

Written evidence submitted by the Chartered Institute of Housing (DAB54)

The Domestic Abuse Bill and the benefit cap: Evidence to the Bill Committee

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals and their organisations with the advice, support, and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is fully reinvested to fund the activities we carry out to support the housing sector. We have a diverse membership of people in 20 countries who work in the public and private sectors.

Further information is available at: www.cih.org

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Summary

1. CIH is opposed to the benefit cap our reasons for this were stated in the Work and Pensions Committee inquiry of 2019.¹
2. Women² are disproportionately affected by the benefit cap, especially those with young children³. The cap has a devastating effect on survivors of domestic abuse as without sufficient benefit support, they can remain trapped in an abusive relationship.
3. CIH believes that the Domestic Abuse Bill provides an excellent opportunity to tackle this issue and allow abuse victims to get full access to the benefits they need.
4. Our amendment is designed to introduce a new exception from the cap for domestic abuse survivors. It requires the Secretary of State for Work and Pensions to provide exceptions to the cap for claimants affected by domestic abuse. These regulations must ensure that the survivor is excepted:
 - (a) during any period in which the person responsible for the abuse is excepted or would be if he made a claim
 - (b) during any period in which the full work-related requirements are waived due to domestic abuse; and
 - (c) in any other case for a period of at least 12 months, starting from when she leaves supported or temporary accommodation.
4. Most of the Domestic Abuse Bill provisions apply to England and Wales only. The benefit cap applies to England, Wales, and Scotland and accordingly the proposed amendments are to be inserted into ss.67 – 70 of the draft Bill. The amendment is in appendix 1.

¹ See Work and Pensions Committee (2019), [Twenty-Fourth Report](#), paras 19, 51.

² Throughout this document we refer to women because they experience domestic abuse at twice the rate of men (appendix 2). But our proposed amendment would apply to anyone escaping abuse see ss.1 - 2 of the draft Domestic Abuse Bill.

³ See appendix 2 for statistics on the benefit cap.

How does the benefit cap work?

5. The Welfare Reform Act 2012⁴ provides the framework for the benefit cap under which the Secretary of State can make regulations.⁵ The cap sets a limit on the amount of 'welfare benefits' a working-age claimant can receive if they are out-of-work or their earnings are below the minimum threshold. For a couple or a lone parent⁶ the monthly amount of the cap is:
 - (a) £1666.67 a month outside London (£384.62 per week); or
 - (b) £1916.67 a month in Greater London (£442.31 per week).
6. Welfare benefits means all the main out-of-work benefits and child benefit. If the claimant is on universal credit (UC) it includes the housing costs element and it is the total award that is capped. If the claimant is on legacy benefits (e.g. income-based jobseeker's allowance, etc) it includes housing benefit (HB) and the cap is applied to the HB.

How does the benefit cap relate to the two-child limit?

7. If the claimant has more than two children, unless she qualifies for protection, she only gets two child elements in her UC (or legacy benefit) so her income only increases by the rate of child benefit for each additional child (£60.44 per month). The rules about protection are complex and fall into three categories:
 - *transitional*: the claimant received support before the two-child policy began
 - *full*: for adoption and fostering⁷
 - *third child*: this only applies to the third (or subsequent) child.
8. Third-child protection includes multiple births and a child that was 'conceived without consent' (see: [DWP/HMRC guidance](#)). Whenever protection applies, her maximum UC includes another child element (£235.83 a month) but her UC only increases up to the amount that does not breach the cap (or nil if it is capped already).

How does the benefit cap affect access to rented housing?

9. A lone parent with two children who uses her UC standard allowance, child elements and child benefit for non-housing expenses, can use any remaining headroom up to the cap towards her rent leaving:
 - (a) £924.30 per month in Greater London; or
 - (b) £674.70 per month in the rest of Great Britain.⁸

⁴ [Sections 96, 96A and 97](#)

⁵ See Universal Credit Regulations 2013, [SI 2013/376, Regs 78 – 83](#) and the Housing Benefit Regulations 2006, [SI 2006/213, Regs 75A – 75G](#).

