

YOUNG PEOPLE'S LEGAL RIGHTS CONFERENCE 2020 BENEFITS FOR FAMILIES

Marcin Brajta
Solicitor
Hackney Community Law Centre

youth legal



INTRODUCTION

- Hackney Community Law Centre's work
- How Covid 19 affected our benefits work:
 - Pre-Covid 19:
 - Most of benefits work: appeals (both First and Upper Tier Tribunal)
 - Covid 19:
 - Suspension of oral hearings at First-tier Tribunals
 - PIP appeal listed for 27 October 2020 (initially scheduled for end of March) challenging a PIP decision made in December 2019

COVID 19, SOCIAL SECURITY AND IMPACT ON FAMILIES

- Overview of how Covid 19 affected benefits for families
- Issues we initially dealt with:
 - Inability to challenge UC decisions
- UC and benefit cap:
 - Two case studies:
 - *Single mother of three furloughed, made redundant and then benefit capped soon after giving birth as she lost her earned income.*
 - *Single mother of three, benefit capped and left with less than £20 per week for her and three children. Unable to access DHP as her local authority said she had no housing needs.*
- Lessons learnt

SOCIAL SECURITY SYSTEM AND COVID 19

- Some very important changes e.g. furlough scheme, help for the self employed

But:

- The number of people claiming unemployment related benefits increased by 1.5 million between March 2020 and September 2020
- Workers who are from a BAME background, women, young workers, low paid workers and disabled workers, have been most negatively economically impacted by the coronavirus outbreak.
- Covid 19 resulted not just in an increase in unemployed rates but also led to a decrease in the number of hours worked by those who were still economically active

HOW TO CHALLENGE POOR DECISIONS?

The usual route:

- 1) Mandatory Reconsideration,
- 2) appeal
- 3) Wait for a hearing

Problems encountered during lockdown:

Example: on 27 October First-tier Tribunal heard an appeal of a decision made in December 2020

How to challenge a decision if you are in lockdown?

CASE STUDY 1

- A single mother of two young children left with no income soon after the lockdown was announced.
- Main issues:
 - UC claim was closed, no access to the online journal
 - Is it safe to expect her to post a letter to the DWP?
 - Can she wait 12 months to find out if she is entitled to UC?
- **Outcome: Success!**

CASE STUDY 2

Single mother of two children, works as a carer. Left with no help with housing costs because the tenancy was in the name of a former husband (even though she was the sole adult occupier as the husband was deported over a decade ago)

Main issues:

- The landlord had already obtained an outright possession order and said would enforce the warrant as soon as the stay on possession proceedings is lifted
- Do we have enough time to go through MR?
- Can we threaten JR when the online journal is open and the DWP are responding to our messages?

Outcome: Success!

BENEFIT CAP AND COVID 19

According to the DWP:

The number of households that had their benefits capped increased by 93% in May 2020 from February 2020 to 154,000 households. This is the biggest increase in the number of capped households since April 2013 and has been driven by an unprecedented increase of 665% in the number of newly UC capped households, a reflection of the impact of the COVID-19 pandemic.

<https://www.gov.uk/government/publications/benefit-cap-number-of-households-capped-to-may-2020/benefit-cap-number-of-households-capped-to-may-2020>

WHY DO WE HAVE THE BENEFIT CAP?

According to the government, the (revised) cap had three aims:

- (a) to improve the fairness of the social security system and to increase public confidence in its fairness, particularly in relation to the government's objective not to reward a non-working family with an income in the form of welfare benefits which exceeded that of an average working family;
- (b) to make fiscal savings which would enable the government to redirect its limited resources for better deployment elsewhere; and
- (c) to incentivise the parents or parent in a non-working family to obtain work on the basis in particular that an ethic of work within a family inculcated better outcomes for its children.

Incentivisation of work was the main aim. The **ability of parents to escape the cap by undertaking work** for not less than the specified number of hours was described by the government as a key exemption and is therefore **central to the design of the scheme.**

CASE STUDY 3

Single mother of three furloughed, made redundant and then benefit capped soon after giving birth as she lost her earned income.

- Is DHP an answer?

The government's defence of its application of the cap to lone parents relied largely on the possibility of making a *Discretionary Housing Payment* ("a DHP")

- **Outcome: Pending**

Child Poverty Action Group has a similar case which was heard by the High Court:

<https://cpag.org.uk/welfare-rights/resources/test-case/maternity-allowance-and-universal-credit>

CASE STUDY 4

Benefit capped and left with less than £20 per week for her and three children.

- DHP is supposed to help in a situation like this.
- Unable to receive DHP as her local authority said she had no housing need (as in theory her housing costs element after the benefit cap was enough to cover rent plus arrears. The fact that she was left with £20 per week to pay bills and was irrelevant according to her local authority)
- **Outcome: Partial success!**

LESSONS LEARNT

- Tribunals are mostly closed and therefore expect a significant backlog
- Are mandatory reconsiderations still mandatory?

See: *Connor v SSWP* [2020] EWHC 1999 (Admin) paragraph 19:

Even though the condition imposed by regulation 3AZ is not an abrogation of the right of access to court, for the reasons already given I accept that it is an impediment or hinderance to that right of access. Thus, the issue is whether the condition is proportionate.

- Can letters before claim and threat of judicial review replace the benefit appeals?

LESSONS LEARNT

- Can anything be done about the benefit cap?
- Can DHPs become the safety net of last resort?

Q&A

Thank you for attending!

My contact details:

Marcin Brajta

Hackney Community Law Centre

8 Lower Clapton Road

E5 OPD

Email: marcin@hcl.org.uk

youth legal

