

The Rape Clause: How Health and Social Care Professionals Administer the 'Non-Consensual Conception Exception' to the Two-Child Limit

In 2017, the UK government introduced a series of exceptions to its 'two-child limit' on 'Universal Credit'. The most controversial of these exempts claimants from the limit if they can demonstrate – to the satisfaction of the Secretary of State – that their third or subsequent child was conceived non-consensually. Many detractors expressed outrage at this 'rape clause', arguing that it was unacceptable for the state to coerce survivors of sexual violence into reliving their traumatic experiences, simply to claim subsistence level benefits.

Whilst government data indicates that over 3,100 rape clause exceptions have been granted since 2017, a lack of research into the implementation of this measure means we know next to nothing about how it works in practice. Given the stakes of the rape clause, this gap in our knowledge is significant.

Dr Rebecca Hewer's recently published research report - **The Rape Clause: How Health and Social Care Professionals Administer the 'Non-Consensual Conception Exception' to the Two-Child Limit** – begins the work of addressing this gap. It offers crucial insights into how health and social care practitioners tasked with 'evidencing' rape clause eligibility, might ascertain and certify such eligibility in practice. It presents original findings from interviews conducted with a cross-section of health and social care professionals working in Scotland's central belt, and raises significant concerns regarding the front-line administration of this policy.

Key Findings

- Professionals **know very little** about the rape clause or the demands made of them as 'approved third party' evidence gatherers. This undermines appropriately sensitive and effective case handling.
- Professionals need **significant time and tailored resources** to prepare to certify rape clause eligibility. There are very few tailored resources available, and the health and social care sector is stretched to capacity.
- Many survivors will encounter **foreseeable obstacles when trying to access rape clause support**, e.g., waiting lists, non-clinical triage, and restrictive service eligibility criteria.
- **The state has failed to identify a clear standard of 'non-consensuality'**, for the purposes of rape clause administration. They have left this challenging task to the discretion of individual practitioners.
- Most professionals say they would take a **light touch approach** to certifying rape clause eligibility, assuming high levels of survivor credibility and defining sexual violence in accordance with a survivor's subjective experience. **This calls into question the necessity of a third-party evidence model.**
- Professionals **lack confidence in their ability to contradict a survivor's account of sexual violence** and do not consider themselves qualified to deny certification of rape clause eligibility.
- Professionals' reflections on how they would contradict a survivor's account – if they felt obliged to do so – reveal **scope for mishandled cases and inequitable provision**. This is largely due to confusion about what constitutes rape, alongside rape myth acceptance, and the failure of the state to provide a threshold definition of non-consensuality.
- A large subset of practitioners, working for statutory agencies **would feel duty bound to take action with respect to adult and child safeguarding if they heard a disclosure of sexual violence**, which would likely necessitate invasive enquiries and unwanted interventions, undermining survivor autonomy.

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Evidence-Based Recommendations

Given ethical concerns about the rape clause, and its demonstrable unworkability, this report recommends the **repeal of the two-child limit**.

In the interim (if repeal of the two-child limit is delayed)

- Given that practitioners either credential (rather than verify) survivor's disclosures of sexual violence or run the risk of using contested and variable definitions of rape to deny certification, this report strongly recommends that the state **move away from using a third-party evidence model to demonstrate rape clause eligibility and towards a self-certification model**.

In the interim (if a self-certification model is not adopted)

- Given recurrent access challenges related to current 'approved third parties', and the importance of permitting survivors to choose in whom they confide, this report recommends that the Secretary of State immediately **increase the kind of professionals with approved third-party status**.
- Given that knowledge and understanding of the rape clause appears to be low, and that this may frustrate sensitive and effective case handling, this report recommends that the state **build rape clause knowledge and capacity among approved third-party professionals**.

Download the full report here:

<https://edin.ac/42ry6mW>