

Briefing

**Welfare Reform Bill –
Housing Benefit**

**Second reading
debate**

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Shelter

Welfare Reform Bill – Housing Benefit: Briefing for second reading debate 24 July 2006

Summary

Shelter supports the Government's aim of making work pay and supporting those people who are unable to work, and so we welcome the legislation in Part 2 of the Welfare Reform Bill, replacing the current Housing Benefit (HB) regime for private rented sector tenants. The Bill enables the new Local Housing Allowance (LHA), which has been successfully piloted in 18 Pathfinder areas since 2003, to be rolled-out nationally.

Under the LHA, tenants are paid direct and required to make their own arrangements for paying the landlord. In most of the Pathfinders, the flat-rate itself has been more generous than the Local Reference Rent restricted HB it replaced. As a result, many claimants have found that the shortfall between the benefit they receive and the rent they owe has either been reduced or disappeared entirely. Others have been left with extra money in their pocket as a result.

Part 2 of the Welfare Reform Bill includes regulation-making powers to:

- Roll out the flat-rate LHA nationwide in the private rented sector (Clause 27)
- Pilot the removal of council and housing association tenants' right to simply ask to have payments made straight to their landlord (Clause 34)
- Reduce and withdraw HB/LHA from claimants who refuse support following an eviction for antisocial behaviour (Clause 28).

Experience in the Pathfinder areas does, however, show that some changes are needed to help ensure that the LHA reforms are successful when rolled-out nationally. Shelter believes that amendments should be made to the Bill, introducing better safeguards for tenants who might experience difficulty managing the LHA payments, and fall into rent arrears and face eviction and homelessness as a result. We also believe that the Bill should be amended to introduce much greater transparency into the way the LHA is set.

In addition, a number of important further reforms to the HB system are also necessary to improve the lives of low-income households. We hope that the Welfare Reform Bill will be amended to:

- Abolish the Single Room Rent restriction on HB/LHA for under-25s
- Introduce a mechanism to uprate Earnings Disregards annually
- Reform the Non-Dependent Deductions regime

- End housing associations' power to use the mandatory Ground 8 in possession actions for rent arrears
- Strengthen the requirement on local authorities to make Interim Payments on claims not determined within 14 days.

Background

Housing Benefit helps nearly four million households meet their rent commitments. Around a quarter of those households include a claimant who is in work, and 800,000 live in the private rented sector. Much needs to be done to improve the present HB system to ensure it achieves its objective of helping households on low incomes to pay for decent quality accommodation in an efficient manner.

The HB system has been dogged by problems over the years. Increasingly, restrictions have limited the payments claimants are entitled to, creating significant shortfalls for many between their benefit and the rent they owe. Along with prolonged delays in processing payments, this has discouraged many landlords from letting to HB claimants. In some areas, this means it can be virtually impossible for some claimants to access private rented accommodation.

Every year Shelter advises thousands of clients experiencing problems with HB claims. Many of these face eviction due to delays in payment or shortfalls. Many more are unable to access any accommodation at all. We have also conducted research on the progress of the LHA Pathfinder areas testing the Government's reformed HB regime. This experience and knowledge informs our campaign for reforms to help those households for whom the benefit plays such an important role.

Local Housing Allowance (Clause 27)

Clause 27 of the Bill contains legislation to implement the Local Housing Allowance (LHA) for HB claimants in private rented accommodation across the UK. The LHA has been tested in 18 Pathfinder areas since 2003. It has proved broadly successful in improving the position of most claimants and so we welcome the plans to roll it out nationwide.

The LHA aims to promote fairness, choice, transparency, personal responsibility, increased work incentives and simplicity. To enable this, the LHA reforms feature two main elements. Firstly payments will normally be made to the claimant rather than the landlords. The provision in existing regulations for claimants to choose to have their rent paid to the landlord will be removed.

Secondly, LHA payments made to claimants will be pre-set at a flat rate determined by the area they live in and the size of the household. Consideration will no longer be given to

the actual property occupied. In addition, claimants will be able to keep any excess if their rent is lower than their LHA rate.

