

The Domestic Abuse Bill and the benefit cap: A briefing for MPs

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 put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

Further information is available at: www.cih.org

May 2020

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About this briefing

Women¹ who have fled domestic abuse are disproportionately affected by the benefit cap, especially those with young children. The benefit cap has a devastating effect on survivors of domestic abuse as without sufficient benefit support, they can remain trapped in an abusive relationship.

The Chartered Institute of Housing 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.

What is CIH's position on the benefits cap?

CIH is opposed to the benefit cap and believes it should be abolished. We set out our reasons for opposing the benefit cap in our evidence to the Select Committee inquiry during the 2017-19 Parliamentary session.² The main ones are:

- (a) It is based on a “false comparison” between *some* of the income of working households and *all* of the income of out-of-work households. It is therefore misleading as it implies that in-work households are in a similar position to capped households and face similar choices on, for example, where they can live³ (households in low paid work can also claim in-work support with their child-related living expenses and with their rent).

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

² See Work and Pensions Committee (2019), [Twenty-Fourth Report of Session 2017-19](#)

³ Ibid, para 51

The Domestic Abuse Bill and the benefit cap: A briefing for MPs



- (b) It creates child poverty and forces households to make harsh choices between adequate diet, heating, or housing that risks compromising their health.
- (c) It is discriminatory in its impact particularly on women (see below) but also on black and minority ethnic households who are more likely to have larger families.⁴
- (d) It has the effect of unfairly 'sanctioning people who do not have job search conditionality when they would not otherwise be sanctioned'.⁵
- (e) It unfairly penalises households for housing market inequalities between different regions of the UK (see below) that have largely been created by the long-term failure of government to ensure that there is an adequate supply of affordable housing.

The Government has recently confirmed that it has no plans to abolish or suspend the cap or to raise the cap limits.⁶ Given the Government's refusal to abolish the cap anytime soon CIH's preferred options for reform would be:

- (a) to restrict the scope of the cap to claimants with full work-related requirements only;
- (b) to extend the list of exceptions to protect those who are at risk of harm, including those escaping domestic abuse; and
- (c) to raise the cap levels to reflect regional differences in rents.

Most of the provisions of the Domestic Abuse Bill applies to England and Wales only. The benefit cap applies to the whole of the United Kingdom (England, Wales, Scotland, and Northern Ireland) and accordingly the proposed amendments are to be inserted into ss.67 – 70 of the draft text of the Bill.

How does the benefit cap work?

The benefit cap policy was first announced at the [Conservative Party Conference 2010](#) by the then Chancellor George Osborne. Originally the cap was set at £26,000 per year but it was reduced to £20,000 (or £23,000 in Greater London) from November 2016 and has not been updated since. The cap only applies to working-age benefits and does not affect pension-age benefit claims.

The Welfare Reform Act 2012⁷ provides the framework for the benefit cap under which the Secretary of State can make regulations.⁸ The cap sets a total limit on the amount of 'welfare benefits' a working-age claimant can receive if they are out-of-work or if their earnings are below a minimum threshold.

⁴ DWP (2012), [Benefit Cap Equality Impact Assessment](#), para 17

⁵ Ibid, para 19

⁶ See Baroness Steadman-Scott, Lords Hansard, 13 May 2020, [Volume 803, Col 678](#)

⁷ [Sections 96, 96A and 97](#)

⁸ For the relevant regulations see Universal Credit Regulations 2013, [SI 2013/376, Regs 78 – 83](#) and the Housing Benefit Regulations 2006, [SI 2006/213, Regs 75A – 75G](#) (as inserted by SI 2012/2294) in both cases as variously amended. These regulations apply across Great Britain and there are equivalent regulations for Northern Ireland.

The Domestic Abuse Bill and the benefit cap: A briefing for MPs



For a couple or a lone parent⁹ 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).

Welfare benefits means all the main out-of-work benefits (means-tested and contributory) and child benefit other than those that provide an exception from the cap (see below). 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 working-age legacy benefits (e.g. income-based jobseeker's allowance, etc) it includes housing benefit and the cap is applied to the housing benefit.

