



UK GOVERNMENT CONSULTATION ON EXCEPTIONS TO THE REFORMS WHICH LIMIT THE CHILD ELEMENTS IN CHILD TAX CREDIT AND UNIVERSAL CREDIT TO A MAXIMUM OF TWO CHILDREN

ENGENDER RESPONSE, NOVEMBER 2016

1. CONTEXT AND BACKGROUND

Engender welcomes the opportunity to respond to this consultation on exceptions to reforms limiting child elements in Child Tax Credit (CTC) and Universal Credit (UC). Given the severe impact on women's equality, and the complexity of arrangements with devolved services in Scotland, however, we do not consider a one month consultation period adequate for hearing expert views on the proposals. We hope that the UK Government will consider extending its consultation arrangements to hear from a wider range of voices. In the meantime, this initial response sets out our broad thinking about the ways in which the current proposals to limit support to a maximum of two children is damaging for women and gender equality.

We fundamentally reject the principles behind both reducing vital social security for mothers of more than two children, and making an exception where a child is conceived as a result of rape.

The theoretical underpinnings of this policy border on population control, with the assumption being that women or families will "take responsibility" to avoid or terminate pregnancies that may lead to the birth of a third or subsequent child. As contraception is not infallible, this introduces economic coercion to terminate pregnancies that runs the risk of breaching low-income women's reproductive rights. It will push women and children into poverty and have a

disproportionate impact on minority ethnic women, women of some faiths, and refugee women, all of whom are more likely to have three or more children.¹

Engender has recently consulted widely with women across Scotland as we have developed responses to Scottish Government proposals on the use of its new social security powers. Details of the two-child limit and the “rape clause” have drawn universally negative responses.

RAPE CLAUSE

We are particularly concerned about the individual and population-level effects of so-called “rape clause”. This exemption from the two-child limit if a third or subsequent pregnancy is the result of rape is abhorrent and unworkable.

This clause will re-traumatise individual women who have survived rape by forcing them to disclose sexual violence at a time and context not of their own choosing, on pain of deeper impoverishment. Even when women control the circumstances around disclosure, this does not necessarily lead to positive outcomes. There is evidence, for example, to suggest that disclosure that elicits what are perceived to be unsupportive responses can exacerbate post-traumatic distress disorder in survivors of sexual violence, and increase a sense of shame and isolation². Therapeutic and support responses to rape are framed around restoring a sense of control to survivors, and the national service standards that govern rape crisis centres in Scotland, England, and Wales specifically refer to this in standard 2.4. This states that services will “promote the human rights of women and support the ability of women to have great control and choice in their lives”³.

This clause may also imperil women’s access to justice by underscoring widely-held myths about women’s propensity to lie about rape, by seeming to provide a financial incentive for women to do so. Scottish Social Attitudes Survey data

¹ WBG (2015) *The impact on women of July budget 2015: A budget that undermines women’s security*

² Jacques-Tiura, A. J., Tkatch, R., Abbey, A., & Wegner, R. (2010). Disclosure of Sexual Assault: Characteristics and Implications for Posttraumatic Stress Symptoms Among African American and Caucasian Survivors. *Journal of Trauma & Dissociation : The Official Journal of the International Society for the Study of Dissociation (ISSD)*, 11(2), 174–192

³ <http://rapecrisis.org.uk/userfiles/PDFs/RCNSS.pdf>

suggests that nearly a quarter of people in 2014 agreed with the statement that “women often lie about being raped”⁴, despite a complete lack of evidence to support this. Crown Prosecution Service analysis of “false accusations” in 2013 identified that only a handful of instances existed where a malicious and untrue allegation of rape had been made⁵. So entrenched are myths about mendacious accusations of rape, that research on jury deliberation suggests that criminal injuries compensation applications can be interpreted by juries to suggest that women have made “false allegations” in order to gain financially.

It should also be noted that surviving sexual violence comes with a financial penalty for women. There are costs involved with criminal justice proceedings, mental health care, transport, childcare, lost wages, housing, interrupted education, damage to property, and more intangible costs stemming from a decreased quality of life and wellbeing. Economic impacts can be felt both in the immediate aftermath of rape, and across women’s lives. We do not have a model of costs for individual victims in the UK context, but American figures from 2009 suggested that survivors of rape bear lifetime out of pocket and opportunity costs of \$138,310⁶. Even taking account of the US’s divergent healthcare costs, this figure bears no relation to the Criminal Injuries Compensation Scheme 2012 tariff, for which the payment in respect of rape is £11,000 with increments for disabling injury⁷, which is only payable if the woman or man has reported the rape to the police.⁸ Rather than coercing survivors of rape to disclose to statutory agencies, the social security system should be ensuring that women have an adequate standard of living while they recover from violent crime that the state has failed to prevent.