DWP has revised the LHA model used in the Pathfinder areas. Changes are proposed to the method used to calculate LHA rates, to the Room Size Criteria and for a cap of £15 per week on the amount a claimant can retain if their benefit level is higher than their rent. Shelter would be concerned if these changes reduce the level of payments to claimants, and we hope DWP will be persuaded to publish its detailed modelling of the anticipated impact of these adjustments before the Bill goes into Standing Committee.

At the same time, we believe that additional changes are essential if the LHA is to prove successful nationwide. In particular, it is vital that better safeguards are incorporated into the legislation ending a claimants' choice over payment of benefit straight to landlords. This is the only way to guarantee some tenants protection from arrears and eviction. We also feel that it is important that greater transparency is incorporated into the process of setting the LHA rates.

Direct Payments to private tenants (Clause 34)

At the moment, claimants can choose whether to receive the payments themselves or have them paid straight to their landlord. Under the LHA Pathfinders this choice is removed and payments are normally paid to the claimant. This change is designed to increase personal responsibility and ease the transition into employment. If the authority considers a claimant is likely to have difficulty in managing their affairs it has the discretion to make payments to the landlord.

Shelter's initial concerns that this approach would lead to increased numbers of claimants falling into arrears and being evicted have thankfully so far failed to materialise. It is clear, however, that increased funding for financial support and advice services in the Pathfinders have been vital in ensuring this outcome. Similar levels of funding support will need to be provided in each authority if the LHA is to be successfully implemented nationwide.

Other safeguards put in place in the Pathfinders have also important in avoiding increased arrears and evictions. These safeguards must, however, be strengthened. In particular, certain groups who are more likely to have difficulty in managing their affairs should retain the choice over the destination of payments. We suggest, for example, that older claimants, anyone moving from supported housing, anyone who has been in care, or statutory homeless households who have been found private rented accommodation, should all retain a choice for the payment to be made straight to their landlord.

Currently the LHA Guidance Manual states that authorities are ‘not expected to be pro-active in identifying someone as potentially vulnerable’. Shelter recommends that, instead, a duty to be pro-active in identifying such cases should exist. Authorities should, for example, be required to consider payments to landlords if a claimant showed signs during a claim interview that they may have difficulty in managing their affairs.

Currently anyone ‘likely to have difficulty in managing his or her affairs is described as ‘vulnerable’. This term has a certain stigma attached and may discourage claimants from applying to have payments made to their landlord. It is also possible that landlords may be less likely to accommodate claimants labelled as ‘vulnerable’. Shelter believes that an alternative to the term ‘vulnerable’ should be used.

Recommendation:

The Bill should be amended to include much stronger safeguards for claimants who need payments to be made to their landlords.

Direct Payments in the Social Sector

Clause 34 includes powers for DWP to trial payments being made to claimants where the local authority or a housing association is their landlord. Shelter recognises that the advantages of managing their own financial affairs applies as much to claimants in social housing as to those living in the private rented sector. However, we are concerned that an even greater proportion of social sector tenants are either vulnerable or might have trouble managing their money.

Recommendation:

Ministers must ensure that effective safeguards are in place before piloting this approach among those living in council or housing association homes.

Transparency in Setting LHA Rates

The Rent Service is responsible for setting the LHA. Rent Officers determine Broad Rental Market Areas (BRMA) and then set individual LHA rates for each type of property by collecting information about local rents and calculating the average. These are published so that landlords and claimants know how much of their rent the LHA will cover.

This is intended to encourage claimants to shop around with their allowance. If they find a property they like with a rent that exceeds their LHA they will need, as they do now, to make up the difference themselves. But if they find somewhere with a rent below their allowance, they will be able to keep the difference up to a maximum of £15 per week.

As the rates of LHA are set for thousands of claimants within the BRMA, it is essential that they accurately reflect the local rental market. If rates are set at a level below the true market rates, claimants will find that they are unable to access accommodation or have to make up what are often large shortfalls from their other benefits. This increases the likelihood of rent arrears and eviction. The issue of shortfalls has been perhaps the biggest problem faced by HB claimants over the last decade.

