



A question of responsibility:
*problems with child benefit and
income support when women and
their children flee domestic violence*

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Introduction

Child Poverty Action Group has been providing welfare rights advice to those referred to the Tower Hamlets Food Bank, run by the First Love Foundation¹, since August 2013. In the course of this work, which is funded by the Pears Foundation and the Big Lottery Fund, our advice workers have supported a number of women who have fled domestic abuse with their children and moved into a refuge, only to find that they are unable to obtain benefits for themselves and their children for three months or more. This can leave them completely without income at a time of acute vulnerability.

The benefits system is supposed to provide a safety net at times of crisis, but is failing these women and their children who have already experienced the trauma of domestic abuse. At a time when they most need support and stability, they can instead become destitute and reliant on foodbanks. This may also leave them at increased risk of returning to an abusive ex-partner just in order to survive.

Although domestic violence was only given as the reason for 1.52% of referrals, by those referring individuals and families to Trussell Trust foodbanks for the year to April 2016², that still means that over 16,000 people experienced a food crisis said to be as a result of domestic violence. Indeed, the Trussell data probably understates the number of referrals where the interaction of benefit rules and events consequent on fleeing domestic violence caused a food crisis: that is because referrers can only tick one option and in many cases may have indicated that the reason for referral was 'benefit delay'. CPAG is clear that fleeing a violent relationship does not cause destitution; that is caused by the failure of the benefits and tax credit system to deal appropriately with women in this situation. Therefore describing the main problem as 'benefit delay' is an appropriate choice for referrers.

The national *Ending Violence Against Women and Girls Strategy*, released earlier this year, commits the government to 'ensure that women get the support they need to ensure long-term changes to their lives and the lives of their children'.³ Ensuring that women who have fled abuse can support themselves and their children financially is a critical part of this.

In this report we call for one simple amendment to the regulations governing entitlement to income support and a change to the procedure followed when HMRC assess new claims for child benefit made by women who are victims of domestic violence. These two simple changes would go a long way towards ensuring that these women are able to access benefits promptly and are not tipped into financial crisis and extreme hardship.

¹ <https://www.firstlovefoundation.org.uk/>

² Statistics available here: <https://www.trusselltrust.org/2016/04/15/foodbank-use-remains-record-high/>

³ <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

Two problems identified

On fleeing domestic abuse with her children, a parent with no or low income would typically wish to claim:

- child benefit;
- child tax credit;
- housing benefit (whether she lives in a refuge or private accommodation); and
- income support, if any of the children are under five;⁴

Most families in this situation already have a claim for child benefit, and in many cases child tax credit. While a couple they will have chosen which parent received these payments (not necessarily the same parent for both). But award of child benefit, child tax credit, income support and extra amounts of housing benefit when parents have separated depends on an official assessment of who is 'responsible' for children. Only one parent can receive each benefit. This assessment is made separately for each benefit, and each has slightly different rules for determining who is the 'responsible' parent.

The two main problem areas are:

- the current procedures adopted by the Child Benefit Office in assessing competing claims for child benefit, which cause long delays and therefore have a knock on effect of precluding entitlement to income support (see below); and
- the fact that responsibility for a child within the income support rules is determined by who receives the child benefit.

We address each of these problems in more detail below and put forward our proposed simple and workable solutions which would help prevent destitution of children and women in this situation.

Child Benefit

The problem

In most cases where a family has a man and a woman as parents, then the woman will be the one who claims child benefit. Indeed, the law⁵ provides that where a husband and wife live together and both make claims for child benefit the benefit is awarded to the woman (this reflects the currently reality that in most such families it is the woman who provides most of the direct support for the children). If this is what has happened and the couple separate with the children remaining with their mother, then there is no problem - she continues to receive the child benefit. However, in a situation where the man has been the one getting the child benefit, problems can arise for women who leave relationships. Unsurprisingly, it is not uncommon that in relationships characterised by violence the abusive man has managed to get the child benefit paid in his name.⁶ It can take weeks or months for

⁴ If the woman was living in an area with full service for universal credit, she would claim this instead of the three means tested benefits listed (although at present there are very few full service areas)- as seen below universal credit should not reproduce the problems this report identifies and the amendments we propose would align the legacy benefit system (which most women have to rely on) with the, largely forthcoming, universal credit.