⁶ In each case the amount for a single person without children is set at two-thirds this figure.

⁷ Introduced following [SC and Others v SSWP \[2019\] EWCA Civ 615](#)

⁸ These figures assume the higher rate child element which is £45.42 per month higher. It only applies to one child born before 6th April 2017. The headroom figures exclude the extra £20 per week during 2020/21 due to coronavirus (see appendix 3).

10. If the rent exceeds the headroom, she only receives the headroom. The cap applies to any kind of rented housing other than a hostel or refuge (see below). It impacts in areas where demand for housing is high, and so therefore is also the market rent.
11. Five out of every six new social rented homes completed during 2018/19 were at market-related rents and during the first six months of 2019/20 this had risen to eight out of every nine completions outside London.⁹
12. For private renters, the local housing allowance (LHA) sets an upper limit on the total rent UC/HB will cover. From April 2020/21, except for a small number of broad rental market areas (BRMAs) in London, LHA rates cover at least 30 percent of homes for each of the five categories of dwelling. CIH compared the LHA rates for the two and three-bedroomed categories in each local authority in England with the headroom available for a lone parent, two-child household.
13. We found that in more than half of local authorities, claimants subject to the benefit cap will have to meet part of their housing costs from their other, non-housing related, benefits. The full results are in appendix 3.

What is the effect of the UC work-related conditions?

14. UC claimants must be available for work and undertake work search (the full work-related requirements).¹⁰ In certain circumstances these are waived or replaced with the less onerous (partial) requirements of work preparation and/or attending a work-focused interview.¹¹ There are several waivers, the ones most likely to apply to a woman escaping abuse are:
 - (a) responsibility for a child aged under three years
 - (b) in the later stages of pregnancy (within 11 weeks of expected confinement)
 - (c) limited capability for work (i.e. incapacity, including mental health); or
 - (d) she has been a victim of abuse in the last six months from a former partner or family member/close relative.
15. But the last of these only applies for 13 weeks from the date she notifies the DWP and a further 13 weeks if she is responsible for a child, but in either case only if it has not been applied in the previous 12 months.¹² But waiver does except her from the cap, the only exceptions are those described below.

⁹ See MHCLG [Live Tables on Affordable Supply](#), Table 1000; Homes England, [Housing Statistics](#). On average the London Living Rent is £1,030 and £1,133 per month for two-bedroom and three-bedroom properties, respectively.

¹⁰ [Welfare Reform Act 2012, s22](#)

¹¹ [Welfare Reform Act 2012, ss19-21](#) and the [Universal Credit Regulations 2013, Part 8, Chapter 1](#)

¹² See [Universal Credit Regulations 2013, Regulation 98](#)

What exceptions are there to the benefit cap?

16. The Secretary of State can make exceptions to the cap by regulations (Welfare Reform Act 2012, [s96\(4\)\(c\)](#)). The regulations provide the following exceptions:
 - (a) the claimant is in receipt of a qualifying disability or carer's benefit;¹³
 - (b) a child in her benefit unit is in receipt of a qualifying disability benefit;¹⁴
 - (c) she has earned income at least equal to what she would earn by working 16 hours per week at the minimum wage (£604 per month); or
 - (d) during the 'grace period' immediately after she leaves paid work.
17. The grace period is nine months and applies if she earned the same amount as in (c) in each of the 12 months immediately before she stopped work (or the date her earnings first fell below it).
18. But there is no exception for domestic abuse. As a result, survivors face the invidious choice of paying the rent or cutting back on essential living expenses such as food or heating that risk compromising her and her children's health or falling into arrears and risking eviction. It may even reduce the opportunities to escape because landlords will be reluctant to let to anyone whose UC is capped.
19. This seems exceptionally harsh, even perverse, when means that the abuser is often in stronger financial position by being single, while the victim is encumbered with a benefit reduction for making a claim that was necessitated by his abuse.

