The reform of Housing Benefit (Local Housing Allowance) for tenants in private rented housing

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Author: Wendy Wilson

Section Social Policy Section

This note covers Local Housing Allowance (LHA) which was introduced for new claimants living in the deregulated private sector from 7 April 2008. LHA is not a benefit in its own right – it is the way in which the rent element of Housing Benefit (HB) is calculated for tenants living in the deregulated private rented sector. Claimants who were already in receipt of HB when the LHA was introduced will not have experienced any changes unless they have changed address or had a break in their claims. This note explains the implementation of the LHA and reforms aimed at reducing expenditure on this benefit.

A separate note, SN/SP/3211, provides more detail on the specific issue of paying HB direct to private tenants rather than landlords while SN/SP/4887 considers issues around the impact of the HB size criteria rules on disabled people living in the private rented sector. A further note, SN/SP/5889, covers the extension of the Shared Accommodation Rate (SAR) to claimants under the age of 35 since January 2012.

The Government has introduced significant changes to the calculation of LHA entitlement which began to be phased in from April 2011. These changes are referred to in this note but a separate note, SN/SP/5638, deals with the subject in detail. Background on the introduction of Universal Credit, which will incorporate housing costs, can be found in Library Research Paper 11/24 *Welfare Reform Bill: Universal Credit Provisions, Draft Universal Credit Regulations 2013* (SN/SP/6548) and *Universal Credit: an introduction* (SN/SP/6469).

The DWP published a *Two Year Review of the Local Housing Allowance* in February 2011 which considered how far the original policy objectives of the LHA had been achieved.

A further independent review of the changes announced in the June 2010 Budget is now underway; initial findings were published in June 2012: *Monitoring the impact of changes to the Local Housing Allowance system of housing benefit: summary of early findings*. An interim report, *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit* followed in May 2013.

Contents

1 Background

1.1 Housing Benefit

Following the passage of the *Social Security Act 1986* the Housing Benefit (HB) scheme was introduced in April 1988 along with the new Income Support and Family Credit Schemes. HB is a means tested benefit that is administered by local authorities and is paid to eligible tenants who live in the social and private rented sectors. The structure of the HB scheme is closely linked to that of the Income Support scheme. The basic level of personal allowances for the two schemes (and that of Jobseeker's Allowance) are the same (with some exceptions); these allowances vary depending on the age and composition of the household concerned.

Entitlement to HB is calculated by comparing the needs and resources of the household, taking their liability for rent payments into account. In calculating household net incomes the HB scheme provides for the disregard of some types of income (or a proportion of that income.) Households in receipt of Income Support or income-based Jobseeker's Allowance, or who have an assessed net income at or below the Income Support threshold, receive maximum assistance. This may be equal to 100% of their eligible rent, less any deductions that have been made for non-dependents living in the household.

Before LHA was introduced, private sector tenants also claimed HB. After the deregulation of private sector rents in 1989, Rent Officers played a role in ensuring that HB neither fuelled rent increases nor enabled people to live in more expensive private sector accommodation than they otherwise would. A series of regulations provided that, in specified circumstances, the amount of rent used to calculate entitlement to HB could be limited: this could result in claimants experiencing a "shortfall" between their HB entitlement and their rent level.

1.2 LHA Pathfinders

On 17 October 2002 Andrew Smith announced plans for a new form of Housing Benefit (HB) which would no longer be directly linked to rent levels. He described the plans as "the biggest reform in Housing Benefit since the benefit began." This new approach was introduced in nine "Pathfinder" areas from November 2003 and was extended to a further nine areas from April 2005.

The Department of Work and Pensions (DWP) described the aims and objectives of the LHA on its website:

> Local Housing Allowance (LHA) is the cornerstone of the Government's Housing Benefit reform programme which aims to simplify Housing Benefit and ensure it supports the wider objectives for welfare reform.
>
> The fundamental aims of the LHA scheme are to promote:
>
> **Fairness** - LHA bases the maximum amount paid to tenants on the size, composition and location of the household. Benefit will no longer be based on actual rents but on median levels of rent within localities. Therefore, two households in similar circumstances in the same area will be entitled to similar amount of benefits.
>
> **Choice** - tenants are able to take on greater responsibility and choose how to spend their income in a similar way to tenants who are not in receipt of benefits. Like other tenants they are able to choose whether to rent a larger property, or spend less on housing and increase their available income. The claimants will be able to keep the excess (to a maximum £15 per week) if they choose whether to rent accommodation cheaper than their LHA rate or rent a more expensive property and pay the additional rent from their own income.
>
> **Transparency** - LHA rates will be published in advance so customers will know the maximum amount of benefit payable. The current link between Housing Benefit and individual rents is complex and does not set out clearly what level of state support is available for people on low incomes. A clear and transparent set of allowance rates helps tenants (and landlords) know how much financial help is available from the state. Tenants are able to compare how much support is available towards their housing costs in different areas and for different property sizes.
>
> **Personal responsibility** - Empowering people to budget for and to pay their rent themselves, rather than having it paid for them, helps develop the skills unemployed tenants will need as they move back into work. Currently around 40% of Housing Benefit payments in the private rented sector are made to tenants, with the remainder paid straight to landlords. The Government believes that, where possible, local housing allowance should be paid to tenants, as are most other benefits and tax credits. Safeguards will be put in place for those customers that are unable to manage their financial affairs or who fall into rent arrears.
>
> **Financial inclusion** - Ideally, we want people to have their housing payments paid into a bank account and to set up a standing order to pay the rent to their landlord. This has

the advantage of being a safe and secure method of payment and provides certainty for landlords that rent will be paid.

Improved administration and reduced barriers to work - For working age tenants, LHA provides a greater certainty about what help is available in and out of work. A simpler system also helps speed up administration of housing payments, giving tenants more confidence when starting a job that any in-work benefit will be paid quickly. A more transparent system may also improve the ability of individuals to move between areas and to take advantage of employment opportunities.[1]

As the Pathfinders progressed, the DWP published the research findings on its website. A full evaluation of the progress of the LHA and direct payments in the Pathfinder areas was carried out by a consortium of leading research universities with experience in the field. All the evaluation reports can be accessed online.[2]

The housing charity Shelter commented on the research in 2005:

When the Government first consulted on these reforms, a number of concerns were raised, particularly about the impact of removing the choice of direct payment to landlords. This report shows that, to a large extent, these concerns have not been realised, something that is clearly to be welcomed. This is mainly due to the LHA being set at realistic levels and the efforts made to ensure that advice and support is available to tenants in the pathfinder areas.[3]

1.3 National Roll out of LHA

The experience of the Pathfinder areas led the then Government to legislate for the national roll-out of the LHA from 7 April 2008.

The legislative basis for LHA is contained in the *Welfare Reform Act 2007* and associated regulations. LHA was rolled out nationally for new claimants in the deregulated private sector from 7 April 2008. Other claimants continue to claim HB. The DWP Press release said:

A new way of calculating Housing Benefit will help tenants become more financially independent and put them on the road back to work, announced Minister for Employment and Welfare Reform Stephen Timms today.

Under the new system benefit will be paid directly to the customer to encourage them to take more personal control over their financial affairs by budgeting and landlords. There will also be safeguards in place for those tenants who need more support in managing their own budgets.

Launching the Local Housing Allowance (LHA) Stephen Timms, said:

'The LHA is a central part of the Government's wider programme of benefit reform. It's a radical change to the way Housing Benefit is paid in the private rented sector and will help people take action towards managing their own bank accounts, making it easier for them to move off benefits and in to work.

'Having a bank account means that people are job-ready and the LHA will help towards bringing increased responsibility to hundreds of thousands of people.

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1 http://www.dwp.gov.uk/local-authority-staff/housing-benefit/claims-processing/local-housing-allowance/background/

2 http://webarchive.nationalarchives.gov.uk/+/http://dwp.gov.uk/local-authority-staff/housing-benefit/claims-processing/local-housing-allowance/evaluation/pathfinders/

3 The interim findings of Shelter's research into the Housing Benefit Pathfinders 2005

'We also want to see a Housing Benefit system that will ensure people in similar circumstances will receive the same amount of benefit as others in their area. I am confident that the success of the LHA in the first 18 authorities will be reflected as the scheme rolls out nationally.'

