Update on developments re: two child cap and rape clause

Rape clause:

1. **In Feb Women’s sector representatives met with officials from Department for Communities with responsibility for welfare policy.**

During discussions DfC outlined the procedures they are putting in place to ensure that no staff member in a JBO or official in DfC ever has access to the complete set of identifying information regarding a claim made under the non-consensual conception exemption.

Women’s sector reps noted these steps alone are not enough to reassure women that their claim can be made without information being reported to the police, especially when there is a very off-putting ‘disclaimer’ on the claim form. While this paragraph might be intended to clarify the law it would actually serve to prevent women from making a claim if they were afraid of information being passed on.

Action: DfC officials agreed to look at the wording on the form and see if they could find better language that would not create an extra barrier to women who have a right to claim.

1. **In April Attorney General for NI published human rights guidance on how to apply section 5 of the Criminal Law Act when information about a rape is revealed as part of a benefit claim.**

It is ‘intended to assist in PPS consideration of potential prosecution under section 5 of the Criminal Law Act (Northern Ireland) 1967 where information about conception by rape has been disclosed as a result of a claim for social security or child tax credit or where information about a person’s rape is revealed in an application by that person for anonymous registration on the electoral roll.’

This guidance basically concludes that in the vast majority of cases there would be no prosecution of someone taking information from a victim who fails to pass it on to the police, because to do so would not pass the ‘public interest test’. This deals very effectively with the fear many professional bodies had about participating in the 3rd party assessor role – however professional bodies like the NI Association of Social Workers and the Royal College of Midwives still oppose the two child cap policy as a whole.

**UPDATE as of 4/6/18 from DfC**

*‘We are certainly looking again at our forms and guidance, particularly in light of the Attorney General’s guidance.* ***I don’t have a definite timescale for changes at this stage****: we were awaiting publication of the Attorney’s guidance and this was only launched a week or so ago, but since then* ***we have been actively looking at amendments to aim to provide greater reassurance for claimants****, third party approvers and our own staff.’*

Two child cap:

1. A **legal challenge** to the policy brought by the Child Poverty Action Group in England **was not upheld**, except for the situation regarding kinship care. The court upheld their challenge to the arrangement by which a kinship carer would be subject to the cap if they had their own biological children after having become kinship carer for other family members but would not be subject to the cap if this happened in the reverse order. This aspect of the policy was found to be in breach of human rights and DWP has since scrapped it and all kinship carers are now exempt. CPAG intend to **appeal** the case. **Organisations in NI are also actively exploring possible legal challenges or interventions.**
2. The UN’s examination of the UK government under the Convention on the Elimination of all forms of Discrimination Against Women is starting in late July when officials must attend the ‘pre-sessional working group’ in Geneva. The report by women’s civil society organisations, as well as the report from the NI Human Rights Commission highlight the negative impact of the 2 child cap on women and their children and we will be encouraging the UN Committee to address this harmful policy in their recommendations to the UK government.
3. Westminster lobbying continues with organisations from NI meeting MPs and DWP officials to outline the specific impact of this policy on families here, given our different demographics and barriers like the lack of abortion access.
4. A number of demonstrations were held around the UK on the anniversary of the implementation of the 2 child cap with organisations from NI having been invited to speak at these.
5. A **civil society working group** on the two child cap has been set up and had its first meeting in May. This includes women’s sector organisations, children’s organisations, human rights and equality organisations, academics, independent advice providers, trade unions and professional bodies. This group will be meeting regularly and **providing strategic policy advice** on the impact of the two child cap.