⁵ S.144(3) and Sch. 10, paras 1 to 3 Social Security Contributions and Benefits Act 1992 ("SSCBA 1992")

⁶ In fact one in five people in the UK are estimated to have faced financial abuse in an intimate relationship, with over 80% of victims also experiencing other forms of abuse, according to research by Refuge and The Cooperative Bank, available at <http://www.refuge.org.uk/files/Money-Matters.pdf>

an ex-partner's claim to child benefit to be ended and a new award cannot be made in favour of the mother until that is done.

The biggest problem arises where women need to claim income support but have not yet had their child benefit claim accepted, as income support can only be awarded to the parent who has the child benefit claim in place. While women wait weeks for their child benefit claim to be accepted they are unable to claim income support – which is intended to meet basic costs of living for lone parents with very young children who are not working while they care for their children (this is discussed further below). This may leave them with no income whatsoever.

Claiming child benefit has always been a somewhat lengthy process, and can only be done by post which can make it slower. But the process for ending one claim (in this case the abusive partner's) and starting another (in this case the victim who has fled) is particularly long drawn out and inflexible even when it ought to be clear that a mother has left her partner following abuse, and is now supporting her children alone (for example when this is verified by the women's refuge where she is living).

The information in the box below is based on CPAG's experience in supporting women through this process and on information provided by HMRC to CPAG by email, in response to a request for clarification of their procedures.



See also the Citizens Advice report *Controlling money, controlling lives Financial abuse in Britain*, November 2014 which makes clear that that financial control, itself a form of abuse, often co-exists alongside violent abuse. https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/controlling-money-controlling-lives--1-.pdf

The process for dealing with competing claims

When a recently separated parent makes a new claim for child benefit in her name, HMRC is unable to accept her claim until the existing recipient's (i.e. her ex-partner's) is terminated⁷. HMRC explained to CPAG that the following steps are taken in such cases.

- First, HMRC writes to the existing recipient asking him to complete a form (CH102) confirming that the children have indeed moved and that he is willing to surrender entitlement to child benefit. He will have a month and a day to complete the form. If he sends back the form agreeing to surrender his claim, or if he does not respond within this time limit, his claim will automatically be terminated and the mother's claim accepted.
- If the abusive partner returns the form without surrendering his claim, i.e., maintaining that he still has responsibility for the children, HMRC will make an assessment of which parent should receive child benefit. Under child benefit, 'responsibility' for the child derives from either living with the child or contributing financially to the child's upkeep.⁸ Even if the child no longer lives with the abusive parent, the child can still be *treated as* living with him for eight weeks under child benefit rules, so he is likely to be technically eligible to receive child benefit.⁹ The mother is also eligible to receive it because she is living with the children. In this case HMRC must determine which parent has priority, determined by criteria set out in the regulations.¹⁰ In most cases the parent who is actually living with the child will be awarded child benefit, although such a claim would not have priority until 3 weeks after it had been made (see below).
- If the two parents provide conflicting information (for example if the abusive partner maintains that the children are still living with him, or that the separation is temporary), HMRC will have to investigate in order to determine where the child is living and which parent has priority. HMRC has confirmed to CPAG that this can take up to 12 weeks in some cases, but was not willing to provide the procedures or detailed timescales for resolving rival claims.
- In this worst case scenario therefore, it can take in excess of 16 weeks for a woman to start receiving child benefit: (ie up to one month and a day for the existing recipient to complete HMRC's form CH102 and up to 12 weeks while HMRC investigates where there is conflicting information).