Local Housing Allowance (LHA) will apply to private sector tenants who make a new claim for benefit and for existing tenants who move address, on or after 7 April 2008. It applies to tenants in the de-regulated private rented sector only.

Designed to be simpler and to increase choice and responsibility for tenants, the LHA is a flat rate of Housing Benefit which varies according to the size of household and the area in which the customer lives.

The LHA has already been introduced in 18 local authorities. Nine pathfinder authorities introduced it in 2003/04 and these were subject to extensive and independent evaluation. A further nine authorities implemented the LHA in 2005 to test the efficiency of the scheme.[4]

2 Key features of LHA

2.1 Private sector only

LHA only applies to private sector tenants, not those in council or social housing. It also only applies to those who have made a new claim, or have had a break in their claim, since 7 April 2008.

2.2 Standard rates within Broad Market Rental Areas

The LHA is a flat rate allowance for different sizes of properties within a Broad Market Rental Area (BMRA). The Rent Service (now part of the Valuation Office Agency) is responsible for determining BMRAs in England.[5] A BMRA comprises two or more distinct but adjoining areas of residential accommodation, within which a person could reasonably be expected to live having regard to facilities and services for the purposes of health, education, recreation, personal banking and shopping. When determining BMRAs the Rent Officer takes account of the distance of travel, by public and private transport, to and from facilities and services of the same type and similar standard.

Prior to April 2011, within a BMRA the LHA for different sizes of properties was calculated by reference to the median rent. The median rent is the rent that is halfway up the ordered distribution of rents for properties of the same size in a BMRA. For each category of property Rent Officers compiled a list of rents that represented the market within each BMRA and calculated the median rent from this information – see section **3.2** (below) for information on the removal of the highest rent levels within an area from this process.

It is argued that paying the same level of allowance to tenants with similar circumstances within the same area produces a fairer and more transparent system. Tenants are able to trade between the quality and price of their accommodation. The LHA rates within a BMRA for different sizes of accommodation are published.

As part of the June 2010 Budget the Government announced an intention to reduce expenditure on Housing Benefit. This has involved changing the basis on which LHA rates are calculated.

4 http://www.dwp.gov.uk/newsroom/press-releases/2008/april-2008/emp074-070408.shtml

5 In Scotland this is the responsibility of Rent Services Scotland and in Wales the Rent Officer Wales.

Since April 2011 LHA rates within BMRAs have been based on the 30th percentile of local market rents (rather than the median). In addition, LHAs for different sizes of properties are subject to national caps:

- £250 per week for a 1 bedroom property;
- £290 per week for a 2 bedroom property;
- £340 per week for a 3 bedroom property; and
- £400 per week for all properties with 4 bedrooms or more.[6]

These caps replaced the inherited policy to exclude the top 1 per cent of rents from the market evidence used to calculate LHA rates (see **section 3.2**). New national caps will apply from April 2014:

- Shared Accommodation - £258.06
- One Bedroom - £258.06
- Two Bedroom - £299.34
- Three Bedroom - £350.95
- Four Bedroom - £412.89[7]

The LHA rates applying in England from April 2013 can be found on the Valuation Office Agency's website.[8]

In response to concerns raised over the impact on claimants the Government announced some transitional protection for existing LHA claimants:

> ...to give existing customers sufficient time to adjust to their new set of circumstances, we will provide transitional protection at their existing LHA rate for a period of up to nine months. This nine month period will follow the date the local authority reviews the claim (transitional protection will continue for the full nine months unless there is a relevant change of circumstances in the meantime).[9]

The size of the BMRAs determined by the Rent Service has proved to be controversial, particularly in areas of high rents where the use of median rents over a large area could pull down the level of LHA payable. See **Section 3** below.

2.3 Direct payment to tenants

LHA can only be paid direct to landlords in certain circumstances:

- where the claimant is in arrears of 8 weeks or more; or
- where the claimant is unlikely to pay their rent; or

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6 The change was implemented by the *Housing Benefit (Amendment) Regulations 2010* (SI 2010/2835) and the *Rent Officers (Housing Benefit Functions) Amendment Order 2010* (SI 2010/2836). The DWP has issued guidance for local authorities on these changes in HB/CTB Circular A25/2010.

7 *The Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2013* (SI 2013/2978)

8 The rates in Scotland and Wales can also be found online.

9 Social Security Advisory Committee's report, November 2010, p9

- where the claimant is deemed unable to manage their own affairs.

LHA cannot be paid directly just because the landlord requests it. The DWP told the Work and Pensions Select Committee inquiry into Child Poverty that:

> The LHA will improve work readiness for parents. The LHA promotes personal responsibility, by making benefit payments to tenants and giving them responsibility for paying their rent. This, together with the promotion of financial inclusion by encouraging claimants to receive their benefit into bank accounts, will help parents when they take a job.[10]

For more information on the 'direct payment' aspect of the LHA see Library note SN/SP/3211. Concerns about direct payments leading to rent arrears are discussed in **section 3.3** of this note. The possibility of giving claimants a choice over whether or not their LHA is paid direct to their landlord was raised in the Labour Government's December 2009 consultation paper, *Supporting people into work: the next stage of Housing Benefit reform.*[11] The current Government said this would be considered as part of the two year review of the LHA.[12]

In response to concerns over the impact of the changes to LHA rates (see **section 2.2** above) The Government announced increased discretion for local authorities in respect of direct payments of LHA to private landlords:

> The Government intend that the measures they are introducing to adjust local housing allowance rates will act to reduce rents in the private rented sector. To support this, the Government are temporarily widening the discretion of local authorities to make direct payments to the landlord in some circumstances where it will support tenants in retaining or securing a tenancy. The Government will work closely with local authorities to ensure this provision is used only in very specific circumstances where landlords are reducing rents to a level that is affordable for claimants.[13]

Guidance on the exercise of this discretion was issued in HB/CTB Circular A4/2011.

2.4 Keeping the difference

LHA is paid at the standard rate to the tenant based on the size of the accommodation they are deemed to need, e.g. a couple with no children would receive the LHA based on a one-bedroom property. Tenants who rented a property at below the standard allowance, or who moved to a cheaper property in the local area, or who negotiated the rent below the standard allowance, were, up to April 2011, allowed to keep the difference between the rent charged and the allowance paid, up to a set cap. Thus in theory, tenants had a choice of paying more (out of their own income) for larger/higher quality accommodation or living in smaller accommodation and retaining a percentage of the housing allowance. The Labour Government argued that this would give tenants more choice. It was also hoped that tenants would have a downward influence on rent, resisting increases that would affect their income.

The amount of LHA that a tenant could keep was capped at £15 a week. If their rent was more than £15 below the level of LHA then their benefit payment was reduced.

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10 Ev 138 *The best start in life? Alleviating deprivation, improving social mobility and eradicating child poverty Second Report of Session 2007–08*

11 Cm 7769

12 HC 509 of Session 2010-11

13 HC Deb 30 November 2010 c72WS

As part of the 2009 Budget the Labour Government announced that the LHA would be amended from April 2010 to remove the provision allowing tenants to retain up to £15 per week in "surplus" benefit:

> The Local Housing Allowance (LHA) was introduced in April 2008, and costs have exceeded the planned expenditure for this policy. To bring the cost into line with what is affordable, whilst still ensuring all recipients can afford their rent, the Budget announces that from April 2010 there will no longer be scope for anyone to receive more LHA than they have to pay in rent. Existing claimants will move onto the new arrangements on the anniversary of their claim.[14]

A consultation paper on the draft regulations to remove the £15 cap was issued on 19 June 2009 with a closing date of 10 September. The effect of the proposal was summarised as:

> - All new customers claiming Housing Benefit in the deregulated private sector on or after 5 April 2010 would not be entitled to any excess benefit over their contractual rent.
>
> - Existing customers, including those in the former LHA Pathfinder areas, who are currently entitled to an excess payment of up to £15, would see a reduction in their benefit when their claims are reviewed, usually on the anniversary date of their claim.[15]