Examples of how the benefits system can help the abuser more than the victim

Example A: physical and economic abuse, abuser in employment

- Maheera and her husband Fahaaz live in Tower Hamlets, with their three children aged six, four and two. Fahaaz has been subjecting Maheera and the children to violent abuse. Fahaaz works full-time but refuses to allow Maheera to work. Maheera has been looking for an opportunity to escape and she has found a privately rented three bedroomed flat within the borough within the LHA rate (Inner East London BRMA).

If Maheera claims UC she only gets two child elements plus child benefit. The headroom available for rent is £863.86 (after £60.44 child benefit for the third child). The rent is £1500 per month, so she will have to make up £636.14 out of her standard allowance and child elements. That leaves her with just £416.26 per month from her UC and child benefit for all four of them.

If the three children stay with Fahaaz he will not be capped even if he gives up work because he is entitled to the nine-month grace period.

¹³ These are: employment and support allowance with a support component, personal independence payment, disability living allowance, attendance allowance, constant attendance allowance, industrial injuries disablement pension, war disablement pension, carer's allowance, guardian's allowance, working tax credit and the carer or LCWRA elements of UC.

¹⁴ These are: personal independence payment and disability living allowance.

Example B: physical and economic abuse, abuser on UC

- Zoe lives with her partner Jack and their twins aged two in their privately rented flat in Oxford. Jack has bipolar disorder. He is often violent towards Zoe and the children and practices extreme controlling behaviour. He and Zoe have a joint UC claim which includes the LCWRA element¹⁵ for Jack. The UC is paid into Jack's bank account, but he rarely gives any money to Zoe and she is afraid to ask for a split payment for fear he may be violent.

Zoe has found a two bedroomed flat with a private landlord that is close to her family. The rent was advertised at £950.00 per month but she has persuaded the landlord to let it at the LHA rate of £910.00. If she claims UC it will be capped at a rent of £674.70 so she will have to make up £235.30 from her standard allowance and child elements.

If the children stay with Jack he will not be capped because the LCWRA element is excepts him (and means he receives a higher award than Zoe would as a single person).

How else does the benefit cap affect people escaping domestic abuse?

20. As there is no specific exception for domestic abuse, a survivor would normally have to rely on one of the exceptions above. However, the cap also depends on the type of accommodation she occupies:
- (a) if she lives in supported or temporary accommodation¹⁶ then her rent (which for these kinds of accommodation is HB) does not count towards the total,¹⁷ so she is unlikely to be capped; but,
 - (b) if she lives any other kind of rented housing (with a private or social landlord) the cap applies in the normal way.
21. A woman can escape the cap by moving to a hostel or refuge (a provision which helps ensure these schemes are viable) but she will be capped as soon as she moves out. But if her only immediate option is to find her own accommodation; she is subject to the cap from the day first day she claims. Landlords will be reluctant to house anyone who is capped, so this will limit the choice of homes available to her. If she moves to a cheaper area, she may become isolated from her family and her natural support networks.¹⁸

¹⁵ The LCWRA element is equivalent to the support component of ESA.

¹⁶ Supported accommodation means a hostel or refuge owned by a social landlord. Temporary accommodation means housing provided by a local authority under its homelessness duties or powers. See paras 3A, 3B, Schedule 1, Universal Credit Regulations 2013/376.

¹⁷ See [Paras 3\(h\),\(i\), 3A, 3B, Schedule 1](#), Universal Credit Regulations 2013, 2013/376; [Reg 5\(2\)\(a\)](#), Universal Credit (Transitional Provisions) Regulations 2014, 2014/1230; and [Reg 75F\(1\)\(g\)](#) Housing Benefit Regulations 2006, SI 2006/213.

