap. The DWP maintains that it represents average household earnings. However, average household income would be a fairer comparator because households on average wages are still entitled to child benefit, working tax credit, child tax credit and in some cases housing benefit. This means that the cap is not based on a like-for-like comparison with the resources available to families on average wages.

### **Homelessness and the cap**

The benefit cap will increase the risk of homelessness. This was acknowledged in the DWP's first impact assessment published in 2011 but removed without explanation from the update in 2012. Prior to publication the DWP offered no mitigations which would justify removing this as an identified risk. Households will be at risk of homelessness because many will struggle to afford their rental obligations under the cap through no fault of their own. The risk of reduced income will also make landlords more likely to evict tenants with rent arrears, refuse to renew tenancies for larger households, or restrict the households they will let to in case they are caught by the cap at a later date.

### **Temporary accommodation and the cap**

We are greatly concerned about the problems the benefit cap will create when homeless households are placed in temporary accommodation by local authorities. Homeless households in temporary accommodation are liable for a "reasonable charge" for their accommodation, which can be covered by housing benefit if the household is on a low income. Temporary accommodation tends to be more expensive than rents in the mainstream private rented sector, and is considerably more expensive than social housing rents, creating a high risk that rents will not be affordable under the overall benefit cap.

Households placed in TA have little scope to move to reduce their housing costs and under the Homelessness Code of Guidance local authorities cannot ask people to make up the shortfall through other benefits if this would deprive the household of "basic essentials such as food, clothing, heating, transport and other essentials". Throughout the bill process Shelter called for households in TA to be exempt from the overall benefit cap. The Minister refused an explicit exemption but promised to look at assistance for "hard cases" to ensure regulations provided the "appropriate protection" for households in TA. It is not at all clear from the regulations that any protection is being provided.

Lord Freud said repeatedly in parliament that the forthcoming reform of TA subsidy would inform final decisions about how the system will operate. He said: "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. We are absolutely aware of this and have measures in train to get a solution in the round to that issue." However, as yet the TA subsidy reform plans have not been published, preventing proper scrutiny of the interaction between the cap and TA.

### **Administering the cap**

The cap will be applied initially via a reduction in housing benefit and over time it will be incorporated into Universal Credit. We question whether the administrative upheaval involved in applying the cap via housing benefit justifies the earlier roll-out. It is concerning that the DWP has still not set out exactly how Job Centre Plus staff will work with local authority housing benefit officers to apply the cap. Furthermore, the cap will take effect at a time when many local authorities are preparing to wind-down their housing benefit offices in preparation for Universal Credit and will have a number of other complex reforms to implement.

The regulations suggest that local authorities do not have to apply the cap until they are notified to do so by the Secretary of State, though local authorities can apply the cap if they have evidence of information suggesting it will apply. We are concerned that there may be scope for error if local authorities wrongly apply the cap before receiving a notification from the Secretary of State. We would also like clarification that households will not be subject to an overpayment clawback for any period before the local authority is notified to impose the cap.

### **Exemptions and mitigation**

We strongly welcome the proposed grace period, having called for similar protection during the course of the Welfare Reform Act. However, we're concerned that the grace period will come into force before the cap is applicable. Households losing their jobs in February 2013 will only be protected until November 2013 whereas someone losing their job after April 2013 will get a full nine months protection. In our view all eligible households should receive a nine month grace period.

I hope this is a helpful contribution to your scrutiny process. Please do let me know if you require further information.

Yours sincerely,

Anne Baxendale  
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