The proposal met with wide objection; Sarah Teather, for the Liberal Democrats, tabled EDM 2069:

> That this House strongly opposes the Government's plans to scrap excess payments to local housing allowance claimants where their rent is lower than the rate of the allowance; expresses alarm that this plan would see some of the poorest families in the country up to £780 a year worse off; believes that the withdrawal of excess payments would not result in savings for the Government because tenants would have no incentive to choose cheaper properties and landlords would simply raise their rent to the maximum amount of the allowance, thus transferring £15 a week from poorer families to private landlords; notes that these changes undermine the original objectives of local housing allowance which were to bring choice and fairness to the benefits system while combating poverty; and therefore calls on the Government to abandon its plan to scrap excess payments to local housing allowance claimants.[16]

When questioned on the subject in November 2009 the then Prime Minister said that no decision had yet been made[17] while the then Minister for Housing, John Healey, gave an indication that the proposal might be re-considered in October 2009:

> **Sarah Teather (Brent, East) (LD):** Does the Secretary of State accept that if his Government go ahead and scrap the £15 excess payments of local housing allowance, all that will result is rent inflation and no savings to the public purse? Will he agree to work with his colleagues in the Department for Work and Pensions to rethink the proposal?
>
> **John Healey:** We are doing just that. We are working with our colleagues in the DWP at present.[18]

14 Budget 2009, HC 407, p97, para 5.33
15 DWP, *Housing Benefit Amendment (No2) Regulations 2009,* June 2009
16 http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=39300&SESSION=899
17 HC Deb 11 November 2009 c246

In the 2009 Pre-Budget Report the Labour Government announced that the removal of the £15 excess would be delayed until 2011:

> However, recent consultation suggests that there are disadvantages to withdrawing the excess. The Government will therefore delay the reform until April 2011 and launch an immediate consultation on its approach to Housing Benefit reform and affordability.[19]

The Work and Pensions Select Committee Report of 2009-10 on the Local Housing Allowance was published in March 2010 – the Committee said it "was not convinced by the Government's arguments in favour of scrapping the £15 excess entitlement". The Committee welcomed the decision to delay implementation and to review the proposal in the context of the then Government's wider consultation exercise on HB.[20]

The new Government abolished the £15 excess from April 2011:

> To ensure that the cost of Local Housing Allowance is sustainable in the current fiscal climate, the Government has decided to continue with the previous Government's plan to remove the £15 excess. The Local Housing Allowance has cost much more than was originally predicted and costs must be brought under control.
>
> The Government agrees that entitlement to the £15 excess has provided a limited incentive to tenants to shop around for properties below their Local Housing Allowance rate. At this time, however, the priority must be to reduce Housing Benefit expenditure and for this reason the excess is being withdrawn from April 2011 for new customers, and on the anniversary of their claim for customers currently receiving an excess.[21]

The *Two Year Review of the Local Housing Allowance* was published by the DWP in February 2011 – the Review concluded that "the excess did not motivate tenants' decisions about accommodation due to a lack of understanding of benefit entitlement and because other factors were considered more important when making decisions about where to live."[22]

3 LHA: emerging issues and Government reforms

3.1 The size of Broad Market Rental Areas (BMRAs)

In July 2008 the House of Lords held, in *Heffernan v The Rent Service,* that when calculating Local Reference Rents[23] (LRR) for Housing Benefit purposes, the "locality" should be the combination of the smallest number of neighbourhoods that meets the requirements of the *Rent Officers (Housing Benefits) Functions Order 1997.*

The plaintiff in this case, Mr Heffernan, lived in the centre of Sheffield. The Rent Officer in this area had determined the whole of Sheffield as the "locality" for the purpose of determining LRRs. Mr Heffernan successfully argued that this was too large an area as it reduced the Housing Benefit entitlement of those living in more expensive areas.

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18 HC Deb 27 October 2009 c160
19 Cm 7747, para 5.17
20 Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 145
21 HC 509 of Session 2010-11
22 DWP, *Two Year Review of the Local Housing Allowance,* 2011, p139
23 Local Reference Rent is the mid-point of "reasonable market rents" for assured tenancies in the area appropriate to the size of property. LRRs are applied when calculating HB entitlement under the "old" system which still applies to claimants who have not been affected by the introduction of the LHA.

As a result of this decision the Rent Service issued revised guidance to Rent Officers and the then Government announced its intention to amend the regulations that enable Rent Officers to determine local rental areas. The Government pointed out that while large areas reduce the entitlement of those living in more expensive areas; they increase the entitlement of those living in cheaper areas:

> The Parliamentary Under Secretary of State for Work and Pensions (Kitty Ussher): Following the judgement of the Law Lords in the case of Heffernan (R (on the application of Heffernan) *v* The Rent Service) on Wednesday 30 July 2008, the government will lay amendments to the Rent Officers (Housing Benefit Functions) Order 1997 and the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 in order to clarify the rules that enable rent officers to define the local rental market areas which help determine entitlement to housing benefit.
>
> The way in which the geographical areas, or localities, for assessing housing benefit are determined has a direct impact on the amount of benefit individual customers receive. If applied, the judgement would result in a dramatic increase in the number of localities nationally, as each would be based on a limited number of neighbourhoods. These new locality boundaries would not necessarily be the same as those that existed before the rent services carried out their most recent reviews of boundaries and could result in a large number of low-income tenants finding that housing benefit would no longer cover their rent. Without amendment to the Rent Officers Order, this would now happen automatically.
>
> This is not our policy intent which is why amendments will be laid at the earliest opportunity.
>
> The routine locality reviews that were undertaken by the rent services in 2006-07 under the Rent Officers Order resulted in fewer localities across the country as a whole. These reviews were undertaken in consultation with local authorities, who have access to a discretionary fund to compensate individual tenants in hardship cases. The vast majority of the new boundaries were agreed by local authorities. The amendments of the Rent Officers Order will enable the rent services to review the boundaries in those localities where local consensus was not achieved. In any year, the rent services are committed to reviewing 25 per cent of all locality boundaries.[24]

The Heffernan judgement related specifically to determining localities for setting Local Reference Rents for HB, and not the BMRAs used for LHA. However, the Rent Service said:

> TRS [the Rent Service] will take a decision on whether to apply the Heffernan judgment to the Broad Rental Market Areas for Local Housing Allowance purposes as soon as possible. TRS are currently taking legal opinion as to whether the judgment applies to the setting of a BRMA (rather than specifically to 'localities').
>
> TRS are committed to the recommencement of the BRMA reviews as detailed in The Rent Service Business Plan but the basis of those reviews must first be determined.[25]

In November 2008 the DWP launched a consultation exercise on draft amendments to the *Rent Officers (Housing Benefit Functions) Order 1997* and the *Rent Officers (Housing Benefit Functions) (Scotland) Order 1997* in the light of the Heffernan decision. The consultation letter stated:

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24 HC Deb 18 November 2008 WS

25 http://www.therentservice.gov.uk/documents/news-releases/Revised%20Information%20Notice%20-%201%20October%2008.pdf

…Applying the principles of the judgement to localities and Broad Rental Market Area (BRMA) on a national basis would not be appropriate.

We are proposing to amend the Order to clarify exactly how areas of reasonable benefits levels are defined and to strengthen the definitions to ensure that these areas accurately reflect our policy intention. Therefore we are proposing to make the following changes:

- a new and largely unified definition of BRMA that will apply in respect of both LHA and LRR cases;
- the amended definitions of the areas will be generally similar except that the LRR definition is centred on the tenant and the LHA one is generic;
- the definition will allow areas to be drawn relatively broadly, and
- we have removed the requirement that an area should be made up of 2 or more neighbourhoods or district areas of residential accommodation.

It is important to note that these changes are intended to simplify and clarify the areas that LRRs and LHA rates apply in the short term only. It is not our intention, at this stage, to make changes to the Order as a result of any policy change. Rather, we need to ensure we have a stable basis for the setting of BRMAs in the short term. This will enable rent officers to continue with their rolling programme of reviewing locality boundaries.[26]

These changes were implemented with effect from 5 January 2009 by the *Rent Officers (Housing Benefit Functions) Amendment (No.2) Order 2008* (SI 2008/3156).