Even where everything goes smoothly (for example the man accepts he is no longer responsible for the children), there is a three week period *after* the new claim for child benefit is made where the previous recipient remains entitled.¹¹ This means that even in straightforward cases it takes at least three to four weeks for a mother in this situation to start receiving child benefit.

⁷ S.144(3) SSCBA 1992

⁸ S.143 SSCBA 1992 – 'For the purposes of this Part of this Act a person shall be treated as responsible for a child in any week if–

(a) he has the child [or qualifying young person] living with him in that week; or (b) he is contributing to the cost of providing for the child [or qualifying young person] at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child [or qualifying young person] for that week.'

⁹ S.143(2) SSCBA 1992 – 'Where a person has had a child [or qualifying young person] living with him at some time before a particular week he shall be treated for the purposes of this section as having the child [or qualifying young person] living with him in that week notwithstanding their absence from one another unless, in the 16 weeks preceding that week, they were absent from one another for more than 56 days not counting any day which is to be disregarded under subsection (3) below'

¹⁰ Sch. 10 SSCBA 1992

¹¹ Sch. 10 para 1 SSCBA 1992

The solution

CPAG recommends that HMRC procedures should be changed for child benefit claims made in respect of children for whom someone else already has an award.

Guidance should be issued to advise staff to accept reasonable evidence that a woman lives with her children in a refuge following domestic abuse (e.g. a letter from the refuge staff) as sufficient to demonstrate that she is both responsible for, and living with, her children and that therefore her claim ought to take priority over her ex-partner's.

The professionals who work in women's refuges supporting victims of domestic violence should be trusted by the Child Benefit Office (as indeed they are by the DWP¹²).

This change in procedure would substantially eliminate current delays in establishing entitlement, and allow payments of child tax credit to begin when the woman and her children move to the refuge and payments of child benefit to begin three weeks later.

As these benefits can only be paid to one person at a time in respect of a particular child, this would mean that payments to the ex-partner would stop. CPAG is mindful that, in many cases of competing claims, justice requires that the existing recipient be given a chance to make representations about why their award should be continued before it is ended. However, in the cases identified here, where the claim for child benefit made by the woman is supported by third party evidence that she has been a victim of domestic violence and the children are living with her, action needs to be taken to ensure an injustice is not done to the parent and child fleeing domestic abuse. CPAG suggests that HMRC could follow a truncated procedure in such cases - perhaps attempting to contact the existing recipient by phone to take representations and if no response is obtained then immediately moving to end the award and notify the existing recipient they are making the decision and of his right to challenge it and the procedure for doing so.

Client A

Client A, had to attend Tower Hamlets Foodbank in May 2015. She had separated from her violent husband. She had three young children. Her former partner was in receipt of the child benefit for the three children.

Client A had made a claim for child benefit on 13 May 2015. She provided all relevant documents with the claim (birth certificates etc.). She explained that the children were no longer living with their father. The documents were returned to her on 20 May 2015.

On 26 May 2015, the Child Benefit Office wrote to Client A's violent ex-partner asking him whether he was still responsible for the children.

The Child Benefit Office repeatedly refused to discuss the matter with CPAG when it contacted them to try and get the issue resolved.

Child Benefit was only awarded to Client A on 18 June 2015, when CPAG warned that legal action would be taken if a decision was not made. Had this action not been taken, the Child Benefit Office would have waited until 29 June 2015 before an award could have been made.

Client A was unable to claim Income Support during the time it took to process her child benefit application.

¹² Thus where evidence from a Woman's Refuge is provided that the claimant has experienced Domestic Violence then regulation 14A(5) and (9) of the Jobseeker's Allowance Regulations 1996 (SI No. 207) allows the claimant to be exempt from the labour market conditions for JSA for a 13 week period.

