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Dear Colleague

## Child Tax/Universal Credit – Two child cap exemption Statement for Health and Social Work professionals in Scotland

In April 2017 the UK Government introduced a 2 child cap for on child tax credit, universal credit and income support. These measures included an exemption for children ‘born as a result of non-consensual conception’ (the so-called ‘rape clause’).

The Scottish Government has made its position clear, that the cap is punitive and unethical, and that there are no circumstances under which a woman should have to disclose she has been raped or subject to coercion and control in order to access welfare benefits.

The UK Government has made provision for claims for exemptions to be certified by certain people including healthcare workers and social workers. We have not been able to ascertain that the UK Government has consulted with any professional body.

We understand that any professional approached to assist with a claim may feel that they are put in a very difficult position and we have been asked to offer some guidance.

Consequently, the guidance in this letter was developed in consultation with BMA, RCM, RCN, SASW, SWS, SSSC, GMC, COSLA and NHS Health Scotland.

The guidance has been endorsed by COSLA who are also fundamentally opposed to the UK Government’s policy.

Please distribute this advice to those members of staff who may find themselves being approached to assist with a claim for an exemption to the two child cap.

Yours sincerely

*Catherine Calderwood*  
**Chief Medical Officer**

*Fiona McQueen*  
**Chief Nursing Officer**

*Iona Colvin*  
**Chief Social Work Adviser**

**From the Chief Medical Officer  
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### Addresses

#### For action

NHS Board Chief Executives  
Directors of Nursing and Midwifery,  
NHS Boards  
Medical Directors, NHS Boards  
Directors of Public Health  
General Practitioners  
Practice Nurses  
Chief Officers of Social Work

#### For information

Chief Executive, NHS Health  
Scotland  
NHS 24  
Scottish General Practitioners  
Committee

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### Further Enquiries

Roderick Duncan



**Scottish Government**  
**Child Tax/Universal Credit – Two child cap exemption**  
**Statement for Health and Social Work professionals in Scotland**

The Scottish Government consider the UK Government policy of imposing a two child cap on child tax credit, universal credit and income support with 'dependants allowance' to be punitive and unethical. It is our view that there are no circumstances under which a woman should have to disclose she has been raped or subject to coercion and control in order to access welfare benefits for her child. We will continue to oppose the UK Government's position in principle and are committed to seeking change to the policy. Professional bodies have also been united in condemning this provision which puts health and social work practitioners in an invidious position.

Whilst it is in effect, however, our position is underpinned by 2 key principles:

- the rights and safety of survivors of rape and their families are prioritised at all times;
- local authorities and the NHS are committed to protecting members of their workforce who may be asked to support a woman's claim.

## **Background**

As of 6 April 2017 the UK Government introduced a cap on Child Tax Credit, Universal Credit and Income Support providing payment only for two children of a claimant, although Child Tax Credit will continue to be paid for all children born before that date. A number of exceptions to the cap are included, one of which allows women to claim for children 'born as a result of non-consensual conception' (the so-called 'rape clause'). This is defined as a child '*likely to have been conceived either*':

- as a result of a sexual act to which the woman didn't or couldn't consent, or
- at a time when the woman was in an abusive relationship, under ongoing control or coercion by the other biological parent of the child

A woman can qualify for the exception whether or not there has been a criminal conviction or court case. However, she cannot be currently living with the child's other biological parent.

To apply, a woman has to complete a 'Support for a child conceived without your consent' form '**with the help of an approved third-party professional**'. The UK Government consider this to be either a healthcare professional (likely to be doctors, health visitors, midwives, and nurses), a registered social worker or a specialist third sector support agency, such as Rape Crisis in Scotland.

Full [details](#) of the policy can be found on the HMRC website.

## **Responding to a request**

Despite our opposition to the policy, we support a woman's right to apply for exemption if she wishes. Although UK Government guidance identifies health and social work practitioners as having a role in supporting claimants to complete this form, neither the relevant underpinning tax credit and social security legislation nor the supporting UK Government guidance create any legal obligation to do so. You continue to be bound primarily by your own professional code of practice when deciding whether or not to support an application

(and therefore would need to be able to justify a decision to support or not to support that application).

DWP has produced [guidance](#) on completing the form for both claimants and those approving a claim.

Please be aware, if asked to complete a '*Support for a child conceived without your consent*' form with a survivor of rape or abuse:

- **Your role is not to investigate whether rape or coercion have occurred**

For the purposes of a claim you are not expected to determine whether or not the woman has experienced sexual violence or coercion. Nor is it appropriate for you to ask for details of the abuse – this may cause further distress to the woman. According to DWP guidance:

**'Please note that ticking a box only confirms that the claimant's circumstances, as described by them, are consistent with the statement next to the box. There is no requirement on the approved agencies or workers to seek any further evidence to confirm the circumstances'.**

This means you are not required to assess the woman's account, you are expected to note whether what she says happened is consistent with either of the two criteria noted above.