In May 2008 Shelter published *Shelter's input into the review of the private rented sector*. It looked at HB and LHA and identified two main problems. The first concerned BMRAs:

Shelter has welcomed government efforts to begin reforming the HB system. However, we are concerned that the new Local Housing Allowance (LHA) will not provide an adequate solution to many of the difficulties faced by HB/LHA recipients and may in fact exacerbate some difficulties.

Shelter has a number of specific concerns with regards to LHA. We note that the boundaries of the newly formed Broad Rental Market Areas (BRMAs) were determined without reference to the rent levels which will fall within those boundaries, relying instead on the more arbitrary measure of distance from services/facilities. In addition, the number of BRMAs under the new system stands at 153 – around half the number of localities under the HB system. We believe that the increase in the size of the areas covered by a specific LHA rate combined with the fact that rent levels do not feature as a factor in the determination of BRMA boundaries may force claimants to cluster in particular areas within the BRMA. Such an outcome would simultaneously worsen the effects of marginalisation often experienced by those on low incomes while also undermining the government's long-standing commitment to sustainable, mixed communities. [27]

Shelter had urged the Government not to push through legislation to amend the way in which BMRAs and localities are determined before fully considering evidence on affordability issues

[26] http://webarchive.nationalarchives.gov.uk/+/http://www.dwp.gov.uk/consultations/2008/consultation-letter-181108.pdf
[27] p6

associated with the LHA.[28] Subsequently, Shelter described the LHA as a "postcode lottery" because of local variations in affordable rents for LHA claimants.[29]

The Work and Pensions Select Committee Report of 2009-10 on the Local Housing Allowance considered, amongst other issues, evidence from various bodies on the operation of BMRAs. The Committee concluded that most boundaries were "working well in terms of the level at which the LHA is set" but "there are some BMRAs within which rent levels vary considerably, with potentially negative consequences for claimants."[30] The Committee recommended an urgent review by the Valuation Office Agency of those BMRAs where rents vary greatly and distort the local rental market with the consequence of increasing barriers to work. The Committee specifically recommended that access to low paid work be used as an underlying criterion for setting BMRAs.[31]

The Labour Government's consultation paper on Housing Benefit reform (December 2009) asked for views on how BMRAs should be set.

The current Government's response to the Work and Pension Select Committee report stated that BMRAs would be considered as part of the move to uprating LHA rates in line with the Consumer Price Index (discussed in **section 3.1** of this note):

> The Government notes the Committee's recognition that most of the existing boundaries for Broad Rental Market Areas are working well. Rent Service Scotland and Rent Officers Wales have already completed a review of their areas. In England there has been a rolling programme of reviews which is expected to be completed by April 2011. Both Blackpool and Cambridge were recognised as early candidates and reviews have been completed.
>
> The measures announced in the June Budget will bring the housing choices for customers more in line with those who do not claim Housing Benefit. High Local Housing Allowance rates have allowed Housing Benefit customers access to properties that even people with above average incomes could not afford. From April 2013, the Department proposes to relate uprating of Local Housing Allowance to the Consumer Price Index and will look at the areas in which the rates are set in the context of that change.[32]

The *Rent Officers (Housing Benefit Functions) (Amendment) Order 2012* provides that after 2 April 2012, if a Rent Officer considers that one or more BRMAs need to be determined the Secretary of State's agreement will need to be sought.

The *Two Year Review of the Local Housing Allowance* was published by the DWP in February 2011. This review refers to controversy over the geographical areas in which LHA rates are set "due to both difficulties understanding how boundaries are arrived at and where large areas have created problems of local affordability within them." The Review did not come to any specific conclusions or recommendations – it simply noted that HB areas are not specific to the LHA arrangements as areas were also used in the previous (and ongoing) scheme in the private rented sector.[33]

28 http://england.shelter.org.uk/news/january_2009/lha_poverty_trap_warning
29 *Roof Magazine,* "In the LHA ghetto", March/April 2009
30 Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010
31 *Ibid* paras 1.31-33
32 HC 509 of Session 2010-11
33 DWP, *Two Year Review of the Local Housing Allowance,* 2011, p13

As a result of a recommendation from the Work and Pension Select Committee as part of its inquiry into *Changes to Housing Benefit announced in the June 2010 Budget*, the Government agreed to commission independent external research into the impact of the Housing Benefit reforms; this research, led by Ian Cole, professor of housing studies at Sheffield Hallam University, is underway and early findings were published in June 2012 – this report contained no recommendations in relation to the composition of BMRAs.[34] An interim report, *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit* followed in May 2013[35] - again this does not contain recommendations in relation to the configuration of BRMAs.

The size of BMRAs was once again considered as part of the Communities and Local Government Select Committee's 2013-14 inquiry into *The Private Rented Sector,* the report of which was published in July 2013. Evidence submitted by Blackpool and York Councils indicated that BMRAs incorporating cities and rural areas had resulted in a distortion of LHA levels. Blackpool's request for a more "refined" approach to setting LHA levels "to reflect local housing markets" had been refused by the DWP.[36] The Committee recommended that the "Government take immediate steps to allow councils to apply for a variation of broad market rental area boundaries where anomalies occur."[37] The Government, in response, said that it has no plans to change BMRA boundaries at this time:

> Broad rental market areas and Local Housing Allowance rates are set such that, with the exception of the most expensive areas of London, benefit claimants can afford to access key services and employment services. Therefore by design they do not always coincide with local authority boundaries.
>
> The Government accepts that in some local authorities a greater or lesser proportion of properties are affordable within local housing allowance rates but the Rent Officers - who administer the rates - have taken a number of steps to ensure that they base their determinations on accurate representations of the private rented market.
>
> Whilst we also accept that there will be boundary issues with any system, we believe that the broad rental market areas reflect the choices people not claiming Housing Benefit have to make about their accommodation. Therefore, whilst we will continue to monitor the situation, government has no plans to change the boundaries of broad rental market areas at this time.[38]

3.2 Uprating LHA rates (CPI & 1% caps)

LHA rates within BMRAs had, up to April 2012, been subject to monthly review by Rent Officers based on movements (both up and down) in private sector rent levels. However, as part of the Government's policy of reducing expenditure on Housing Benefit and the desire to exert downward pressure on private sector rent levels, in April 2013 LHA rates were uprated by the Consumer Price Index (CPI) and will be uprated by a maximum of 1% in 2014 and 2015 (there is an exemption from the 1% cap for areas with the highest rent increases).[39]

34 DWP, *Monitoring the impact of changes to the Local Housing Allowance system of housing benefit: summary of early findings*, June 2012

35 DWP, *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit,* RR 838, May 2013

36 HC 50, First Report of Session 2013-14, *The Private Rented Sector,* 18 July 2013, paras 123-125

37 *Ibid* para 125

38 Cm 8730, October 2013

39 The 1% cap in 2014 and 2015 was announced in the Chancellor's Autumn Statement on 5 December 2012. 30% of the savings expected to arise from this measure will be used to exempt areas with the highest rent increases.

Measures were included in the *Welfare Reform Act 2012* to enable implementation of the move to uprating by CPI.[40] During the social security uprating statement on 6 December 2011 Steve Webb announced that LHA rates would be frozen from April 2012 in preparation for the move to annual uprating:

> On local housing allowance, at the emergency Budget in June 2010, the Government announced that from 2013, local housing allowance rates will be calculated annually by using the lower of the rent at the 30th percentile of local rents or the previous year's rate uprated by reference to CPI. This will end the monthly uprating of LHA rates and bring the system into line with the uprating of other pensions and benefits.
>
> As part of the preparation for this change, we need to fix LHA rates, to establish a baseline from which they will be uprated in future. As the new cycle for uprating LHA will be annual, we have decided that the baseline should be one year ahead of the first uprating event. Therefore, LHA rates will be fixed from April 2012. This approach means that there will be no reductions in ongoing awards as a result of this change.[41]

The *Rent Officers (Housing Benefit Functions) (Amendment) Order 2012* (SI 2012/646), which changed the basis on which Rent Officers determine the level of LHA (from monthly to annually), was considered by the Merits of Statutory Instruments Committee in March 2012.[42] The Order provided that from April 2013 LHA rates are set at the lower of

- the previous LHA rate uprated by the Consumer Price Index inflation published the previous September; or
- the 30th percentile of local market rents in the previous September.