Income support

The problem

Income support is a benefit available to women who are lone parents of children aged under five and who have inadequate income and are not in remunerative employment. If there is an existing claim for child benefit in respect of the children concerned, the parent receiving child benefit is automatically considered to be responsible for the child: even if the officers of the DWP fully accept that the children are living with the mother they are required by the legislation to treat her as not responsible for those children and hence as not a lone parent.¹³ Only when no one has made a claim for child benefit can they actually consider the question of where the child lives.¹⁴

This means that the delays for such women in claiming child benefit, explained above, become incredibly problematic for women who would otherwise be entitled to income support: for example a woman with two children not only loses out on the £34.40 child benefit a week but she and her children, are also deprived of the £73.10 a week income support. If there are also problems with the tax credits such a woman might have no income at all (for the 16-week period identified above). Even with a child tax credit award in place this is only £117 a week for a family of three.

For many of these women the only option available if they wish to have a more adequate income is to claim jobseeker's allowance, which comes with a work-search requirement and sanctioning regime that is not appropriate for lone parents of very young children, let alone those who have just escaped domestic abuse. It is possible for women to have the work-search requirement lifted for thirteen weeks if they have recently experienced domestic violence, but this does not always happen in practice as women will not automatically be told that the easement can be made even if they disclose that they have suffered abuse.¹⁵ If that happens, then they have to ask for this rule to be applied to them explicitly, which is only possible if they know about it. Furthermore, thirteen weeks may not be enough time for them to start receiving income support, as both our experience working with abuse victims and information provided by decision-makers shows.

Client B

Client B separated from her husband in circumstances of domestic violence and was living in a woman's refuge.

Client B's husband was in receipt of the child benefit for the children. Client B had put in her claim for child benefit but until that was sorted out Client B was unable to qualify as responsible for her children. Client B was therefore forced to claim jobseeker's allowance despite the fact that she had three young children aged under five.

¹³ Reg 15(1) Income Support (General) Regulations 1987 (SI No. 1967) ("IS Regs") – 'Subject to the following provisions of this regulation, a person is to be treated as responsible for a child or young person for whom he is receiving child benefit [...]'

¹⁴ Reg 15(2)(a) IS Regs

¹⁵ <http://www.fawcettsociety.org.uk/wp-content/uploads/2015/02/Wheres-the-Benefit-An-Independent-Inquiry-into-Women-and-JSA.pdf>

Client C

Client C separated from her violent ex-partner in mid-March. He was receiving child benefit for the children. She was assisted to claim child benefit by the refuge support worker at the end of March. Client C was seen at Tower Hamlets Foodbank around this time.

Because Client C's violent ex-partner was still receiving the child benefit we advised that she would have to claim jobseeker's allowance as she would not count as responsible for her children and thus could not claim income support as a lone parent.

Client C's child benefit was not awarded until the middle of May. Client C then had to go through the process of ending her claim for jobseeker's allowance and claim income support - meaning she again had a period where she was without adequate income whilst the awards were switched over.

The solution

In our view the first priority is to alter the test of responsibility for children in income support such that it is possible for women who have fled abusive partners to make a claim irrespective of whether or not they have been awarded child benefit. To achieve this requires an amendment to regulation 15 of the Income Support (General) Regulations 1987 (SI No. 1967).

Box A gives the current wording of Regulation 15.

Box A. Income support regulation 15: current wording

- 15 (1)** Subject to the following provisions of this regulation, a person is to be treated as responsible for a child or young person for whom he is receiving child benefit
- (2) In the case of a child or young person in respect of whom no person is receiving child benefit, the person who shall be treated as responsible for that child or young person shall be-
- (a) Except where sub-paragraph (b) applies, the person with whom the child or young person usually lives;
 - (b) Where only one claim for child benefit has been made in respect of the child or young person, the person who made that claim.

As indicated above, no other benefit has such a rigid rule on who counts as responsible for a child which requires Decision Makers to ignore facts they know to be true and results in such problems. We recommend that the income support rules be brought into line with the approach taken in housing benefit regulations, such that responsibility for a child would depend on the claimant 'normally living with' the child. An award of child benefit would then only be determinative when the child normally lives with both parents for an equal time or where there is a genuine question about with whom the child is living. The relevant part of regulation 20 of the Housing Benefit Regulations 2006 (SI No. 216) is shown in box B.