⁴ Scottish Government (November 2015) *Scottish Social Attitudes Survey 2014: Attitudes to violence against women in Scotland*

⁵ http://www.cps.gov.uk/publications/research/perverting_course_of_justice_march_2013.pdf

⁶ <http://www.soc.iastate.edu/staff/delisi/murder%20by%20numbers.pdf>

⁷ Payments increase up to a maximum of £44,000, which is only payable in the instance that women report the rape to the police, and that penile penetration has occurred that has resulted in serious internal bodily injury with additional permanent disabling severe mental illness confirmed by psychiatric prognosis.

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243480/9780108512117.pdf

WOMEN'S SOCIAL SECURITY

These proposals take place against a backdrop of declining social security for women in the UK, and this context must be front and centre of analysis emerging from this consultation. Welfare reform and the UK government's wider austerity agenda are having a grotesquely disproportionate impact on women's access to resources, security and safety. Over the decade of austerity, from 2010 to 2020, 86% of net 'savings' raised through cuts to social security and tax credits will come from women's incomes.⁹ This is because of systemic issues that see women twice as dependent on social security as men.

Women are twice as likely to give up paid work in order to become unpaid carers¹⁰ and 92% of lone parents are women. Women have less access to resources, assets and occupational pensions than men, with the pay gap persisting at 32.2% for women's part-time work in Scotland¹¹ and women accounting for 66% of the paid workforce living in poverty in Scotland.¹²

Women's economic independence is undermined by endemic violence against women, which includes domestic abuse and sexual violence. Within all of this, many women who experience multiple discrimination are even more at risk of extreme hardship; disabled women, women from minority ethnic communities, rural women, and refugee women are all impacted by policy changes and cuts to services in particular ways.

As a result of welfare reforms women have been placed at greater risk of deeper and sustained poverty. By 2020, women who are lone parents will experience an estimated loss of £4,000 per year, a 20% drop in living standards and a 17% drop in disposable income.¹³ Where women's disposable income is reduced, spending on children decreases and links between women's and child poverty are widely recognised.¹⁴

These proposals will impoverish women yet further.

⁹ Women's Budget Group (2016) *The impact on women of the 2016 Budget: Women paying for the Chancellor's tax cuts*

¹⁰ The National Carers Organisations (2013) *Submission to the Expert Group on Welfare*

¹¹ Close the Gap: <https://www.closesthegap.org.uk/news/blog/new-gender-pay-gap-remains-stubbornly-high/> (accessed 9/11/16)

¹² CPAG (2014) *Poverty in Scotland 2014: The independence referendum and beyond*

¹³ Women's Budget Group (2016) *A cumulative impact assessment of ten years of austerity policies*

¹⁴ CPAG (2012) *Ending child poverty by 2020*

WOMEN'S HUMAN RIGHTS

The UK Government has a wide range of commitments to advance gender equality and to eradicate violence against women and girls. These are being undermined by current social security policy and will be further undermined by these proposals, both to limit support to a maximum of two children and to make exemptions on the grounds of rape. The UK also has legal obligations as a signatory to the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the UN International Covenant on Economic, Cultural, and Social Rights (ICESCR), and the European Convention of Human Rights (ECHR).

In 2013, the CEDAW committee recommended that the UK continuously assess the impact of austerity measures set out in spending reviews on women's rights.¹⁵ The Committee on Economic, Social, and Cultural Rights echoed this call in its concluding observations of 2016, reminding the UK Government that austerity "measures must be temporary, necessary, proportionate and not discriminatory, must not disproportionately affect the rights of disadvantaged and marginalized individuals and groups and respect the core content of rights"¹⁶. It called for the UK Government to "conduct a comprehensive assessment of the cumulative impact of [austerity] measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities, that is recognized by all stakeholders¹⁷". The Committee went on to say that it "is particularly concerned about the adverse impact of changes and cuts on the enjoyment of the rights to social security and to an adequate standard of living by disadvantaged and marginalized individuals and groups, including **women**, children, persons with disabilities, low-income families and **families with two or more children**" [emphasis ours].

This call for cumulative impact assessment by two separate UN committees has not resulted in such impact assessments taking place. The policy proposal

¹⁵ UN CEDAW committee (2013) Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland

¹⁶ UN Committee on Economic, Social, and Cultural Rights (2016) Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland

¹⁷ *Ibid.*

under review here demonstrates why such robust impact assessment is necessary if women's rights are not to be breached.

