

# MAKING INTERVENTIONS WORK

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## ADDED VALUE

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An intervention is appropriate when a case raises issues of public significance that go beyond the interests of the parties involved.

(Public Law Project – Third Party Interventions, A Practical Guide)

Specialist knowledge, research and submissions can be put forward to help the court reach a decision, usually one which will have an impact on many others not involved in the case.

Some examples from Shelter's experience....

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## **R (DA, DS & others) v SSWP** [2019] UKSC 21

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DA - a challenge to the cap as it applied to lone parents with children under 2  
 DS - a challenge regarding the legality of the cap as a whole, as well as its application to lone parents with children under 5

Discrimination challenge - lone parent families with young children and the children themselves are disproportionately affected by the cap. The majority of lone parents are women.

SSWP's policy aims:

1. Achieving fairness
2. Work incentivisation
3. Fiscal savings

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## **R (DA, DS & others) v SSWP - Shelter's intervention**

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- 1. FOI requests** to every local authority in England regarding the operation of the benefit cap in their area and their use of Discretionary Housing Payments.
- 2. Modelling** - we examined how the cap would impact families with 2, 3, 4 & 5 children across England. For each Broad Rental Market Area, we looked at how the cap would affect families if they lived in the smallest home they could without overcrowding and lived in a home in the cheapest part of their local private rented market (the 30<sup>th</sup> percentile).
- 3. The results of a survey of private landlords** to identify and examine barriers to moving and attitudes of landlords
- 4. An analysis of quarterly benefit cap statistics** published by the DWP

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## R (DA, DS & others) v SSWP - Shelter's intervention

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This analysis enabled us to show whether families could avoid the cap by moving to another area or by overcrowding into homes that are unsuitably small.

We were also able to show the extent of the impact of the cap on families' ability to meet their essential living needs after housing costs (e.g utilities and food), and measure how far below the relative poverty line families would find themselves under the cap.

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## R (DA, DS & others) v SSWP - Shelter's intervention

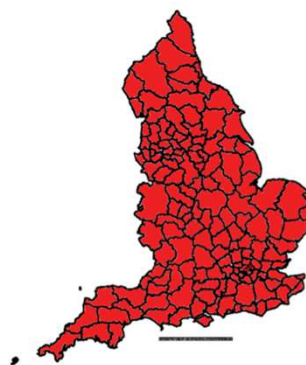
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Areas in England where one parent families with three children would be affected by the benefit cap:

Previous cap of £26,000



Present cap of £23,000



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## R (DA, DS & others) v SSWP - Shelter's intervention

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Proportion of England where one-parent families cannot avoid the cap by overcrowding:

Family size	Original Cap	Revised cap
2 children in a 1-bedroom home	0%	5%
3 children in a 2-bedroom home	9%	92%
4 children in a 2-bedroom home	37%	100%
5 children in a 3-bedroom home	100%	100%

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## R (DA, DS & others) v SSWP - Shelter's intervention

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Proportion of England where the cap would leave a one-parent family with income (after housing costs) below the relative poverty line:

Capped and under the poverty line	2 children	3 children	4 children	5 children
Under the poverty line	19%	100%	100%	100%

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## **Samuels v Birmingham City Council** [2019] UKSC 28

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Ms Samuels was evicted due to rent arrears and applied as homeless to BCC.

Arrears had built up as there was a shortfall of some £150 per month between her housing benefit and her rent.

BCC found that she had become intentionally homeless. They considered that she could have used her subsistence benefits to top up her rent.

Joint intervention with Child Poverty Action Group

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## **Samuels v Birmingham City Council - Shelter's intervention**

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Evidence focused on:

1. Current context of housing affordability, including impact of welfare reform and the LHA freeze
2. Local authority approaches to making decisions on affordability and the impact on children

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## Samuels v Birmingham City Council - Shelter's intervention

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### Impact of LHA freeze:

As of April 2018, for a 2 bedroom home, there is a shortfall between max LHA and actual cost of renting in the lowest 30% of the market in **95% of areas** in England (BRMAs).

From April 2018, for a 3 bed home, LHA rates fall short of rents in **97% of areas** in England.

Shortfalls are large: in over a quarter of areas, families in need of a 2-bed face a shortfall of at least **£100pcm**.