- **Disclosure of sexual violence or coercion can be traumatic or distressing.**

This exemption requires women to disclose sexual violence or coercion, and identify one or more of their children as conceived as a result of abuse. Disclosure is difficult in most circumstances. However, the need to do this to access welfare benefits may additionally be painful for survivors. How you respond may therefore be crucial both in avoiding re-traumatising the woman and in helping to improve her longer term health and well-being. It may also allow you the opportunity to help her access other sources of support.

If asked for assistance, ensure you have time to listen and respond sensitively to the request. Offer further referral to other services if needed and if required (for example referral to Protection of Vulnerable groups processes).

## Common questions

- *My colleagues in England say the third sector will fill in the form, isn't this the case in Scotland too?*

Rape Crisis Scotland and Scottish Women's Aid have indicated that their members do not feel able to act as third party assessors in these circumstances. They will, however, provide support to any woman referred to them.

- *What if I don't feel able to respond to, or support, a woman's request?*

Neither the relevant underpinning tax credit and social security legislation nor the supporting UK Government guidance create any legal obligation on an approved person to support a claim being made. However, you need to be mindful of the potential harm to the relationship between you and the woman that may result from a refusal. If you cannot respond, please ensure that the woman understands why this is the case, and refer her on to other sources of support. You continue to be bound

primarily by your own professional code of practice when deciding whether or not to support an application.

- *If I am approached to complete the form with a survivor of rape, should I inform the police that a crime has been committed?*

No. There is no requirement in Scotland to report any disclosure of abuse made by a woman. If, however, you have child or adult protection concerns then you should follow your usual local procedures.

As noted above professional bodies have been united in condemning this provision which puts health and social work practitioners in an invidious position. The following organisations have issued statements on the policy:

Royal College of Midwives: [https://www.rcm.org.uk/sites/default/files/RCM%20Briefing%20-%20The%20child%20tax%20credit%20cap%20and%20the%20%E2%80%98rape%20clause%E2%80%99%20A4%202pp\\_2.pdf](https://www.rcm.org.uk/sites/default/files/RCM%20Briefing%20-%20The%20child%20tax%20credit%20cap%20and%20the%20%E2%80%98rape%20clause%E2%80%99%20A4%202pp_2.pdf)

Royal College of Nursing: <https://www.rcn.org.uk/about-us/policy-briefings/br-0317>

British Medical Association: <https://www.bma.org.uk/-/media/files/pdfs/collective%20voice/influence/uk%20governments/westminster/bma-briefing-child-tax-and-universal-credit-two-child-limit-policy-march2018.pdf?la=en>

British Association of Social Workers: <https://www.basw.co.uk/news/article/?id=1626>

### **Professional codes of practice can be found at:**

The Code-Professional Standards of Practice and Behaviour for nurses and midwives:  
<https://www.nmc.org.uk/standards/code>

General Medical Council : <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice>

British Association of Social Workers: <https://basw.co.uk/codeofethics/>

### **Guidance**

Guidance on responding to victims of domestic abuse and rape and sexual assault is available at:

What health workers need to know about rape and sexual assault:  
<http://www.healthscotland.scot/publications/rape-and-sexual-assault-guidance>

What health workers need to know about domestic abuse:  
<http://www.healthscotland.scot/publications/domestic-abuse-guidance>

## Links to the Policy and Guidance

UK Government Guidance, 'Child Tax Credit: exceptions to the 2 child limit':

<https://www.gov.uk/guidance/child-tax-credit-exceptions-to-the-2-child-limit>

Form: 'Support for a child conceived without your consent':

<https://www.gov.uk/government/publications/support-for-a-child-conceived-without-your-consent>

'Guidance for third parties':

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621426/ncc1-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621426/ncc1-guidance.pdf)

## Help and information

### Rape Crisis Scotland

Information about rape and sexual assault and main contact for network of local centres

[www.rapecrisisscotland.org.uk](http://www.rapecrisisscotland.org.uk)

**Rape Crisis Helpline** 08088 01 03 02 (daily, 6pm-midnight)

General enquiries:

0141 331 4180 (Mon-Fri, 9.30am-4.30pm)

### Scottish Women's Aid

Information and training on domestic abuse and main contact for the network of local

Women's Aid groups: 0131 226 6606

[www.scottishwomensaid.org.uk](http://www.scottishwomensaid.org.uk)

### Scottish Domestic Abuse and Forced Marriage Helpline

0800 027 1234 (24 hours) [www.domesticabuse.co.uk](http://www.domesticabuse.co.uk)

### Scottish Women's Rights Centre

Free legal advice and information service available for women aged 16+ who have been affected by violence.

**Helpline:** 08088 010 789

Tuesdays 6-9pm; Wednesdays 1.30-4.30pm; Fridays 10am-1pm

Book an appointment in Glasgow: 0141 552 3201

Book an appointment in Hamilton: 01698 527 003

<https://www.scottishwomensrightscentre.org.uk/>