

## Written evidence from Child Poverty Action Group (COV0109)

### Submission to the Joint Committee on Human Rights inquiry into the human rights implications of the government's response to the covid-19 pandemic.

#### Introduction

1. Child Poverty Action Group works on behalf of the more than one in four children in the UK growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good. We provide training, advice and information to make sure hard-up families get the financial support they need. We also carry out high profile legal work to establish and protect families' rights.
2. All human rights are indivisible and, at the international level, the UK has ratified both the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights ('ICESCR'). Nevertheless, while the majority of the rights in the ICCPR are to be found in the European Convention on Human Rights and, as such, have been incorporated into domestic law by the Human Rights Act, there is no such equivalent incorporation for economic, social and cultural rights, other than the right to education.<sup>1</sup> While economic, social and cultural rights are justiciable, legal challenges to violations of such rights, domestically at least, have largely had to be brought through the rubric of Article 14 discrimination claims inevitably limiting the nature and scope of such legal challenges.<sup>2</sup>
3. These submissions focus on one particular aspect of the government's response to the covid-19 crisis, namely the measures taken (as well as not taken) to provide for those losing income as a result of the lockdown and its unprecedented impact on employment, schooling and childcare and access to, as well as the cost of, food and other basic necessities.
4. The operation of a social security system is one of the ways in which the government seeks to fulfil its obligations in respect of the human right to social security (recognised in Article 9 ICESCR as well as Article 26 of the UN Convention on the Rights of Children) and also the human right to an adequate standard of living (Article 11 ICESCR and Article 27 UNCRC).
5. The covid-19 pandemic has seen a surge in individuals who are, possibly for the first time in their working lives, having to claim social security benefits. Many though are finding that the safety net is lacking. While additional money<sup>3</sup> has been put into the social security system and the DWP has processed an unprecedented number of new claims for universal credit<sup>4</sup>, there are certain aspects of the government's response which raise clear economic and social rights concerns, including, but not limited to, the right not to be discriminated against in relation to the right to social security and an adequate standard of living. For

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<sup>1</sup> Found in Art 2, Protocol 1 to the European Convention on Human Rights.

<sup>2</sup> A recent and notable exception is the finding that the 'no recourse to public funds' policy breaches Article 3 ECHR: <https://dpglaw.co.uk/high-court-ruling-over-no-recourse-to-public-funds-delivers-further-blow-to-home-offices-discredited-hostile-environment-policy/>

<sup>3</sup> <https://www.gov.uk/guidance/coronavirus-covid-19-what-to-do-if-youre-already-getting-benefits>

<sup>4</sup> <https://hansard.parliament.uk/commons/2020-05-04/debates/CEE2A905-7589-40D0-B14C-219F12CCB242/Covid-19DWPUpdate>

reasons of space, we are unable to address all of these aspects but have limited our submission to some of the most concerning.<sup>5</sup>

### *Benefit cap*

6. The benefit cap is a limit on the total amount of benefits that a household can receive. It is currently set at £20,000 for families living outside of London and £23,000 for families living in London. This includes housing costs and is irrespective of the number of children. While a legal challenge to the lowered benefit cap was unsuccessful in the Supreme Court in May 2019,<sup>6</sup> the Court recognised that the cap pushed families affected by it well below the poverty line. In its defence of the cap, the DWP relied on the main aim of the benefit cap being work incentivisation, with the ability to escape the cap by working a minimum amount being central to the design of the scheme, and also on the availability of childcare to help those who might otherwise find it difficult to combine work and childcare responsibilities (particularly lone parents).
7. With large scale job losses as a result of the covid-19 crisis, limitations on the ability to look for or take up what limited job openings may exist, together with the lack of available childcare with schools and nurseries closed and children not being able to be looked after by family or friends outside of the immediate household, there is simply no place for a work incentivisation measure during the current crisis. Additionally, for those who are furloughed, receiving only 80% of their basic salary risks bringing them below the minimum earnings level to exempt them from the cap even though they remain in-work. While some claimants who would otherwise be capped will be able to avail themselves of the grace period<sup>7</sup>, there are many who will not be able to e.g. term time only employees and those who have recently returned to work after taking time out to look after young children.
8. The benefit cap already disproportionately affects lone parents, of whom the overwhelming majority are women.<sup>8</sup> At the same time children of lone parents are twice as likely to live in poverty than children in couple families.<sup>9</sup> Yet the failure to lift the cap during the covid-19 crisis risks more lone parents being subject to it notwithstanding that they are in-work (albeit on reduced pay) or that there is simply not the combination of work and childcare available for them to be able to escape the cap.
9. For both couple and single parent families, the reduction in the household's total benefit entitlement, already set at subsistence levels, when alternative means of obtaining a livelihood are severely limited is in breach of the right to social security as well as the right to an adequate standard of living.

