Send to: Local Authority, enclosing HB letter

Date

Dear Sir/Madam

**Re:** (*Full name & address of claimant)*

**Appeal against reduction in housing benefit**

**Claimant benefit number:**

**National Insurance number: \_\_ \_\_ \_\_ \_\_ \_ / \_\_ \_\_ \_\_ \_\_ \_**

We are writing on behalf of the above named client and enclose a signed form of authority from her in order to appeal against the decision detailed below. Please note that an appeal does not have to be signed by the appellant for it to be valid - it is sufficient that it is accompanied by valid authorisation: *CO v LB Havering* [2015] UKUT 28 (AAC).

Our client appeals against the decision of [ / / ] reducing her housing benefit as a result of the application to her award of the reduced benefit cap. Our client is a lone parent with a youngest child born on [ / /].

**Background**

The reduction of the appellant’s housing benefit is as a result of the application of the lowered benefit cap. The lowered cap is enacted in Part 8A of the Housing Benefit Regulations 2006 (“the 2006 Regulations”) pursuant to sections 96 and 97 of the Welfare Reform Act 2012 (“the 2012 Act”), as amended by the Welfare Reform and Work Act 2016 (“the 2016 Act”) and the Benefit Cap (Housing Benefit and Universal Credit) Regulations 2016 (“the 2016 Regulations”). The 2016 Regulations came into force on 7 November 2016.

The lower benefit cap limits the total amount that the appellant can receive in benefits to [£20 000/£23 000 ***delete as appropriate depending on whether outside or inside London***] per annum, irrespective of the number of children she has, the age of her youngest child or what work conditionality she is subject to under normal welfare benefit (income support/jobseeker’s allowance/universal credit – ***delete as appropriate***) requirements.

[***Any relevant personal circumstances of client showing that she and her children are suffering real harm now – this goes to the LA not objecting to the lateness of the appeal***]

**Grounds of Appeal**

The application of the lower benefit cap to the appellant and the reduction of her weekly housing benefit is unlawful for the following reasons set out in summary below:

1. it is incompatible with the appellant’s and her children’s rights under Article 14 ECHR, in conjunction with Article 8 ECHR, not to be unlawfully discriminated against in the enjoyment of their right to family life; and
2. it is irrational and/or has been made without having regard to material considerations including, the fact that the level of the cap is set with reference to an entirely arbitrary figure; no account is taken of the in-work benefits that working households earning £20 000 a year would receive; no account is taken of family size; [no account is taken of the statutory presumption that it is unreasonable to expect the appellant to work because of her caring responsibilities/no account is taken of the fact that the appellant is already fully complying with her statutory obligations to be available for and actively looking for work – ***delete which alternative as appropriate***]

We are aware that a previous challenge to the original benefit cap (set at a level of £26 000 for lone parents across the country) was unsuccessful before the Supreme Court (*R (on the application of SG and others) v SSWP*). However, subsequent judgments since then (including of the Supreme Court), make it clear that the decision in *SG* is very much limited to the specific way in which the case was argued before the Supreme Court, namely a breach of the lone parents’ right not to be discriminated against in respect of welfare benefits (i.e. Article 14 read with Article 1, Protocol 1). Indeed, in a decision of the High Court of 22 June 2017 (*R (on the application of DA) and Others v SSWP* [2017] EWHC 1446 (Admin)), it was held that the lowered benefit cap, as it applies to lone parents with a youngest child under 2, is unlawful and in violation of their and their children’s right not to be discriminated against in respect of their right to private and family life contrary to the Human Rights Act 1998 (Article 14 read with Article 8).

The same arguments accepted by the court in *DA,* namely the real hardship being caused by the lowered cap and the difficulty in lone parents with children under 2 of finding sufficient work which they can combine with their childcare responsibilities to enable them to escape the cap mean that the cap is not in the best interests of those children,apply equally to lone parents irrespective of the youngest age of their children. It follows that the discriminatory impact of the cap on lone parents and their children (approximately 67% of all capped families are lone parents) cannot be justified given that it is not in the best interests of the children affected whatever their age. Indeed, evidence shows that the lowered cap is already having a stark adverse effect on vulnerable non-working families.

We are aware that there is currently another case before the High Court, *R (DS and others) v Secretary of State for Work and Pensions,* challenging the lawfulness of the cap as it applies to lone parents (whatever the age of their youngest child) and, in the alternative, lone parents with children under 5 or under 3 and, in each case, their children. A hearing date is still awaited in this case.

**Delay in bringing the appeal**

While our client is outside the one month time limit for filing this appeal, she has acted as quickly as possible on realising that she may be able to appeal her housing benefit reduction on human rights grounds. Given this prompt action, together with her circumstances set out above, we trust that you will not raise any objection to this appeal being brought out of time.

In the event that you are not prepared to reinstate our client’s housing benefit to the level to which she would be entitled in the absence of the cap, we would request that you forward our client’s appeal to HMCTS without delay. Furthermore, in light of the case currently before the High Court, we would suggest that the most appropriate cause of action would be for the Tribunal to stay this appeal behind the case of *DS* and for the local authority not to oppose such a stay.

Yours faithfully

Name

Agency