

## Benefit Cap case studies

### Case study 1 current case

**Ms O** is a single parent with 5 children aged 2 to 14. She is a Belgian national and has lived in the UK for 8 years. She has previously worked in the UK. The children's father is not living in the UK and she has no contact with him.

In early 2015 she was refused IS as she was considered to not have a right to reside. Ms O did not fully understand the reason she could not claim. She tried to claim JSA as well but this was also refused on the same basis. She did not seek advice. Her Housing Benefit was stopped but she contacted the council and explained the position to them and they accepted that she was entitled on the basis of having previously worked while having children in education in the UK. This situation gives her a derived right to reside as the children would be unable to continue their education if she did not have a right to reside. Housing Benefit correctly interpreted the same rules that DWP had misinterpreted.

Ms O then continued to get her full rent of £120 per week for her social housing property paid direct to the landlord and she also received Child Benefit of £75.50 per week. Her Child Tax Credit was paid at £278.00 per week. She had managed to get by on this by careful budgeting.

From 16<sup>th</sup> January 2017 (when the benefit cap will apply in Coventry ) her total income per week is £473.50. which is above the Benefit Cap by £88.88 per week. Her Housing Benefit will therefore be restricted to £31.12 per week.

Ms O is extremely worried as she cannot manage with this further reduction in her income. She is seen by a Law Centre Benefits Advisor during the activities to prepare people for the extension of the benefit cap.

The wrong Right to Reside decision in 2015 is identified but it is now out of time for an appeal. However this is an obvious mistake and therefore it is decided to pursue a late review on the basis of an error in law. At the same time the client will be assisted to make a new Income Support claim. She is entitled to Income Support of £73.10 for herself each week and although this will mean that she will lose an additional £30.62 of Housing Benefit per week due to an increase in the benefit cap she will be better off by the balance of £42.48 per week. This is not likely to be sufficient to enable her to manage to maintain rent payments.

Ms O and the children do not have any disabilities and are not able to get themselves into any of the exemption categories. They will be dependent on Discretionary Housing Payments in order to maintain their rent payments.

If the late review is accepted or if the case is subsequently won on appeal Ms O will then secure a backdated Income Support payment of around £5000 which she has lost due to the mistake made by Income Support.

## Case study 2 Benefit Cap and eviction prevented

### **Mr and Mrs F**

Mr and Mrs F were referred to the Law Centre's advice to families worker by social care in December 2015. They have 5 children and lived in a privately rented property. The landlord had started possession proceedings as they had rent arrears of £1500. The family were in receipt of Job Seekers Allowance, Tax Credits, Child Benefit and Housing Benefit. Their weekly rent was £108.39 and they received Housing Benefit of only £41 per week towards this. The shortfall in their rent arose due to a bedroom tax of around £15.00 per week and a benefit cap of around £52.00 per week. The family had not understood that they were subject to the benefit cap and were unable to understand this. They had not been able to make up the shortfall in Housing Benefit and this is the reason they had got into rent arrears. They had some other debts and their water rates were being paid by direct deductions from their Job Seekers Allowance.

The Law Centre identified that they had a disabled daughter and that they had a potential entitlement to Disability Living Allowance which would gain them an exemption from the benefit cap. We got the possession hearing deferred while we worked on securing entitlement to DLA. The DLA claim was successful and they were awarded lower rate mobility component and middle rate care component. The award of DLA enabled the mother to claim Carers Allowance and this secured an increase in their Job Seeker's Allowance (for carer's premium) and a disabled child element was also triggered in the Tax Credits. The benefit cap was also removed as an award of DLA entitled the family to be exempted from the benefit cap. All of these increases were put in place from the date of the award of DLA. DLA awards cannot be backdated. The total weekly increased income was £223.38 (including increased Housing Benefit). The eviction was prevented and the family were given a suspended possession order. They were able to put some of the arrears of the benefits towards the rent arrears and are now able to manage to keep on top of their weekly expenditure including being able to manage to pay the bedroom tax shortfall.

This family has now achieved a permanent solution to the benefit cap and this could have been achieved earlier if the issue had been identified earlier.