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<sup>5</sup> In terms of CPAG's expertise, these submissions do not address the closely linked right to housing (expressly protected under the right to an adequate standard of living) and the impact of covid-19 on homelessness.

<sup>6</sup> *R (DA and DS) v Secretary of State for Work and Pensions* [2019] UKSC 21.

<sup>7</sup> An exemption from the cap for those with a full 12 months' employment history at the minimum earnings level.

<sup>8</sup> Latest statistics show that 72% of those who had their benefits capped at February 2020 are lone parents:  
<https://www.gov.uk/government/statistics/benefit-cap-number-of-households-capped-to-february-2020>

<sup>9</sup> Research by Gingerbread, the charity for lone parents, shows that in 2018 nearly half (49%) of children in single parent families lived in poverty, compared with one in four of those in couple families (25%):  
<https://www.gingerbread.org.uk/policy-campaigns/living-standards-and-poverty/>

### *Two child rule*

10. The two child rule<sup>10</sup> is a limit on the total number of additional amounts payable in means tested benefits for children to the first two children (save for some limited exceptions).<sup>11</sup> The principle aim of the policy is to ensure that people in receipt of benefits face the same financial choices in deciding how many children they have as those who support themselves solely through work. Yet nobody could have planned for the covid-19 pandemic. Families who considered themselves able to provide for 3 or more children have overnight found themselves without work and having to claim welfare benefits only to discover that they are not entitled to anything for their third and subsequent children. No child has any control over the financial position of the family they are born into and no child has any responsibility for the covid-19 pandemic or influence over the government's response to it, yet uniquely in the UK's social security system some children are denied the right to any form of means tested benefits. The failure to end the two child policy, not least during the life of the pandemic and its economic fallout, is a clear breach of the right of every child to social security and an adequate standard of living.

### *Discrepancies in rates between benefits*

11. In response to the covid-19 crisis, additional money was put into the social security system with the standard allowance (the amount paid to adults) in universal credit and working tax credit increasing by approximately £1000 per annum. While welcome, there has been no equivalent uprating of the same allowance in income support, jobseekers allowance or employment and support allowance. While it is open to most people on those legacy benefits, which universal credit is replacing, to claim universal credit and so avail of the higher allowance, this is not an option for certain disabled people.
12. Currently a disabled person on legacy benefits who is in receipt of the severe disability premium is prevented from being awarded universal credit. Such a group is therefore unable to access the increased allowance despite that uprating being made in clear recognition of increases to daily living costs for many as a result of the current crisis. The most straight forward solution to avoid such discriminatory treatment would be to increase legacy benefits in line with universal credit.

### *EU nationals*

13. For EU nationals, entitlement to welfare benefits in the UK is dependent on their having a right to reside (unless they have been granted settled status). The most common way of obtaining a right to reside is through being in employment. However, the current situation means that employment opportunities are severely curtailed at the same time as border restrictions prevent such EU nationals being able to return to their home countries. The lack of any temporary suspension of the right to reside requirements means that they are therefore left without access to subsistence benefits and face the risk of destitution in clear breach of the right to social security and the right to an adequate standard of living.

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<sup>10</sup> Like the benefit cap, it has been the subject of litigation in the domestic courts and a final appeal in the Supreme Court is listed for October 2020.

<sup>11</sup> The two child policy does not apply to child benefit.

## *Conclusion*

14. Covid-19 itself does not affect us equally.<sup>12</sup> Changes to the government's welfare benefits response are urgently needed to ensure that, unlike austerity, the economic fallout of covid-19 is not borne by the poorest and most vulnerable members of our society in breach of their economic and social rights.

22/05/2020

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<sup>12</sup> See, for example, <https://www.ifs.org.uk/inequality/chapter/are-some-ethnic-groups-more-vulnerable-to-covid-19-than-others/>