Whilst the evaluation of the LHA Pathfinders found that the rate of claimants experiencing shortfalls reduced from 58 per cent to 39 per cent - this development has not been uniform across all Pathfinder areas.¹ In Leeds and Conwy for example a similar rate of claimants experienced shortfalls prior to LHA, 64 per cent and 61 per cent respectively.² Yet following its introduction the improvements varied dramatically – in Leeds the figure was halved to 32 per cent, but in Conwy 57 per cent are still experiencing shortfalls.³

Shelter's own research has also found that the generosity of LHA rates appears to depend on the area claimed in. We found that, in Conwy, only 10 per cent of property was affordable under LHA rates, whilst in Leeds and Edinburgh the figures were 32 per cent and 55 per cent respectively.⁴ Our research also found that LHA rates have generally failed to increase in line with advertised rents over the evaluation period.

These findings could reflect certain nuances in local housing markets, but they may also be due to inadequate data collection or setting of BRMAs. Currently, claimants or their advisors have no right of access to the data Rent Officers use to calculate LHA rates. Nor is The Rent Service required to justify how BRMAs are set. If the LHA is to deliver real improvements for claimants in every part of the country, it is essential that those setting LHA rates and BRMAs are made more accountable for their decisions.

Recommendation:

That the Bill be amended to require the Rent Service to publish their reasons for setting the boundaries of BRMAs and the data used to establish LHA rates.

Loss of housing benefit following eviction for antisocial behaviour (Clause 28)

The Bill also contains powers to reduce or withdraw HB/LHA from claimants who have been evicted for antisocial or criminal behaviour. If the claimant refuses an offer of rehabilitation support to address their behaviour, the local authority has the option to

¹ *Receiving the LHA*, (DWP, 2005).

² *Ibid*

³ *Ibid*

⁴ *On the path to success (working title)*, (Shelter, expected September 2006)

impose sanctions to encourage him or her to co-operate. The Government intends to pilot this sanction in 10 English local authorities over two years.

The sanction starts at 10 per cent of benefit in the first four weeks, 20 per cent for the next four weeks and then 100 per cent for a maximum of five years from the date of the original possession order. A reduced rate of withdrawal will be applied where the authority has reason to believe that it would otherwise cause the claimants or their family hardship. The sanction should be ended when a claimant begins to co-operate or the family is considered to have become particularly vulnerable.

Shelter strongly supported DWP's decision in 2003 not to go ahead with plans to withdraw housing benefit from perpetrators of antisocial behaviour. We recognise that this sanction is different, and in some senses more targeted, but we believe that it will still impact adversely on the innocent family members of those responsible. Furthermore, instead of tackling the problem at its root, the proposed sanction would simply exacerbate poverty and move the problem on to a new, and probably poorer, community.

Recommendation:

Shelter believes that this sanction is unfair and unworkable and that Clause 28 should be deleted from the Bill.

Additional reforms

Shelter believes that a number of additional measures would significantly improve the HB system and the lives of many low-income households.

Single Room Rent restriction

The Single Room Rent restriction (SRR) was introduced in October 1996. It applies to single childless claimants below 25 years of age. It originally restricted a young person to a rent deemed to be the average for single-room accommodation with a shared kitchen and bathroom regardless of the accommodation actually occupied.

The Labour Party and Liberal Democrats were both opposed to these plans from the outset. Opening the debate on the regulations introducing the SRR, Labour's then Social Security Spokesman, Keith Bradley MP explained why they would be voting against the Statutory Instrument:

*'The regulations could have a devastating effect on young people's ability to live in safe, sound and affordable rented accommodation.'*⁵

⁵ House of Commons, Official Report, 05 June 1996: Column 618

Tony Blair, Gordon Brown, John Prescott, John Hutton, Hilary Armstrong, Margaret Beckett, Peter Hain, Harriett Harman, Tessa Jowell, Jack Straw and Stephen Timms were among the 247 MPs who voted against the proposals.

Labour's decision to stick to its predecessor's existing spending plans between 1997-99 meant that ministers did not scrap the SRR when they were first elected in 1997. However, in July 2001, after receiving evidence that it was causing young people severe financial hardship and leading to homelessness, ministers did extend its scope to include a shared living room, in an attempt to better reflect the cost of shared accommodation.