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

If the claimant has more than two children, unless they qualify for protection, they only get two child elements in their UC (or legacy benefit) so their income only increases by the rate of child benefit for each additional child (£60.44 per month during 2020/21). 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 fostering (introduced following a legal challenge¹⁰)
- *third child*: this only applies to the third (or subsequent) child.

Third-child protection includes protection for multiple births and for a child that was 'conceived without consent' (the infamous 'rape clause', see: [DWP/HMRC guidance](#)). Whenever protection applies, whatever the reason, the claimant's maximum UC includes another child element (£235.83 a month) but their award only increases by the extra amount to the extent that it doesn't breach the cap (or nil if their award is capped already).

How does the benefit cap affect access to rented housing?

For a lone parent with two children who uses their UC standard allowance, child elements and child benefit for basic living expenses as intended, any remaining headroom up to the cap can be used towards their rent. In this case the monthly headroom is:

- (a) £924.30 per month in Greater London (£838.03 during 2020/21 due the extra £20 per week for coronavirus)
- (b) £674.70 per month in the rest of Great Britain (£588.03 during 2020/21).¹¹

If the rent exceeds the headroom the claimant only receives the headroom. The cap does not normally apply to anyone living in a hostel, refuge, or temporary accommodation (see below) but it applies in any other kind of rented housing. For example, social housing with market-related rents (such as homes in the Affordable

⁹ In each case the amount for a single person without children is set at two-thirds this figure.

¹⁰ [SC and Others v SSWP \[2019\] EWCA Civ 615](#)

¹¹ These figures assume the higher rate child element which is £45.42 per month higher than the lower rate. The higher rate only applies to one child and if only s/he was born before 6th April 2017 (i.e. before the two-child limit was introduced).

The Domestic Abuse Bill and the benefit cap: A briefing for MPs



Rent Programme and the London Living Rent¹²) are likely to be affected in a similar way to privately rented homes. Of new homes completed by social landlords during 2018/19 five out of every six 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.¹³

In private rented housing 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 inner London, the LHA rates cover at least 30 percent of homes in each of the five categories of dwelling. CIH has compared the LHA rates for the two and three-bedroomed categories in each local authority in England¹⁴ with the headroom available for a lone parent, two-child household.

The results – showing the significant effects of the gap – were as follows:

- For households entitled to the three-bedroom¹⁵ rate:
 - the LHA exceeds the headroom in 197 out of 317 authorities in England (and in another six BRMAs in Scotland and Wales),
 - in southern England (the regions East of England, London, South East and South West) there were only four local authorities (two each in Devon and Norfolk) 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 per month and in 25 out of 33 London authorities it was over £450 per month. (NB the total monthly support provided by the lower rate child element in UC and child benefit is £296.27).
- For households entitled to the two-bedroom rate:
 - the LHA exceeds the headroom in 142 out of 317 English local authorities (and one BRMA in Scotland),
 - 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 per month (so that even a lone parent with one child would be capped by over £100 per month).

This analysis excludes the extra £20 per week included in the UC standard allowance for coronavirus during 2020/21 (in other words it assumes that the headroom required is the higher figure, so it understates how many households will

¹² Homes in the Affordable Rent Programmed are typically (outside London) based on 80 percent of the median market rent and this can be higher than the LHA rate which is based on the bottom 30 percent of rents. On average the London Living Rent is £1,030 per month for a two-bedroomed property and £1,133 per month for a three-bedroomed property.

¹³ See MHCLG [Live Tables on Affordable Supply](#), Table 1000; Homes England, [Housing Statistics](#), 1 April 2019 to 30 September 2019.

¹⁴ Local authority boundaries are not coterminous with the broad rental market areas (BRMAs) used to set LHA rates. So, although BRMAs on average cover a larger area than local councils (152 BRMAs covering 317 local councils in England), some authorities may be covered by two or more BRMAs. In these cases, our analysis is based on the BRMA that covers the largest part of that authority by area.

¹⁵ 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.

be capped). In short, in more than half of local authorities in England, claimants subject to the benefit cap will be required to find money to meet their housing costs from their other, non-housing related, benefits.

What is the effect of the work-related conditions for universal credit?