We are also concerned about the impact on women's and children's rights under Article 8 of the European Convention of Human Rights, which provides: "Everyone has the right to respect for his private and family life, his home and his correspondence." We can envisage multiple scenarios where the fact that a child has been conceived as a result of rape may not be widely known within a family, and the wider community, and that the compulsion present in this clause will breach the privacy of women and families. We do not believe that the UK Government has demonstrated that compelling women to disclose that they have sustained a pregnancy that began in rape is in "the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

We suggest that the UK Government is not meeting its international obligations or its domestic commitments with regards to women's equality and rights with this proposal.

INTERNATIONAL EXPERIENCE OF "FAMILY CAPS"

A comprehensive exploration of so-called "family cap" policies was not possible in the timescale of this consultation. We are also mindful that policy implementation in other jurisdictions is situated within contexts that do not make direct comparison straightforward. However, evidence from the United States, where many states introduced "family caps" on social security during President Clinton's reform of federal social security arrangements may be illustrative.

The deployment of the "family cap" in the United States is predicated on the racialized myth of the "welfare queen", a fictitious woman who had multiple children in order to gain access to increased social security payments. US policymakers, like UK Government, intended their policy to constrain the reproductive choices of social security recipients. While Engender and others view this as a breach of women's reproductive rights, the evidence summarised by briefings produced for the University of Berkeley's Center on Reproductive Rights and Justice and the Guttmacher Institute suggested that it

did not succeed even on its own terms. National studies failed to find that women receiving social security had more children, and then failed to find a clear relationship between “family caps” and a reduction in births^{18 19}. Elena Gutiérrez writes that “the one national study that showed links between family caps and lower birthrates discovered that they only existed in states that provided public funding for poor women’s abortions”²⁰.

Instead, studies of “family cap” policies found greater poverty, driving worse health and social outcomes for children; increased risk of homelessness and other hardships associated with extreme poverty. Women whose entitlements were capped reported higher levels of housing and food insecurity, struggled to pay for transport and utilities, and found buying nappies and clothes for their children challenging.

As “family cap” policies have increasingly been seen as failing, legislation enabling them has been repealed in Illinois, Maryland, Wyoming, and California. Other states have created exemptions to “family caps” that enable local derogation.

2. SPECIFIC QUESTIONS

Q6. Do you have views on using a third party evidence model?

Compelling women, on pain of impoverishment, to disclose sexual violence that has been perpetrated against them cannot be made more palatable by use of a third party evidence model.

Coercing disclosures is intrinsically traumatic, and this trauma cannot be wholly mitigated by involving third party trauma-sensitive organisations in the process. Recovery from sexual violence necessitates women having trust in their support services, and this is inimical to a dual role as an agent of a process that determines the extent to which they will be impoverished.

Q7. As part of exploring a third party evidence model approach, we have been considering the list of possible third parties and would be grateful for advice as to whether this is the right list, or whether there are other professionals and bodies that should be added:

¹⁸ https://www.law.berkeley.edu/files/bccj/CRRJ_Issue_Brief_MFG_Rule_FINAL.pdf

¹⁹ <https://www.guttmacher.org/sites/default/files/pdfs/pubs/tgr/01/1/gr010110.pdf>

²⁰ https://www.law.berkeley.edu/files/bccj/CRRJ_Issue_Brief_MFG_Rule_FINAL.pdf

- **Health care professional (including GPs, other doctors and nurses, midwives and health visitors)**
- **Police officers**
- **Registered social workers**
- **Registered counsellors**
- **Independent Sexual Violence Advisers**
- **Other organisations such as specialist rape charities approved by the Secretary of State (in the case of Universal Credit) or by the Treasury (in the case of Child Tax Credit)**

All of the professionals listed in this question are intended to build relationships with service users that are centred on the needs of those services users, and their children. Most will work for public authorities, and are therefore required to act to realise women's and children's rights. They should not be acting in a way that will breach women's right to privacy, to an adequate standard of living, to healthcare, or to be acting outwith their professional competence in restricting access to social security.

Additionally, we note that this list does not appear to be sensitive to the Scottish context. Independent Sexual Violence Advisers do not operate in Scotland, and it does not seem particularly helpful for the Secretary of State or Treasury to take decisions on whether specific Scottish services or agencies are suited to the task of functioning as third party reporters.

FOR FURTHER INFORMATION

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ABOUT ENGENDER

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. We are a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.