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ANOTHER BLOW TO THE AUSTERITY AGENDA:
HIGH COURT RULES THAT APPLYING THE REDUCED BENEFIT CAP TO LONE
PARENTS WITH CHILDREN UNDER TWO IS UNLAWFUL

Today, the High Court has ruled that the application of the benefit cap to lone parents with children under two is unlawful because of its discriminatory impact upon children. The judicial review challenge, brought by four lone parent families, concerned the reduced benefit cap introduced by the Welfare Reform and Work Act 2016. The revised benefit cap drastically reduced housing benefits, leaving lone parent families across the country unable to afford basic life necessities to care for their children. Mr Justice Collins has ruled that the application of the revised benefit cap to lone parents with children under two amounts to unlawful discrimination and that “*real damage*” is being caused to the Claimants and families like theirs across the country. Upon considering the impact of the benefit cap, Mr Justice Collins concluded that “*real misery is being caused to no good purpose.*”

The challenge was brought by four lone parent families for whom the reduced benefit cap has, or will have, severe effects. They are all lone parents with children under the age of two, and their dependent children, and a lone parent who was heavily pregnant in May and now has a newborn baby. Two of the families had become homeless because of domestic violence. As a result of their caring responsibilities and the cost of childcare, they were unable to work the required 16 hours to escape the cap. As a result, their benefits were cut which left each of the claimants with a choice between rent and food and other essential items and unable to provide basic necessities for their children.

The Secretary of State recognises that lone parents of very young children under two should not be expected to work. Free childcare hours for low income families start only when children reach the age of

two. However, no exemption to the benefit cap was made for this group. The Claimants argued that the Secretary of State's failure to exempt them from the benefit cap has a profound impact upon them and their children, which is discriminatory and unlawful.

Their legal team (solicitor Rebekah Carrier at Hopkin Murray Beskine and barristers Ian Wise QC, Monckton Chambers, Caoilfhionn Gallagher QC, Doughty Street Chambers and Michael Armitage, Monkton Chambers) successfully argued that the Secretary of State had failed to take into account the disproportionate impact of the benefit cap on lone parents, who are overwhelmingly women, and their children.

In his judgment, Mr Justice Collins noted that (at [16]):

“The important consideration for the purposes of these claims is the difficulty and often the impossibility of lone parents with children under two being able to work because of the need to have some means of caring for the child. There has not in the figures set out in the Impact Assessments or the Equality Analyses been a specific assessment of the ability of such lone parents to enter work.”

The judgement emphasised the damaging impact of the benefit cap in terms of child poverty (at [29]):

“Those in need of welfare benefits fall within the poorest families with children. It seems that some 3.7 million children live in poverty and, as must be obvious, the cap cannot but exacerbate this. The need for alternative benefits to make up shortfalls is hardly conducive to the desire to incentivise work and so not provide benefits. There is powerful evidence that very young children are particularly sensitive to environmental influences. Poverty can have a very damaging effect on children under the age of five.”

In reaching his conclusion, Mr Justice Collins found (at [42])

“...the cap is capable of real damage to such as the claimants. They are not workshy but find it, because of the care difficulties, impossible to comply with the work requirement. Most lone parents with children under two are not the sort of households the cap was intended to cover and, since they will depend on DHP, they will remain benefit households. Real misery is being caused to no good purpose.”

Rebekah Carrier, the solicitor acting for the claimants, said:

“The benefit cap has had a catastrophic impact upon vulnerable lone parent families and children across the country. Single mothers like my clients have been forced into homelessness and reliance on food banks as a result of the benefit cap. Thousands of children have been forced into poverty, which has severe long term effects on the health and well-being. We are pleased that today’s decision will relieve my clients – and other lone parent families around the country – from the unfair impacts of austerity measures which have prevented them from being able to provide basic necessities for their children”

The challenge was supported by homelessness charity Shelter which intervened in the case and the claimants relied on evidence from the charity Gingerbread on the impact of the benefit cap on lone parent families and their problems in finding work, from the Family and Childcare Trust on the difficulties of finding suitable and affordable childcare, and from the Women’s Aid Federation about the particular impact upon women and children who have suffered domestic violence. Emeritus Professor Jonathan Bradshaw CBE, a specialist in child poverty with over 50 years’ experience, gave evidence of the devastating impact of poverty in early childhood, and debunked the Secretary of State’s claim that worklessness, rather than poverty, causes adverse outcomes for children. Expert evidence was also provided by Professor Maggie Atkinson, who was Children’s Commissioner for England between 2010 and 2015, about the long- term impacts of child poverty, and economist James Harvey who cast doubt on statistics relied upon by the Government to justify the cap applying to lone parents with such young children.

NOTES FOR EDITORS:

1. DA and others are represented by solicitor Rebekah Carrier, Hopkin Murray Beskine Solicitors, and barristers Ian Wise QC, Monckton Chambers, Caoilfhionn Gallagher QC, Doughty Street Chambers and Michael Armitage, Monckton Chambers. Any enquiries should be directed to Rebekah Carrier at rc@hmb solicitors.co.uk, 020 7272 1234 or 07531 341102.
2. An order for anonymity is in place in relation to each of the claimants and their children. They are providing anonymised quotes but will not be available to speak to the media. However, their solicitor, Rebekah Carrier, will answer any queries and is available for interview.

3. In 2013 a ‘benefit cap’ was introduced to limit the total amount in benefits that “workless” working-age people can receive, even if their full entitlement to benefits would otherwise have been higher. The benefit cap set a maximum figure that households can receive in total for all benefits including housing costs, regardless of the number of children in their family. Because of high housing costs, especially in London (often for poor quality temporary accommodation), many families lost most or all of their housing benefits.
4. In 2015, although the Supreme Court found that the original cap was lawful, a majority found that it breached the rights of children. Despite evidence of the impact upon child poverty and amidst calls to review the way the benefit cap works, the benefit cap was lowered again in November 2016. The new annual limit was reduced significantly, with lower rates for households outside London. Previously, London bore the brunt of the policy but the revised cap is now affecting thousands of households across the country.
5. The judicial review claim challenged the revised Benefit Cap which requires lone parents to work at least 16 hours per week to avoid the imposition of the cap. The Benefit Cap was originally imposed by Sections 96 and 97 of the Welfare Reform Act 2012. These have been amended by the Welfare Reform and Work Act 2016. The material effect of the amendment was to reduce the annual limit for the receipt of welfare benefits from £26,000 per annum to £20,000 for those living outside and £23,000 for those living in Greater London. The reductions were brought into effect by Regulations on 7 November 2016. The cap affects couples, whether or not they have children, and lone parents with children.
6. Mr Justice Collins accepted the Claimants’ arguments that the policy unlawfully discriminates against young children, and has a particularly grave effect upon lone parent families and their children. The Secretary of State unlawfully failed to have proper regard to the best interests of children, as required by the United Nations Convention on the Rights of the Child (UNCRC), and the profound impact upon children and their family and home lives when formulating the benefit cap policy.