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## Samuels v Birmingham City Council - Shelter's intervention

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### Local authority decision making:

Comparison of 'reasonable monthly expenditure' for couple families using the three most common benchmark figures:

Couple household	Standard Financial Statement	Association of Housing Advice Services (AHAS)	Common Financial Statement
with one child	£1,224.00	£927.33	£1,391
with two children	£1,426.00	£1,133.17	£1,593
with three children	£1,628.00	£1,339.00	£1,795
with four children	£1,830.00	£1,544.83	£1,997
with five children	£2,032.00	£1,755.67	£2,199

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## **Samuels v Birmingham City Council - Shelter's intervention**

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Final judgment:

*[The intervener's] evidence shows what appears to be an unfortunate lack of consistency among housing authorities in the treatment of "affordability", and a shortage of reliable objective guidance on reasonable levels of living expenditure. It is to be hoped that, in the light of this judgment, the problem will be drawn to the attention of the relevant government department, so that steps can be taken to address it and to give clearer guidance to authorities undertaking this very difficult task.*

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## **Al Ahmed v Tower Hamlets LBC** [2020] EWCA Civ 51

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What constitutes a "good reason" for a delay in bringing an appeal under section 204 of the Housing Act 1996?

Mr Al Ahmed had filed his appeal after the 21 day deadline, due to difficulties finding a legal aid housing solicitor to represent him.

The court gave guidance on this issue, including a recognition of the difficulties faced by homelessness applicants in bringing an appeal under s.204 of the 1996 Act without legal advice and representation, and of the difficulties they may face in finding someone to provide those services under legal aid, especially as a result of the post-LASPO shrinkage of the housing advice sector.

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## **Al Ahmed v Tower Hamlets LBC – Shelter’s intervention**

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Evidence focused largely around High Court finding that the requirements of bringing a homelessness appeal were not ‘especially sophisticated or taxing’ and that a litigant in person could therefore have issued an appeal within the 21-day time limit:

- Practical difficulties in bringing an appeal in person
- General difficulties faced by those who are homeless and the circumstances that homeless applicants often have to contend with;
- Difficulties in finding a legal aid housing solicitor
- Freedom of Information request results in respect of the advantages to homeless applicants of being legally represented when bringing a section 204 appeal, and the impacts on court time and costs

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## **Al Ahmed v Tower Hamlets LBC – Shelter’s intervention**

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*[Shelter’s evidence] presents a bleak picture of the difficulties faced by homelessness applicants in bringing an appeal under s.204 of the 1996 Act without legal advice and representation, and of the difficulties they may face in finding someone to provide those services under legal aid, especially as a result of the post-LASPO shrinkage of the housing advice sector. Everything will of course depend on the circumstances of the individual case, but it would be both surprising and unfair if difficulties of that kind could not be taken fully into account and given appropriate weight in the assessment of whether there was a good reason for failure to bring an appeal in time and, to the extent that it arises as a separate issue, for delay in applying for permission to bring an appeal out of time.*

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## **Ncube v Brighton & Hove City Council** (2021) EWHC 578 (Admin)

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Mr Ncube was a refused asylum seeker, who was street homeless during the Covid 19 lockdown and the 'Everyone In' initiative. The council refused to accommodate him under Housing Act 1996 Part 7, as he had no recourse to public funds due to his immigration status.

Did councils have alternative powers to provide accommodation?

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## **Ncube v Brighton & Hove CC – Shelter's intervention**

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Shelter provided evidence including:

- summary of various reports r.e rough sleeping during the pandemic
- results obtained from a FOI request to local authorities, asking for their 'move on' plans for rough sleepers accommodated under the Everyone In initiative
- a summary of anonymous case studies which illustrated the range of different circumstances in which people were homeless with NRPF from March 2020
- Home Office delays - an overview of the delays experienced by those with NRPF in applying to have that condition lifted and the delays experienced by asylum seekers in applying for accommodation and support under s4 Immigration and Asylum Act 1999;

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## **Ncube v Brighton & Hove CC - Shelter's intervention**

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*Shelter's evidence indicates that all of these classes of person are found within the rough sleeping population, with EEA nationals of unknown status (who are believed principally to consist of those who are not exercising EU Treaty rights and so lack a right to reside) comprising the largest cohort: see Polly Neate at [30]-[43]. Some of these people may have other forms of support such as under s.17(1) Children Act 1989 and interim support under ss. 95 and 98 of the Immigration and Asylum Act 1999. It was submitted by Shelter (para. 44 of its skeleton argument) that those who are eligible for assistance may encounter very considerable delays or may have remedies against the Home Office by way of judicial review which may be more theoretical than real.*

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## **ISSUES TO CONSIDER**

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What is the 'added value?'

Witness statement or intervention?

Involve potential interveners as early as possible.

Obtain consent from all parties, or at least no objections.

Costs neutral basis. The intervener agrees to bear their own costs and not seek costs from other parties, who in turn agree not to seek costs from the intervener.

If permission is granted, agree length of submissions and the timetable.

Pro bono assistance?

Ending well - what follow up work is needed after final judgment?

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**THANK YOU**

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