Under the LHA Pathfinders, young people are entitled to a reduced 'Shared Room Rate' of LHA. This uses a slightly more generous definition than the SRR, based on properties where, while the tenant has a room or bedsit of their own, all or some of the facilities are shared (such as kitchen/cooking facilities, bathroom and toilet, and a room suitable for living in). This has led to a further small increase in the benefit available to young people.

In Shelter's experience many private landlords refuse to let to young people who are reliant on HB. Whilst this is partly due to perceptions and prejudice, it is clear that it is compounded by the lower rate of HB to which about young people are entitled. The widening of the SRR definition, including the new version used in the LHA Pathfinder areas, has made little real difference to the ability of young people to afford and access accommodation.

On average young people who are in receipt of SRR-restricted HB face greater shortfalls than older claimants. Those that are seeking accommodation find it extremely difficult to find landlords willing to let to them, or that shared accommodation is not available. Recent DWP research found that the SRR prevents many young people from accessing privately rented accommodation.

*'.... combined with the reluctance of landlords to let to young people (it) has resulted in many young people taking up informal lettings, using friends' floors, forcing them into unnecessary hostel accommodation or attempting to make use of the homelessness legislation.'*⁶

Shortfalls between HB rates and rents are a major area of concern for Shelter's clients. DWP research found that, even after the 2001 reform, 87 per cent of all SRR claimants still faced a shortfall compared to 55 per cent of all private sector claimants. It is sometimes suggested that this is because many young claimants still choose to live in self-contained accommodation. Yet 69 per cent of those living in accommodation meeting the SRR definition faced a shortfall.⁷ The average shortfall faced by SRR claimants was

⁶ *Research into the Single Room Rent Regulations, Research Report No 243, (DWP, 2005)*

⁷ *ibid*

£35.14 per week, more than double the £16.34 average shortfall amongst non-SRR cases.⁸

In an adjournment debate on 4 July 2006, Work & Pensions Minister, James Plaskitt MP, defended the Government's policy of retaining the SRR. He did, however, admit that young claimants living in shared accommodation in the constituency of Edmonton faced an average shortfall of £22 per week.⁹ This is a shortfall that claimants will be required to make up from their lower JSA rate of £45.50 per week.

The Shared Room Rate trialled in the LHA Pathfinder areas appears to have made little impact on the plight of the under 25s. Unfortunately, the evaluation of these areas does not include a separate analysis of the reforms impact on Shared Room Rate restricted claimants. It does, however, show that claimants entitled to only a shared accommodation rate are still facing higher levels of shortfall - £24 per week compared the average of £17 per week. Also, the proportion of those experiencing shortfalls is higher (55 per cent) for those entitled to the shared accommodation rate than for those entitled to one bedroom self-contained property (40 per cent).¹⁰

Shelter's own research has found that the new definition used in the Pathfinder areas has had little impact on the problems faced by young people. Across four Pathfinder areas we found that 46 per cent of property advertised was affordable to those entitled to the LHA one-bedroom rate. However, only 26 per cent of property matching the SRR definition was at or below the local Shared Room Rate.¹¹

For many young people, shared accommodation is a suitable and attractive home. For those who might be considered vulnerable, however, sharing is not always a realistic option. They do not usually have a network of friends with whom they can share, and they often face intense competition from students and young professionals for rooms in shared houses. For these young people, and others in areas where there is a lack of shared housing, self-contained properties may be the only way to put a roof over their head.

Shelter recognizes that unemployed young people on benefits should not be better off than those in work. However, equally, we should not be prepared to tolerate a benefits system that denies vulnerable young people the opportunity of a stable home from which to find employment. Along with Centrepoin, Child Poverty Action Group, Citizens Advice, Crisis, the Foyer Federation, Housing Justice, the YMCA, and the National Federation of Residential Landlords, Shelter is campaigning to persuade ministers not to carry these

⁸ *ibid*

⁹ House of Commons, Official Report, 04 July Column 248WH.

¹⁰ Receiving the LHA, LHA Evaluation 6, DWP.

¹¹ *On the path to success* (Shelter, September 2006)

additional restrictions for young people over into the new the LHA. Over 150 Members of Parliament have added their support to an Early Day Motion backing this campaign.

Recommendation:

The Bill should be amended to include legislation abolishing the Single Room Rent restriction on HB and Shared Room Rate of LHA for the under 25s.

