

SUPREME COURT FINDS BENEFIT CAP IN BREACH OF CHILDREN'S RIGHTS

Press release

Wednesday 18 March 2015

In a groundbreaking judgment delivered today (Wednesday 18 March 2015) the Supreme Court has found that the government's 'benefit cap' is in breach of the United Kingdom's legal obligations on children's rights. The benefit cap is a fixed limit on the total amount of state benefits which a household can receive, regardless of their family size or circumstances.

After lengthy deliberations a majority of the Supreme Court have concluded that the cap is not compatible with the government's obligation under the United Nations Convention on the Rights of the Child to treat the best interests of children as a primary consideration (Lady Hale at paragraph 225, Lord Kerr at paragraph 268 and Lord Carnwath at paragraph 128). Two of the five Judges of the Supreme Court who considered the case have found that this failure resulted in unlawful discrimination against women. A third member of the court, although finding that the government had breached its commitment and obligation to treat the best interests of children as a primary consideration, found the benefit cap regulations not to be unlawfully discriminatory against women. He did however call for the government to address the implications of the finding of the majority of the Supreme Court that the benefit cap scheme breaches the United Nations Convention on the Rights of the Child in its review of the benefit cap.

The Benefit Cap:

The benefit cap limits the total amount of State benefits paid to families to a sum of £500 per week. In practical terms, the vast majority of benefits paid to most of those who are capped goes to private landlords. The benefit cap also stops payment of child benefit and child tax credit to families where the total benefit payments exceed £500 per week. This means that money specifically provided for children is stopped where, as in the Appellants' cases, rent paid to a private landlord eats up most of the benefit allowed under the benefit cap.

This appeal was brought by two families: two lone mothers and their pre-school age children. Both families have fled violent marriages and live in overcrowded privately rented accommodation as they have not been able to obtain council housing. Because of this, they find themselves caught by the cap. The consequences are very serious for both families: the benefit cap threatens to leave them with so little disposable weekly income that they cannot provide adequate food, clothing or warmth for their children.

Key Findings on the Rights of Children:

The Deputy President of the Supreme Court, Lady Hale, states in the judgment that:

'The prejudicial effect of the cap is obvious and stark. It breaks the link between benefit and need. Claimants affected by the cap will, by definition, not receive the sums of money which the State deems necessary for them adequately to house, feed, clothe and warm themselves and their children' (paragraph 179).

'It cannot possibly be in the best interests of the children affected by the cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life.' (paragraph 225).

Lord Kerr states:

'It cannot be in the best interests of the children affected by the cap to deprive them of the means of having adequate food, clothing, warmth and housing. Depriving children of (and therefore their mothers of the capacity to ensure that they have) these basic necessities of life is simply antithetical to the notion that first consideration has been given to their best interests' (paragraph 268).

Lord Carnwath states:

'The Secretary of State has failed to show how the regulations are compatible with his obligation to treat the best interests of children as a primary consideration' (paragraph 128).

The Appellants' Response to the Judgment:

The Appellants welcome the clear finding that the benefit cap regulations breach the government's international obligations under the United Nations Convention on the Rights of the Child. However they are disappointed that - by the slimmest of majorities - the Supreme Court declined to find that the scheme breaches national law (3:2). As it was only due to a legal technicality that they did not secure an outright victory the Appellants call on government to commit to amending the benefit cap scheme so as to ensure that it complies with the internationally recognised standards for the welfare of children.

Rebekah Carrier, the Appellants' solicitor, said:

'My clients have been hit by the benefit cap because of their flight from violence and because of high private sector rents which they cannot avoid. The cap is causing serious hardship to families across the country and to local authorities who are struggling to find accommodation for homeless families in crisis. It is not an exaggeration to say that the long term impact of the cap is going to trap some women

and children in violent relationships, leave others hungry, homeless and isolated at times of crisis. The government seeks to justify the cap by the financial savings achieved but the long term consequences of this arbitrary benefit cap are likely to have not only devastating consequences for individual children but serious financial costs as the fallout impacts on other public services including social services, education and the justice system.

A majority of the Supreme Court has held that the cap breaches international protections for the rights of children. The government must halt this policy and comply with its international obligations, and its own promise to ensure its policies comply with the UN Convention.'

NOTES FOR EDITORS:

1. The Appellants were represented by Rebekah Carrier of Hopkin Murray Beskine Solicitors and barristers Ian Wise QC of Monckton Chambers and Caoilfhionn Gallagher and Samuel Jacobs of Doughty Street Chambers.
2. Rebekah Carrier is available to answer queries and for media interviews. She can be contacted at rc@hmb Solicitors.co.uk or 020 7272 1234.
3. There are four Appellants – one parent and one child from each of the families. As two are children and two are women at risk from their abusive ex husbands their identities are protected and they are referred to by initials only.
4. The United Nations Convention on the Rights of the Child is an international human rights treaty. The UK signed the Convention on 19 April 1990 and ratified it on 16 December 1991. The government has made a public commitment to ensure its policies comply with the Convention: “All UK government policies and practices must comply with the UNCRC” (<https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>).
5. The appeal was supported by the charities Child Poverty Action Group (CPAG) and Shelter (Shelter Children’s Legal Service) and Women’s Aid. CPAG and Shelter intervened in the Supreme Court and Women’s Aid provided supporting evidence.