The Committee was not persuaded by the DWP's explanation of the impact of this change:

> In the interim the LHA will be frozen at the current level. The DWP state that this will generate additional savings of £800m by 2014-15 but provide no evidence to support this assertion and no basis for assessing what the effect of the change will be on tenants, landlords and charities. In contrast a submission from Shelter describes this as a fundamental change to the way that Housing Benefit is calculated and gives indications from their research of the likely consequences for local authorities and tenants. In particular they commented that in the ten years to 2007 private rents increased by 70% while CPI only increased by 20% and expressed concerns that the change is likely to decrease further the ability of tenants on housing benefit to find affordable accommodation. **We found DWP's explanation deficient and the House may wish to press DWP to provide a clearer statement of the specific effects of this change.**
>
> **This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.[43]**

The *draft Housing Benefit (Amendment) Regulations 2012* were considered in Grand Committee in the House of Lords on 15 October 2012 and approved by the House of Lords on 6 November. The First Delegated Legislation Committee considered the regulations on 16 October 2012. These regulations ended the process of reviewing existing LHA cases on

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[40] See Library Research Paper 11/23

[41] HC Deb 6 December 2011 c164

[42] HL Paper 277, 22 March 2012

[43] *ibid*

the anniversary of the claim, or on a change of the claimant's circumstances, with effect from January 2013. All claims were to be reviewed annually on 1 April.[44]

The *Rent Officers (Housing Benefit and Universal Credit Functions) (Amendment) Order 2013* (SI 2013/1544) provided that, from and including 2014, recalculation of LHA rates would take place in January of each year. The increase will be the lower of the rent at the 30th percentile of listed rents or the previous year's LHA, increased by one percent (except in areas with the highest rent increases).

The *Impact Assessment on Housing Benefit – uprating Local Housing Allowance rates by CPI* estimated that the measure could save £300 million a year – this was dependent on actual changes in the CPI. Lord Freud advised the Work and Pensions Select Committee that when the CPI figure was set for 2013 it would apply for two years as it would represent a settlement for the 2010 Spending Review: '...what we are doing is breaking the link into the market as a whole for two years, in order to keep downward pressure.'[45] As noted above, LHA rates will actually be capped further at 1% in 2014 and 2015 (except in areas with the highest rent increases). It was expected that further limiting LHA rates would save £105m in 2014-15 rising to £225m in 2015-16.

The Rent Officers (Housing Benefit and Universal Credit Functions) (Local Housing Allowance Amendments) Order 2013 (SI 2013/2978) will come into force on 14 January 2014. This Order provides for LHA rates in 126 BMRAs to increase by 4% (rather than 1%); 35 of the affected BMRAs are in London:

> The Government recognises that rental markets differ across the country and has committed to using 30% of the forecast savings (as at Autumn Statement 2012) from the measure, to increase some rates by more than the 1 per cent limit. There is a total of £140 million funding available over the two years; £45 million in 2014/15 increasing to £95 million in 2015/16. This instrument sets out that the LHA rate for specified categories of accommodation in some broad rental market areas will be increased by 4 per cent, instead of 1 per cent, subject to a maximum limit.
>
> The LHA rates which will be targeted for the 4 per cent increase will be those that have diverged the most from market rents. These will be identified by comparing the proposed April 2014 rates (limited by the 1% increase) with the 30th percentile of local rents from rent officers for the 12 months up to the end of September 2013. Those LHA rates with the greatest percentage gap will be increased by 4 per cent instead of 1 per cent, but will be subject to the overall limits to LHA. We remain committed to our original intentions to restrict the amount of LHA which can be paid in the most expensive areas so LHA rates will continue to be subject to maximum limits.
>
> [...]
>
> The basis for increasing some LHA rates by 4 per cent is the need to balance the objective of supporting the areas where rents are rising fastest with the limited funding available. Setting a higher increase would see relatively few rates benefit, whereas setting a lower percentage increase would spread the funding too thinly and not provide enough support where it is needed. Selecting a rate of 4 per cent is in line with the Department's medium-term planning assumption of general private rental growth

44 There is scope to review a case if the rent changes throughout the year so tenants will not have to wait until the annual review [First Delegated Legislation Committee 16 October 2012 c6].

45 HC 469, Work and Pensions Committee, Second Report of 2010-11, *Changes to Housing Benefit announced in the June 2010 Budget,* December 2010, p20

> and is broadly in line with the increases in social and affordable rents in 2014/15 (3.7 per cent).
>
> It is expected that LHA uprating by 1% will run for two years in 2014/15 and 2015/16. The Government has also LHA Targeted Affordability Funding available for both those years. We will consider how we should distribute the funding in 2015/16 after examining further rental evidence in 2014.[46]

Respondents to the initial policy announcement on the annual uprating of LHA rates by CPI argued that the CPI, as currently constructed, is not an appropriate index for setting housing costs and that over time, as actual rent levels rise, claimants would be unable to afford privately rented homes. The Residential Landlords Association (RLA) described the CPI measure as "one of the most detrimental of all these proposals"[47] while the British Property Federation said that it was the "most severe aspect" of the Housing Benefit reforms.[48]

After considering evidence submitted to its inquiry into the Housing Benefit reforms announced in June 2010 the Work and Pensions Select Committee recommended:

> ...that the Government fully evaluate the impact of the changes to Housing Benefit introduced in 2011, including on rent levels, before introducing the change to using the Consumer Price Index (CPI) for uprating LHA. If uprating using CPI is introduced in 2013, it should be accompanied by an undertaking that the Secretary of State will review the Local Housing Allowance rates in relation to prices in the wider private rental market prior to 2015.[49]

Although the Government agreed to evaluate the impact of changes which came into effect in April 2011 uprating LHA rates by CPI are outside the scope of this review. However, the Government said that the Secretary of State "will, through secondary legislation, be able to review rates and, if he considers it necessary, will be able to set rates at a different level than increases in the Consumer Price Index."[50]

The Zacchaeus 2000 Trust sought to have the *Rent Officers (Housing Benefit Functions) (Amendment) Order 2012* quashed on the basis that the *1992 Social Security Contributions and Benefits Act* intended Housing Benefit to be set by reference only to an assessment of actual rent levels prevailing in the market of which CPI was not a measure. The charity also argued that the Secretary of State had failed to fulfil the duty in section 149 of the *Equality Act 2010* to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between persons with protected characteristics and other persons. The claim was dismissed. It was held that the Secretary of State had wide discretion under the 1992 Act to set benefit levels and that this 'unquestionably' included a wide power to cap increases by reference to the general level of inflation. On the potential breach of the 2010 Act, it was held that impact assessments had been completed on the reforms which identified that some groups, including disabled people and children, might have to move home.[51]

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46 Explanatory memorandum to (SI 2013/2978)
47 *Ibid* Ev103, para 125
48 *Ibid* Ev41
49 *Ibid* p21
50 HC 845, Work and Pensions Committee, Fourth Special Report of 2010-11, *Government response to the Committee's Second Report of Session 2010-11,* March 2011
51 *R (Zacchaeus 2000 Trust) v Secretary of State for Work and Pensions* [2013] EWHC 233 (Admin)

Following the announcement of the intention to cap increases to LHA rates at 1% in 2014 and 2015 (with an exemption for areas with the highest rent increases) housing bodies again emphasised the impact of LHA rates failing to keep pace with actual rent levels over time. In *Home Truths – 2012* the National Housing Federation (NHF) predicts private sector rent rises of 6% a year between 2015–2018 and suggests that rent levels will be 27% higher in 2017 than they are now.[52] The cost of privately renting a home has, according to work carried out by the NHF, Shelter and the Chartered Institute of Housing (CIH), risen by 37% in the last five years.[53]

Richard Lambert, chief executive of the National Landlords Association, reportedly said that the 1% cap "could render private accommodation unaffordable for many tenants in receipt of housing benefit and will deter landlords from investing in much needed housing for those receiving support."[54]

There are potential "knock-on" effects for social landlords if a lack of affordable private rented accommodation results in increased demand for social housing. Local authorities may now discharge their duties to homeless households by using suitable private rented housing – this may become increasingly difficult if Housing Benefit will not meet cover the full contractual rent.