To qualify for universal credit the claimant must be available for work and undertake work search (the full work-related requirements).¹⁶ In certain circumstances these are waived or replaced with the less onerous (partial) requirements of work preparation and/or attending a work-focused interview.¹⁷ There are several of these exceptions, the ones most likely to apply to a woman escaping abuse are:

- (a) she is responsible for a child aged under three years;
- (b) she is in the later stages of pregnancy (within 11 weeks of expected confinement);
- (c) she has 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.

But the last exception only applies for 13 weeks from the date she notifies DWP and only if she has not applied for it in the previous 12 months. It can apply for a further 13 weeks if she is responsible for a child.¹⁸

However, the point here is that waiver from the full work-related requirements does not of itself mean that the claimant is excepted from the cap. The only exceptions are those described below.

What exceptions are there to the benefit cap?

The Secretary of State can make exceptions to the cap through regulations (Welfare Reform Act 2012, [s96\(4\)\(c\)](#)). The regulations provide for the following exceptions:

- (a) the claimant is in receipt of a qualifying disability or carer's benefit (or has the equivalent element in their universal credit award);¹⁹
- (b) a child in the claimant's benefit unit is in receipt of a qualifying disability benefit;²⁰
- (c) the claimant has earned income at least equal to what would be earned by working 16 hours per week at the minimum wage (£604 per month during 2020/21); or
- (d) during the claimants 'grace period' immediately after leaving paid work.

¹⁶ [Welfare Reform Act 2012, s22](#)

¹⁷ [Welfare Reform Act 2012, ss19-21](#). For the detailed rules about who is waived from the full work-related conditions in UC see [Universal Credit Regulations 2013, Part 8, Chapter 1](#)

¹⁸ See [Universal Credit Regulations 2013, Regulation 98](#)

¹⁹ These are: main phase employment and support allowance with a support component, personal independence payment, disability living allowance, attendance allowance, constant attendance allowance, industrial injuries disablement pension, a war disablement pension, carer's allowance, guardian's allowance, working tax credit and the carer or LCWRA elements of universal credit.

²⁰ These are: personal independence payment and disability living allowance.

The Domestic Abuse Bill and the benefit cap: A briefing for MPs



The grace period is nine months and applies if the claimant earned the same amount as in (c) (£604 per month) in each of the 12 months immediately before she stopped work (or the date her earnings first fell below it).

Apart from as described above there are no other exceptions and there is no specific exception for people escaping domestic abuse.

This means that a woman fleeing domestic abuse could find herself unable to afford to rent new accommodation sufficient for herself and her children or forced to make an invidious choice between falling into debt or cutting back on essential living expenses such as food or heating that risk compromising her and her children's health. It may even reduce her opportunities to escape since any landlord is likely be reluctant to let to someone who is at risk of having their housing benefits capped.

This seems exceptionally harsh, even perverse, when it often means that the abuser will find himself in stronger financial position by being single, while she 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, London with their three children aged six, four and two. Fahaaz has been subjecting Maheera to violent abuse and controlling behaviour since they were married, and he also violent towards the children. Fahaaz works full-time as a security guard but he has always refused to allow Maheera to work. Maheera has been looking for an opportunity to escape and with the help of her friend she has managed to find a privately rented three bedroomed flat within the borough. The rent is £1500 per month which is within the LHA rate (Inner East London BRMA).

If Maheera escapes she could claim UC, but because of the two-child limit she will only get two child elements in her UC plus child benefit. This means the headroom available for rent (ignoring the extra £20 per week due to coronavirus) is £863.86 (£924.30 less child benefit of £60.44 for the third child. The rent exceeds the headroom by £636.14 per month. She will have to pay the excess out of her rest of UC leaving her with just £204.16 per month for her and her three children plus £212.12 child benefit (£96.06 in total per week for all four of them).

If the three children stay with Fahaaz and he gives up work he won't be capped as he is entitled to the nine month grace period because he has been in work and earning over £604 per month for the last 12 months.

Example B: physical and economic abuse, abuser on universal credit

- Zoe lives with her partner Jack and their twins aged two in their privately rented flat in Oxford. Jack has bipolar disorder and is often violent towards Zoe and the children during periods of mania. He has symptoms of paranoia and practices extreme controlling behaviour towards Zoe. He and Zoe have a joint claim for UC which includes the LCWRA element²¹ due to Jack's health problems. The UC is paid into Jack's bank account, but he rarely gives any of the money to Zoe and she is afraid to ask for a split payment for fear he may be violent.