¹⁸ It is almost impossible for households with three or more children to escape the cap by moving, because it is so low: See Work and Pensions Committee (2019), op. cit. p21.

Appendix 1: Draft amendment

INSERT AFTER CLAUSE 67

To move the following Clause—

“Benefit cap domestic abuse

(1) Section 96 of the Welfare Reform Act 2012 is amended in accordance with subsection (2).

(2) After sub-section (9) insert:

(9A) Regulations made under subsection (4)(c) must provide for exceptions where a person (“A”) whose behaviour towards another person (“B”):

- (a) constitutes domestic abuse within the meaning of section 1 of the Domestic Abuse Act 2020; and
- (b) A and B are personally connected within the meaning of section 2 of that Act; and
- (c) B claims a welfare benefit as a single person; and
- (d) B’s claim for benefit as a single person was necessitated by A’s behaviour towards them, regardless of whether B had been part of a joint claim with A or not.

(9B) Regulations made under subsection (9A) must provide for exceptions as follows:

- (a) if person A would fall within an exception to the application of the benefit cap as prescribed by regulations made under subsection (4)(c) if A was entitled to a welfare benefit as single person, but person B would not fall within any exceptions if B claimed as a single person;
- (b) where B is, due to domestic abuse, subject to nil or partial work-related requirements by regulations made under sections 19 to 21, for as long as those reduced requirements continue to apply to B; and
- (c) in any other case for a period not less than 12 months beginning with the date B first received a welfare benefit which included a housing costs element within the award of universal credit, or housing benefit not falling within Regulations 75F and 75H Housing Benefit Regulations 2006.”

Appendix 2: Benefit cap equality impact statistics

1. The benefit cap disproportionately affects women. The latest cap statistics (February 2020) show that:¹⁹
 - 32, 589 households are affected by the cap
 - of these 82.6 percent are single people (i.e. not a couple)
 - of those that are single 92.5 percent are women
 - of those that are single with children 97.8 percent are women
2. It is not known how many claimants affected by the cap are domestic abuse survivors and what proportion of these would be women, but given that the number of women affected by domestic abuse is nearly twice that of men²⁰, the proportion of survivors affected by the cap who are women will be close to 100 percent.
3. The cap also has a disproportionate impact on black and minority ethnic households who are more likely to have larger families.²¹

¹⁹ DWP (2020), [Benefit Cap Statistics](#) and DWP [Stat-Xplore](#)

²⁰ Office of National Statistics, [Domestic abuse in England and Wales overview: November 2019](#)

²¹ DWP (2012), [Benefit Cap Equality Impact Assessment](#), para 17

Appendix 3: Results of CIH analysis

1. Local authorities in England where a lone parent with two children renting privately is affected by the cap.^{22 23} For households entitled to the three-bedroom²⁴ rate:
 - the LHA exceeds the headroom in 197 out of 317 authorities,
 - in southern England (the regions East of England, London, South East and South West) there were only four local authorities out of 177 where the cap did not exceed the headroom,
 - in 150 authorities the gap was over £100 per month, in 95 of these it was over £300 and in 25 out of 33 London authorities it was over £450.

2. For households entitled to the two-bedroom rate:
 - the LHA exceeds the headroom in 142 out of 317 authorities,
 - in southern England, the cap exceeds the headroom in 135 out of 177 authorities,
 - in 109 authorities the gap was over £100 per month, in 40 of these it was over £300 and in 20 authorities (13 of which are in London) it was over £400.

June 2020

²² These results exclude the extra £20 per week due to coronavirus, so the number of authorities affected, will be higher.

²³ Local authorities are not coterminous with BRMAs. The results are based on the BRMA that covers the largest part of each authority by area.

²⁴ A two-child family is entitled to the three-bedroom rate if the children are of the opposite sex and at least one is aged over 10. In any other case the two-bedroom rate applies.