London Councils welcomed the announcement that LHA rates in 35 London areas would increase by 4% in 2014 but expressed concern that the national LHA caps "leave a real gap between what is actually 'affordable' and what help is offered."[55]

3.3 LHA and very high rent levels

As part of Budget 2010 the Labour Government announced the removal of the top 1% of rents (nationally) from the market evidence for each bedroom size in the calculation of LHA rates. The stated aim of this measure was to address concerns around high LHA payments to a small number of tenants living in the most expensive areas. The change was to take effect for new claims from October 2011 and for existing claimants on the anniversary of their claim. LHA was to be capped at £1,100 per week.

Following this announcement there was concern around the impact on an estimated 13,000 families (mainly based in London) who would be forced to find alternative suitable accommodation.

This measure was overtaken by the new Government's June 2010 Budget announcement in which the intention to cap LHA rates for different sizes of accommodation from April 2011 was set out.[56]

3.4 Affordability, rent arrears and direct payments

Shelter's input into the review of the private rented sector (2009) also highlighted concerns in relation to the direct payment of the LHA to tenants:

> Shelter also remains concerned about the direct payment element of the new LHA arrangements. Recent anecdotal evidence has highlighted that some landlord organisations are advising members not to let to LHA claimants because of the

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52 NHF, *Home Truths – 2012*, 2012, p7
53 *Ibid* p8
54 *Inside Housing*, "Benefit cuts raise homelessness fears", 7 December 2012
55 *Inside Housing*, "DWP allows £45m LHA increase," 4 December 2013
56 See **section 2.2** of this note

perceived risks of the move to direct payments. We are also concerned that DWP's guidance to local authorities does not place a requirement on LHA staff to be pro-active in identifying someone as potentially vulnerable and consider that this should be a minimum requirement for the administration of LHA.[57]

Additional research by Shelter involved contacting over 100 landlords across four BMRAs and recording their reaction to an enquiry from a LHA claimant. Shelter found a high proportion of landlords were reluctant to let to claimants.[58]

Inside Housing magazine of 24 April 2009 reported on a survey conducted by the homelessness charity, Crisis, in which 180 councils and voluntary organisations were surveyed on the impact of the LHA. 82 per cent of respondents said claimants were falling into arrears or having their tenancies ended as a result of direct payments. A further development involved tenants with overdrafts having their LHA payments "swallowed up" or "frozen" when paid into their accounts, leaving tenants unable to pay their rent.[59]

The May/June 2009 edition of *UK Landlord Magazine* carried an article entitled "Local Housing Allowance is not working" in which it highlighted landlords' difficulties in ensuring prompt rent payments as a key concern.

The Work and Pensions Select Committee's inquiry into the LHA "received mixed evidence on the effect of direct payments to tenants on levels of rent arrears." The Committee called on the Government to commission a more representative in-depth study on rent arrears and the reasons for them "to gain a clearer picture of the scale of the problem."[60]

Detailed consideration of the 'direct payment' aspect of the LHA can be found in Library standard note SN/SP/3211.

The Government said that direct payments would be considered as part of the two year review of the LHA which reported in February 2010.[61] Prior to publication, the Government announced increased discretion for local authorities in respect of direct payments to landlords in response to concerns over cuts to LHA payments introduced in April 2011 (see **section 2.3** of this note for more information).

The *Two Year Review of the Local Housing Allowance* found that "a high proportion" of direct payments to tenants had been achieved - many by automatic credit transfer "suggesting positive impacts on financial inclusion." It is acknowledged that for a "further minority" the system "may be causing particular difficulties." Problems were identified around the success of safeguards in protecting vulnerable tenants – eight weeks is considered too long a period to wait to transfer payments to landlords. Improved guidance issued on the use of discretionary safeguards by local authorities had not, at that point, had enough time to bed-in to be properly assessed by the researchers.[62]

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57 *Shelter's input into the review of the private rented sector,* 2009
58 *Roof Magazine,* "In the LHA ghetto", March/April 2009
59 *Inside Housing,* "Banks freeze tenants' accounts", 24 April 2009
60 Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 95
61 HC 509 of Session 2010-11
62 DWP, *Two Year Review of the Local Housing Allowance,* 2011, pp140-1

The early findings of the independent review of the changes announced in the June 2010 Budget, published in June 2012,[63] found more than two-fifths of claimants surveyed experienced difficulty in affording their rent payments:

> Claimants in London (45 per cent) were more likely than those in other parts of the country (41 per cent) to say this; and far fewer of claimants in London said that it was easy to afford (21 per cent compared with 40 per cent elsewhere). Forty-seven per cent of new claimants, compared with 43 per cent of existing claimants, said that it was difficult for them to afford their rent payments.[64]

Two-thirds of claimants surveyed had a shortfall between the rent due and their LHA entitlement. Respondents had covered the shortfall by making it up from other benefits and borrowing from friends and family; over a quarter said they had looked for a job or a better paid job. Few claimants (3%) said they had moved home as a result of a shortfall. When asked how they would cope with an increased shortfall due to the LHA changes, responses were broadly similar to actions already taken.

Claimants with a shortfall between the rent and their LHA 'were significantly more likely to be in arrears than those who did not have a shortfall. Thus, 13 per cent of claimants with a shortfall, compared with seven per cent of those with no shortfall, were behind with their rent.' Overall, just under nine out of ten claimants surveyed were up to date with their rent payments with 11% in arrears Benefit shortfalls were not found to be a significant cause of arrears:

> Only two per cent of claimants had reported that the single most important reason why they were behind with the rent in their current accommodation was a cut in their HB. A further seven per cent said that the HB they were awarded was less than they had expected it to be. London claimants (12 per cent) were twice as likely as those living in other parts of the country (six per cent) to report that this was the single most important reason for their arrears.[65]

Most landlords had responded to arrears by asking for the money to be paid back gradually over time (48 per cent). 14% cent of claimants in arrears said the landlord had asked for the money to be repaid immediately while 15% said their landlord (or the agent) had served, or threatened to serve, a notice to quit. A further 8% per cent said their landlord had verbally asked them to leave, 4% per cent of claimants reported that the landlord had told them they would not renew the tenancy when the lease came to an end because of the arrears.

Over a third of claimants in the survey who had moved while in receipt of LHA reported difficulties in finding accommodation – 57% had encountered landlords who would not let to HB claimants and 32% found that rents were unaffordable. A higher percentage of claimants in London had experienced landlords unwilling to let to HB claimants. A third of all LHA landlords surveyed said they would consider/plan to stop letting to HB claimants in the next year – rising to 40% in London. Problems with rent arrears and changes to the HB/LHA rules were the two main reasons behind this decision.

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63 The findings are based on a postal survey of landlords and a face-to-face survey of claimants in autumn 2011. Although the LHA measures had been introduced they had not yet had an impact on the rent levels and housing circumstances of existing claimants – thus the report focuses on emerging trends and early signs of impact.

64 DWP, *Monitoring the impact of changes to the Local Housing Allowance system of housing benefit: summary of early findings,* June 2012

65 *ibid*

The interim report of May 2013, *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit,* reported that the "gap between the contracted rent and the LHA rate in higher demand areas encouraged landlords to reduce their lettings to LHA tenants." The potential to receive direct payments of LHA has not provided a sufficient incentive for landlords to negotiate with tenants over rent levels.[66]

Front line housing and benefits advisors have reported affordability concerns in the London PRS markets – in traditionally affordable areas (e.g. Barking and Dagenham) residents are competing with inner-London boroughs for PRS properties.[67] Advisors expressed concerns about deteriorating standards in LHA dominated markets.[68] Rent arrears are thought to be increasing but LHA measures are viewed as a contributory factor along with other pressures on household finances.

