

Shelter

Accommodating homeless families under the benefit cap

Temporary accommodation (TA) is housing provided by local authorities under the legal duty they have towards homeless families. TA tends to be more expensive than normal private rented accommodation, which means households will struggle to cover the costs once the benefit cap comes into place, creating considerable difficulty for both local authorities and homeless families. Shelter is calling for an exemption from the overall benefit cap for households in TA so that local authorities can continue to meet their duty to homeless households without having to shoulder huge additional costs or send homeless families far away from their local area.

What is temporary accommodation?

Local authorities have a legal duty to provide TA for certain groups of homeless households pending either a decision on the homeless application or the provision of suitable, settled accommodation. This ensures that homeless families are not forced to sleep on the streets. At the end of March 2012 there were 50,430 homeless households in TA in England¹.

Under the Housing Act 1996 local authorities are required to provide suitable accommodation under the following circumstances:

- There is “reason to believe” a household may be homeless and a local authority is carrying out enquiries to establish this and to determine whether the household meets all the eligibility criteria (this is often referred to as ‘interim accommodation’).
- Following this, if a household is found to be homeless, in priority need, and not intentionally homeless the local authority must provide TA until a final offer of suitable, settled housing is secured (at which point the local authority would have discharged its full duty).
- If a household is homeless, in priority need, but found to be intentionally homeless the local authority must provide TA “for such a period as it considers will give him/her a reasonable opportunity to secure his/her own accommodation”.

In 2011 48,510 households were accepted as unintentionally homeless and in priority need, and were consequently owed the full homeless duty².

¹ CLG live tables on homelessness

² CLG live tables on homelessness

What sort of accommodation is provided as temporary accommodation?

Most TA is leased by a local authority or housing association from a private landlord. In these instances, the local authority or housing association takes over the management of the property and sub-lets it to the homeless household. As such, the cost of TA includes both the market rent for the property and a management fee to cover local authority or housing association costs. In some situations the local authority arranges for the homeless applicant to let TA from the housing association or private landlord directly, avoiding the need for the council to take lease of the property.

Suitability requirements

Though there are no formal, national standards for TA, the types of accommodation that can be offered are restricted by broad suitability requirements (see below). But even if these requirements are met, TA can still be inappropriate for the needs of the household - for example by being poor quality or a placement being a long way from the household's local area. Under government guidance local authorities should not use bed and breakfast accommodation to house families with children unless no other accommodation is available and, if this is the case, only for a maximum of six weeks. Despite this, as of June 2012, 690 families with children had been illegally placed in B&Bs for more than six weeks.

Affordability

According to the government's Homelessness Code of Guidance, local authorities must ensure that any accommodation procured meets the affordability needs of the household. This includes considering "whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials."

The guidance recommends that local authorities refer to the 'applicable amounts' used in housing benefit legislation as a guide to appropriate income levels, once housing costs have been met. The amounts listed are the minimum that the state considers necessary for subsistence living. For a single person over 25 years old this is currently £71 per week. A household should therefore not be left with anything less than this once housing costs have been paid for; if they are out of work and have no income, they cannot be expected to routinely 'top up' housing benefit shortfalls out of other benefits.

Location

The Housing Act 1996 sets out that "so far as *reasonably practicable* a local housing authority shall...secure that accommodation is available for the occupation of the applicant in their district." However, this does not prevent homeless households being placed a long way out of their local area - as long as this is done on a case-by-case basis and not as a matter of course.

Data from the Department for Communities and Local Government (CLG) shows that the percentage of households placed in out-of-area TA increased from 11 per cent to 16 per cent between 2008 and 2012. Case law has set a very low threshold for the distances that are appropriate, for example a homeless family from London could reasonably be placed in accommodation in Birmingham. This practice is not confined to London boroughs; local authorities in all regions make out-of-area placements.

New regulations taking effect from 9th November will tighten up the requirements on location and suitability, and will allow households to challenge decisions if the accommodation they are offered would cause serious disruption to the family or prevent people from finding or staying in work. However, these regulations will still allow authorities to offer TA out of area. In practice, courts are likely to agree in many cases that out of area placements are allowed if the overall benefit cap has prevented the local authority from procuring affordable TA within area.

How is temporary accommodation funded?