Earnings disregard

Some earnings of claimants are disregarded and do not affect the amount of benefits received. The standard single person's rate of disregard is £5 per week. It has not been uprated since 1988. In comparison, lone parents have £25 of their earnings disregarded. If the standard rate of disregard is to be meaningful and encourage claimants to seek employment, it must be increased in line with other earning disregards.

Recommendation:

Secondary legislation should be introduced to increase the standard rate of Earnings Disregard on HB/LHA and the Bill should be amended to include a mechanism to annually uprate earnings disregards in line with living costs.

Non-Dependent Deductions

Where the claimant's household includes someone who is not their partner or child, a non-dependent deduction (NDD) will be made from any HB due. Non-dependents claiming income related benefits and aged over 25 are required to contribute towards the rent at a rate of £7.40 per week.

This often results in confusion for claimants, overpayments and rent arrears. Shelter regularly advises clients who are unable to stay with friends or relatives who are in receipt of HB, due to the claimant's concern over NDDs. The NDD regime can, therefore, be a contributory factor in creating homelessness.

Overpayments resulting from backdated NDDs such as these often result in rent arrears and risk of eviction for tenants and the people they are helping, as they are unable to retrieve the required amount from their past guests or adult children who are often on benefits and find it difficult to contribute.

Recommendation:

The Bill should be amended to remove the two top rates of NDD and cap the deduction if payment would bring an individual below income support levels.

Ground 8

Ground 8 (of schedule 2 of the Housing Act 1988) is a mandatory ground for possession on assured tenancies, the most common type granted by housing associations. It requires only the existence of eight weeks' rent arrears to automatically grant a possession order against the tenant, and allows no judicial discretion, no test of whether or not it is reasonable to grant the possession order, and no consideration of whether the arrears might be due in whole or in part to Housing Benefit delays. The use of Ground 8 is increasing amongst housing associations, particularly in London where it was found that 36 per cent of possession cases involve Ground 8.¹²

A recent case, brought under Ground 8, allowed a possession action to be granted against a tenant whose appeal against unpaid housing benefit was pending, and was successful, clearing the rent arrears shortly after the date of the hearing.¹³ Because it was a mandatory ground, the judge did not have the option of adjourning the case. Ground 8 is not necessary as possession actions for rent arrears can be covered under discretionary Grounds 10 and 11. It discourages housing associations from pursuing good practice in rent arrears management and hampers attempts to reduce evictions and homelessness.

The Law Commission has recommended the removal of this ground for social housing providers. This Bill provides the perfect opportunity to amend the legislation.

Recommendation:

The bill should include a measure to remove housing associations' and other RSLs' power to use Ground 8 in possession actions for rent arrears.

Interim payments

To ensure private sector tenants do not fall into arrears at the outset of a tenancy and risk eviction, it is essential that they or their landlords receive HB/LHA payments promptly. Along with benefit shortfalls, long delays in payments are often cited by landlords as the main reasons for not wishing to let to HB claimants.

Local authorities are under a duty to make interim payments of HB after 14 days if they have not made a final decision on entitlement and the delay is not the fault of the claimant. However, Shelter's Housing Advice Centres report that the current requirement to make Interim Payments is all too often ignored or treated as discretionary by HB administrators. Proper adherence to this regulation could go a long way in improving the image of HB in the eyes of private sector landlords.

¹² Hunter, C et al, *The exercise of judicial discretion in rent arrears cases*, (DCA, 2005). see also Pawson, H et al: *The use of possession actions and evictions by social landlords*, (ODPM, 2005).

¹³ North British Housing Association v Matthews (2004) EWCACiv1736

Currently, failure to make an Interim Payment is not considered an official decision so there is no right of review or appeal. The only recourse for the claimant is Judicial Review, or to complain to the Local Government Ombudsman. Judicial Review is not a proportionate form of recourse, it requires legal aid, a solicitor and court time, and complaining to the Ombudsman is not effective in urgent cases. Claimants need to be provided with an easier, quicker, and more accessible form of recourse.

Recommendation:

The Bill should be amended to include a stronger requirement that local authorities make Interim Payments and a suitable form of redress for claimants whose application is not determined within 14 days.