The Communities and Local Government Select Committee considered rent affordability issues as part of its inquiry into *The Private Rented Sector* over 2012-13. Particular concern was expressed over the affordability of rents in London. The Committee concluded that increasing housing supply would be the most appropriate approach to reducing private sector rent levels. The Government's response noted that in the 12 months to August 2013 private rental prices paid by tenants rose by 1.1% in England and 1.9% in London.[69]

3.5 LHA and large properties

Towards the end of 2008 the case of a family of Afghani refugees, who were renting a seven bedroom house in Ealing, was widely reported in the press. The family was receiving LHA to cover their rent payments of £2,875 per week. In light of these critical reports the DWP carried out an inquiry into LHA rates for homes with more than five bedrooms. The inquiry reportedly found 16 similar cases, all in London, which were collectively costing the taxpayer around £2.5 million per year.[70]

In response, on 20 October 2008 the then Secretary of State for Work and Pensions, James Purnell, announced:

> In April of this year we introduced the local housing allowance, a more straightforward and transparent way of calculating entitlement to housing benefit in the private rental sector. However, an unintended consequence of the changes meant that in a limited number of cases the taxpayer paid out significant sums of money to private landlords in order to house people in the sorts of property that they could not afford if they were in work. That was clearly unacceptable and I ordered an urgent inquiry into the local housing allowance rates for properties with more than five bedrooms.
>
> Today, I can announce that LHA rates will be capped at the five-bedroom rate for all new customers. We will lay regulations as soon as possible, to come into effect no later than next April. In the interim, DWP and the Rent Service will monitor such applications carefully and advise on a case-by-case basis. Those currently claiming LHA above the capped rate for a property with more than five bedrooms will have their case reviewed on the first anniversary of their claim. This announcement fits with the wider DWP and Treasury review of housing benefit, which is currently under way. A

66 *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit: Interim report (RR 838): summary,* May 2013

67 Authorities are seeking PRS properties in order to discharge their duties towards homeless households.

68 *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit: Interim report (RR 838): summary,* May 2013

69 Cm 8730, October 2013

70 *Inside Housing,* "Families pushed to downsize to save cash", 21 November 2008

> key outcome of the review will be to ensure fairness for the taxpayer and to ensure that housing benefit provides the right incentives to work.[71]

The draft *Housing Benefit (Amendment) Regulations 2009* (SI 2009/614) were referred for consultation purposes to the Social Security Advisory Committee (SSAC).

The DWP published guidance for staff on implementing the "5 bed cap":

> You may be aware of the announcement made yesterday by the Secretary of State for Work and Pensions concerning new rules for Local Housing Allowance (LHA) rates for larger properties.
>
> This follows a number of reports in the media in the past week criticising the levels of benefit paid to some customers in the London area.
>
> We are confident that the LHA scheme is working extremely well overall and that you have undertaken implementation very successfully. However, an urgent enquiry has been conducted into the payment of benefit in respect of properties with more than five bedrooms. As a result of this enquiry, Ministers have decided to cap LHA rates at the five bedroom rate for all new customers.
>
> As now, the national rent services will publish monthly LHA rates for all property sizes up to and including five bedrooms. For families with an entitlement of more than five bedrooms, the following rules will apply
>
> **For new claims**, families living in five bedroom properties or less will have their benefit rates capped at a *maximum* of the LHA rate for five bedroom properties in that area
>
> **Families already claiming LHA** and living in a property with more than five bedrooms which costs more than the capped rate will have their case reviewed at the first anniversary of their claim. We need to do further work on exactly when these customers will see a reduction in their benefit as for some the claim anniversary will fall shortly after the introduction of the change. In these circumstances we will work closely with you so that these families' needs are met by ensuring that they know about the change and their options for dealing with it.
>
> Whilst this is a significant change to the principles behind the LHA scheme, it is important to note that around 99% of cases will be unaffected by the changes; we estimate that less than 1% of families have an entitlement of more than five bedrooms, and many of these will actually live in smaller sized accommodation.
>
> We anticipate these changes will come into effect no later 1 April 2009 and we will consult with your representatives and the Social Security Advisory Committee in the normal way in advance of amending regulations.
>
> We recognise this is an unexpected change, and will provide as much support as we can over the coming months. We will issue further communications on our plans over the next few weeks.[72]

The SSAC's conclusions were published on 16 March 2009.[73] The Committee recommended that the Government should not proceed with the regulations:

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[71] HC Deb 20 October 2008 c15
[72] Housing and Council Tax Benefit Circular G20/2008
[73] Cm 7571

> In its view, the introduction of the proposed changes will have a direct impact on larger families. These significant impacts will not only be felt by households with a number of children, but also extended family members living with them including disabled members. It will also disproportionately affect families from minority ethnic groups. The Committee did, however, recommend that should the Government decide to proceed it should ensure that customers who will be affected by the change are given ample notice and that transitional protection should be increased from 13 to 26 weeks.[74]

The Labour Government, responding to the SSAC's concerns, reiterated its intention to go ahead with the "5 bed cap" but agreed to extend the period of transitional protection from 13 to 26 weeks.[75] The *Housing Benefit (*Amendment*) Regulations 2009,* containing the changes to the cap were debated in the Lords on 11 May 2009.[76]

There was concern amongst some housing organisations that the 5-bed cap would force large families into unsuitably small accommodation. The Work, Welfare and Equality Group published a report on 7 January 2009, *Local Housing Allowance – Larger Properties,* in which the impact of the cap on certain vulnerable groups was considered in the light of equality duties. With regard to claimants from ethnic minority groups the Group concluded:

> These figures demonstrate there is likely to be a disproportionate percentage of customers from minority ethnic groups entitled to six or more bedroom properties, raising concerns of indirect discrimination although the proportion of non-white households entitled to larger properties is still smaller than the proportion of white households. Taking 5 or more bedroom characteristics as a guide to 6 or more bedroom characteristics, it is roughly estimated that of the fewer than c.5,000 larger properties LHA caseload under about 2,000 will be non-white customers at the end of 2009/10. The Department recognises this disproportionate impact on ethnic minority groups, but considers this to be justified and proportionate due to the mitigation factors that are set out in the following section, including the small number of customers that will be affected and the size of properties that most families currently occupy.[77]

The operation of the cap was considered as part of the Work and Pensions Select Committee 2009-10 inquiry into the LHA. The Committee supported the principle of limiting HB to levels appropriate for people on low pay but noted:

> …it is equally important that the solution to this problem does not undermine other Government objectives on availability and quality of housing, child poverty and race equality. We recommend that the Government monitors the impact of the cap as part of its two-year review of LHA with an open mind to other potential solutions for larger properties.[78]

As part of the June 2010 Budget the new Government announced that it would cap the LHA at a four bedroom rate of £400 per week from April 2011:

> The Government welcomes the Committee's agreement that Housing Benefit levels should be comparable to what is affordable for most average working households as well as representing value for money for the taxpayer.

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[74] *Ibid* para 9
[75] *Ibid* para 35
[76] HL Deb 11 May 2009 cc890-902
[77] Para 34
[78] Work and Pensions Select Committee, Fifth Report of 2009-10, *Local Housing Allowance*, HC 235, March 2010, para 155

In some areas of central London the Local Housing Allowance has given rise to rates which have increased to unmanageable levels. Housing Benefit customers have been able to enter into rental commitments that people earning a reasonable wage would not consider.

Recent rates in central London have been as high as £750 per week for a three-bedroom property and, exceptionally, £2000 for a five-bedroom property. These rates are far in excess of rates that most working people or families with average incomes could afford.

The Government has decided that it must take decisive action to put a limit on the amount of rent to be met through Housing Benefit under the Local Housing Allowance scheme. From April 2011, Housing Benefit will only be paid at the up to the four bedroom rate and caps for all property sizes will be introduced so that the highest amount of benefit a family could receive would be £400 a week. This, coupled with the October 2011 change will reduce all Local Housing Allowance rates to the 30th percentile. The result will be Housing Benefit levels which are fairer and more sustainable, and in all but the most central areas of London between 30 and 40% of properties will still be affordable to Housing Benefit customers.