Although local authorities have a legal duty to provide TA, they can ask households to pay a reasonable charge for their accommodation. Most households in TA are entitled to housing benefit and a specific subsidy regime sets a limit on the amount of housing benefit that can be claimed for TA.

Housing benefit for TA is already subject to its own cap, of £500 per week in inner London and £375 per week elsewhere. Within these caps, the housing benefit subsidy is set in relation to local rents, at the local housing allowance rate (as of January 2010), minus 10%, plus a management fee of £40 per week in London and £60 elsewhere. If a local authority procures more expensive TA than can be covered by this, it must meet the shortfall from its own budget.

What is changing?

1. From April 2013 the total amount of benefits that can be received by any out of work family will be limited to a maximum amount of £500 per week for single parents and couples with children, and £350 per week for single people. This covers all benefits but will be applied by the local authority via a reduction in housing benefit. The cap will be applied in four London boroughs – Haringey, Croydon, Bromley and Enfield – from 15th April 2013 and roll out nationally to all local authorities between July and September 2013.
2. From October 2013 households moving onto Universal Credit will be subject to a different funding regime. TA costs will be based on contemporary LHA rates and the management costs for TA will be paid directly to local authorities, most likely through the

Discretionary Housing Payments (DHP) budget. This means the cost of TA for a homeless household will be the same as renting a private home within LHA rates.

Universal Credit will be rolled out on a very gradual timetable from October 2013 to 2017. Therefore the majority of households in TA and at risk of the cap from April 2013 will be receiving HB under the existing subsidy regime.

What are the implications of this?

As TA tends to be more expensive than the private rented sector, households in TA are highly likely to be affected by the cap and see a reduction in their housing benefit. This will create significant challenges for local authorities, as they will still have a legal duty to provide TA for homeless families, even though those households will be unable to claim sufficient housing benefit to cover the rent.

In order to find TA within the cap levels local authorities will have to place homeless households far out of area. For larger households it will be extremely difficult to find affordable TA anywhere in England and local authorities will have to rely on other sources of funding.

This concern was raised during the passage of the Welfare Reform Act but Ministers did not accept an amendment to exempt homeless households from the cap. However, Lord Freud, the Minister for Welfare Reform, said that the government would look at assistance for “hard cases” to ensure regulations provided the “appropriate protection” for households in TA. Despite this assurance, DWP has now confirmed that it intends the benefit cap to apply to households in TA, both pre and post Universal Credit.

What are the options?

An exemption from the cap for households in TA - The government estimates that this would cost £30 million a year³. This exemption would solve the problems described here and provide certainty for local authorities.

Discretionary Housing Payments - The DWP has said that DHPs can be used to meet the cost of TA and it has made available an additional £75 million for 2013/14 and £45 million in 2014/15. However, DHPs are, by their nature, discretionary and cash-limited and as a result they do not provide certainty for homeless households or local authorities. Local authorities will need to draw on the additional DHPs to protect households at risk of homelessness, as well as those in TA (although LAs may choose to prioritise families in TA because of the specific legal duties owed to homeless families).

³ HC Deb, 22 February 2012, c864W

Cross-subsidy from other benefits - The Homelessness Code of Guidance (see above) limits the extent to which local authorities can expect homeless households to use benefits such as income support or tax credits to “top up” housing benefit shortfalls. As such, it will be extremely difficult for local authorities in areas with above-average housing costs to comply with the guidance and procure TA within the overall benefit cap. Local authorities may try to develop their own definitions of affordability but these will be vulnerable to costly legal challenges.

What will local authorities do?

Local authorities may decide to procure temporary accommodation in cheaper locations out of borough and send homeless families to live a long way from their local area. This could result in serious disruption (such as children having to move school) and a loss of support networks (such as informal childcare, and contacts in local employment networks) thus actively undermining people’s ability to get back into work.

If a local authority makes an offer of accommodation that is technically ‘suitable’ but which the family refuses due to the severe disruption it would entail, the local authority will nonetheless have discharged their legal duty and the family will be left to fend for themselves.

Alternatively, local authorities will have to meet the additional cost of temporary accommodation out of their own stretched budgets, or deplete limited DHP budgets. For the largest families this will be inevitable, as no accommodation in any area will be affordable within the level of the cap.

Shelter is calling for all homeless households in TA to be exempted from the overall benefit cap, as this would ensure that local authorities are not forced to choose between shouldering huge costs and sending homeless families far away from their local area.

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