Zoe has been looking for an opportunity to escape and has found a two bedroomed flat with a private landlord that is close to her family who have been providing her with support. She has found one which is £950.00 per month but 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 the difference £235.30 from her UC standard allowance and child elements.

If the children stay with Jack his UC will not be capped because he receives LCWRA element which is an excepting benefit (and means Jack receives a higher award than Zoe would as a single person).

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

As the law currently stands (May 2020) there is no specific exception for people escaping domestic abuse, so a survivor would normally have to rely on one of the exceptions above. However, the cap also depends on the type of accommodation the claimant occupies:

- (a) if the claimant lives in supported or temporary accommodation then any award of housing costs (which for these kinds of accommodation is HB) does not count towards the total,²² so that only the non-housing elements can be capped;²³ but,
- (b) in any other case (i.e. if the claimant lives in any other kind of rented housing with a private or social landlord) the cap applies in the normal way (see above).

Supported accommodation means a hostel or refuge owned by any kind of social landlord or other supported housing that is provided by a housing association, a charity or county council (but not a district authority).²⁴ Temporary accommodation means accommodation provided by local housing authority under their homelessness duties or powers.²⁵

²¹ The LCWRA element is equivalent to the support component of ESA.

²² 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

²³ Non-housing elements are unlikely to exceed the cap limits.

²⁴ Defined at Para 3A, Schedule 1, Universal Credit Regulations 2013/376; and Reg 75H Housing Benefit Regulations 2006, SI 2006/213.

²⁵ Defined at Para 3B, Schedule 1, Universal Credit Regulations 2013/376

The Domestic Abuse Bill and the benefit cap: A briefing for MPs



A woman can escape abuse by moving to a hostel or refuge (and this provision also helps to ensure that these schemes continue to be financially viable) but if her only immediate option is to rent from a private or social landlord then, unless one of the exceptions above applies, her award is subject to the cap. If she does find a place in a refuge the cap will apply as soon as she moves out if her rent exceeds the headroom. Landlords may also be reluctant to house anyone who would be capped and so the choice of rented homes that are available to her without facing additional hardship will also be limited. The only other option would be to move away from her area/region to one where housing costs are lower, but this may isolate her from her family and her natural support networks.²⁶

What about gender inequalities and the benefit cap

The benefit cap disproportionately affects women. The latest official statistics for the benefit cap (February 2020) show that:²⁷

- 32, 589 households are affected by the cap
- of these 82.6 per cent are single people (i.e. not a couple)
- of those that are single 92.5 per cent are women
- of that are single with children 97.8 per cent are women

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 official estimates²⁸ show that the number of women affected by domestic abuse is nearly twice that of men, the proportion of abuse survivors affected by the cap who are women is likely to be close to 100 percent.

CIH's proposed amendment

Our amendment is designed to introduce a new exception from the cap for domestic abuse survivors. The amendment requires the Secretary of State to provide for exceptions for claimants affected by domestic abuse. These regulations must ensure that the abuse survivor is an exception from the cap:

- (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 (or would be if they are also waived for another reason);
and
- (c) in any other case for a period of at least 12 months if that person is claiming as a single person because of domestic abuse, starting from when she leaves supported or temporary accommodation.

The amendment itself is in the appendix below.

²⁶ Shelter has undertaken research that found that it is almost impossible for households subject to the benefit cap who have three or more children to move to different areas in order to escape the impact of the cap, because the cap is so low: op. cit. Work and Pensions Committee (2019), p21.

²⁷ Source: DWP (2020), [Benefit Cap Statistics](#) and DWP [Stat-Xplore](#) and see also op. cit. DWP (2012).

²⁸ Office of National Statistics, [Domestic abuse in England and Wales overview: November 2019](#)

APPENDIX: Draft amendment

INSERT AFTER CLAUSE 67²⁹

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.”

²⁹ This ensures that the amendment falls within the part of the Bill that relates England, Scotland, and Wales.