In the longer term greater control will need to exercised over the growth of Housing Benefit in the private rented sector. To do this the Department will fundamentally reform the way rates are set to ensure that, in future, support for customers living in the private rented sector are kept at more reasonable and realistic levels.[79]

The Child Poverty Action Group (CPAG) was granted leave to seek judicial review of the Government's decision to place a national cap on the LHA and the prevention of payments of LHA to meet the cost of renting a house with more than 4 bedrooms irrespective of household size. CPAG issued a press release on 7 March 2011 outlining its case:

The Chief Executive of Child Poverty Action Group, Alison Garnham, said:

"We have served legal proceedings on the Government to protect Britain from becoming a country where neighbourhoods that have been open to all families to live in for generations become more like a private members club.

"Housing Benefit will no longer be the national scheme it is legally meant to be once cuts redesign it as an engine of social segregation. It is not right that families living in certain areas, especially larger families, are punished and pushed aside while parts of Britain become enclaves for the privileged.

"London will be worst affected of all. The cuts will mean the social cleansing of parts of London with families being forced out of their homes and into less suitable, often poor quality and cramped housing.

"Children will be forced to move away from schools, friends, neighbourhoods and family. For some this may include moving away from another parent, most often their Dad.

"David Cameron made a clear promise before the election to make British poverty history. We didn't expect this to mean families being told to pack up and move out of the neighbourhood their parents and grandparents lived in because of the housing market bubble the bankers created and the bankers' bailout that hit the ordinary taxpayer."

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[79] HC 509 of Session 2010-11

> Child Poverty Action Group's case in support of disadvantaged families against the Government is:
>
> - The changes are contrary to the fundamental purpose of the housing benefit scheme, which was originally intended to be a national scheme to prevent homelessness
> - The Government has failed to have due regard to the general equality duties under the Race Relations Act 1976 and the Sex Discrimination Act 1975 because ethnic minorities and lone parents will be disproportionately hit by the two cuts being challenged.[80]

The case was heard in the High Court on 21 July 2011 and the decision, in favour of the Government, was handed down on 13 October 2011.

> Mr Justice Supperstone dismissed CPAG's claim. He agreed with the government that the purpose of the housing benefit scheme is not to prevent homelessness, but to help claimants with their rent whilst also protecting the public purse. He has also held that there is nothing in the statutory scheme to prevent the government from setting an overall cap in this way. By preparing an Equality Impact Assessment he held that the government had "due regard" to the need to eliminate unlawful racial discrimination but that they were entitled to make the changes despite their disproportionate impact.[81]

4 The future

4.1 Capping total household benefits

As noted at various points in this paper, the Government announced cuts to the LHA as part of the June 2010 Budget. Two further measures were announced in the October 2010 Spending Review: one affecting the Shared Accommodation Rate[82] and another involving capping total household benefits from 2013.[83]

The cap, which was fully rolled out by 27 September 2013, currently operates by reducing the claimant's Housing Benefit entitlement where the total amount of their benefit entitlement (excluding certain specified benefits) exceeds £500 per week for a family or £350 a week for a single person. In the long-term the cap will form part of the Universal Credit system.

4.2 Universal Credit

The Government's long term approach to the structural reform of welfare benefits, including Housing Benefit, was set out in the consultation paper, *21st Century Welfare*.[84] The proposals involve the development of a "Universal Credit":

> The Universal Credit will simplify the benefits system by moving from the current benefit structure to a simple streamlined payment. People's benefits will also be withdrawn at one unified rate.
>
> The plan is to migrate recipients from the current benefits and tax credits systems onto the Universal Credit starting in 2013 and finishing in the next Parliament.

[80] CPAG Press Release, 7 March 2011
[81] CPAG Press Release, 13 October 2011
[82] See SN/SP/5889
[83] See Library note, *The Household Benefit Cap*, SN/SP/6294, for more detailed information
[84] Cm 7913 July 2010

> The reforms will be set out in more detail in a White Paper later in the autumn and put before Parliament in a Welfare Reform Bill next year.
>
> The new Universal Credit system aims to:
>
> - improve work incentives through a combination of improved earnings disregards and/or lower benefit withdrawal rates;
> - smooth the transitions into and out of work;
> - reduce in-work poverty;
> - simplify the system, making it easier for people to understand, and easier and cheaper for staff to administer; and
> - cut back on fraud and error.[85]

Responses to the consultation were published in November 2010[86] alongside the White Paper, *Universal Credit – welfare that works.*[87] One of the leading themes that emerged in the responses concerned the implications of housing costs being met from a single award:

> It was feared that paying the housing element directly to the Universal Credit recipient may have a negative impact on landlords' rent collection while causing individuals to fall into debt.[88]

The White Paper described the Universal Credit system:

> It will bring together different forms of income-related support and provide **a simple, integrated, benefit for people in or out of work.**
>
> - It will consist of a basic personal amount (similar to the current Jobseeker's Allowance) with additional amounts for disability, caring responsibilities, housing costs and children.
> - As earnings rise, we expect Universal Credit will be withdrawn at a constant rate of around 65 pence for each pound of net earnings. Higher earnings disregards will also reinforce work incentives for selected groups.
>
> **When introduced, Universal Credit will initially apply to new claims. It will be phased in for existing benefit and Tax Credit recipients. There will be no cash losers at the point of change, ensuring that no one will see their benefits reduced when Universal Credit is introduced.**

The section in the White Paper on housing costs is reproduced below:

> 29. Our aim is to simplify provision for rent support in Universal Credit as much as possible, while protecting potentially vulnerable people from unintended consequences, such as getting into arrears or being made homeless. As announced in the Budget, we will set the amount we pay to support people in the private-rented sector at a level that will generally make the lowest third of market rents affordable.

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85 DWP Press Release, 5 October 2010
86 Cm 7971
87 Cm 7957
88 DWP, *Consultation Responses to 21st Century Welfare, November 2010*

> Rates will be set and uprated to ensure that the support received is fair but not excessive.
>
> 30. For social-rented sector tenants (including those who rent properties with the new shorter tenures and affordable rents), the housing component will build on the support currently provided by the current Housing Benefit system, based on actual rents in both housing association and Local Authority properties, including in the new 'affordable rent' tenure. We have already announced our intention to limit Housing Benefit payments to social-rented-sector tenants who under-occupy their properties. Other than this, we do not anticipate further changes in the short to medium term.
>
> 31. There are advantages in paying the housing component to individuals, rather than the current system of payments direct to landlords. This would encourage people to manage their own budget in the same way as other households. However, we also recognise the importance of stable rental income for social landlords to support the delivery of new homes and will develop Universal Credit in a way that protects their financial position. Options for achieving this could include some ongoing use of direct payments to landlords, use of direct debits, and a protection mechanism which safeguards landlords' income. We will work closely with the devolved administrations, providers and lenders in developing the new system.
>
> 32. There are many policy and operational issues to work through in respect of housing. The Government will work closely with Local Authorities and the housing sector as plans develop.
>
> 33. We will consider whether changes are needed to the current approach to calculating help with mortgage costs to ensure it is consistent with Universal Credit principles. In the longer-term, we believe it should be possible to provide support more efficiently, and we will be exploring the full range of options.

Provisions to enable the introduction of the Universal Credit are contained in the *Welfare Reform Act 2012* and associated regulations. More information can be found in a Library Research Paper 11/24 *Welfare Reform Bill: Universal Credit Provisions*, *Draft Universal Credit Regulations 2013* (SN/SP/6548) and *Universal Credit: an introduction* (SN/SP/6469).

Universal Credit is now in the process of being phased in although the timescale for full implementation has been revised. A separate Library note considers the replacement of Housing Benefit/LHA with *The housing element of Universal Credit.*

In *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit* (May 2013) the researchers report that "many landlords were very nervous about the introduction of Universal Credit from autumn 2013 onwards, and what they saw as the end of a discrete benefit to pay for rent."[89]

[89] *Monitoring the impact of changes to the Local Housing Allowance system of Housing Benefit: Interim report (RR 838): summary*, May 2013