Box B: Housing benefit regulation 21: current wording**Circumstances in which a person is to be treated as responsible or not responsible for another**

20.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him [...].

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
 - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
 - (ii) in any other case the person who has the primary responsibility for him

For housing benefit, then, the question of responsibility for children can have an effect on entitlement (for example it will determine the appropriate ‘size criteria’ by which maximum housing benefit is set). But for housing benefit, as the regulation states, the responsible parent is defined simply as the parent with whom the children are ‘normally living’.¹⁶ Which of the parents any award of child benefit has been made to is only considered if equal time is spent with each parent, or if there is ‘a question’ as to with whom the children normally reside.¹⁷ In domestic violence cases where there is clear evidence on that issue from a refuge then there is no such question.

DWP guidance issued to housing benefit authorities makes clear that determining which parent the child is ‘normally living with’ is a straightforward judgement, advising that: ‘it is for the authority to decide on the merits of each case where a child or young person usually lives. In most cases this will be clear. Ignore any temporary absence from home’.¹⁸

It is our experience that housing benefit authorities consider a letter from a refuge or hostel, confirming that a woman lives there with her children, as sufficient evidence that the children are normally living with her. Awards at the appropriate rate (i.e. including sufficient rooms so the size criteria are applied correctly) can therefore be made quickly to women who have fled abusive relationships to refuges - in many cases in less than 14 days. Indeed DWP guidance on the application of the shared accommodation rule in housing benefit explicitly notes that a letter from a hostel is usually sufficient supporting evidence for a claim.¹⁹

The housing benefit model, which largely ignores receipt of child benefit in determining a claimant’s entitlement in favour of asking simply who the children live with, suggests an approach to determining entitlement to income support which would reduce delay, support the wellbeing of vulnerable families and reduce the risk that domestic violence survivors and their children are forced to return to an abusive ex-partner for financial reasons.

¹⁶ Reg 20(1) Housing Benefit Regulations 2006 (SI No. 213) (“HB Regs”) ‘Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him and this includes a child or young person to whom paragraph (3) of regulation 19 applies.’

¹⁷ Reg 20(2)(a) HB Regs

¹⁸ Part C, para 1.90 *Housing Benefit and Council Tax Benefit Guidance Manual*

¹⁹ *Housing Benefit and Council Tax Benefit circular A12/2011*

Alongside the amendment to the regulations, we recommend that the *Decision Makers' Guide* is altered to instruct DWP staff to accept written confirmation from a refuge that a woman is living there with her children as a result of domestic abuse, as sufficient evidence that the children are 'normally living with' her unless there is significant cogent evidence to the contrary.

The existing wording of the income support regulations is plainly designed to mean that decision makers do not have to actually make judgements about where a child is living but can instead use the child benefit receipt as a proxy measure. This change would not have workload or resource implications:

- decision makers within income support teams already make decisions on this very question in cases where there is no child benefit claim. It would not therefore be a new task for them;
- the number of cases where it is in doubt with whom the child lives will be relatively small- in general there will be a child benefit claimant with whom the children clearly live and no evidence to the contrary;
- this is also a workload which the housing benefit authorities manage routinely in deciding responsibility for children;
- similarly, decision making on tax credits allows the decision makers to look at who is responsible in a sensible manner. For tax credits, person is deemed responsible for a child if the child is 'normally living with' them²⁰. If separated parents have shared custody and a child normally lives with both, HMRC considers who has 'main responsibility' and thus to whom to award child tax credit²¹.
- Under universal credit regulations, a person is responsible for any children they 'normally live with'.²² Where the child normally lives with more than one adult, the deciding factor is which parent has the 'main responsibility' for the child. If the adults cannot agree, who has main responsibility is determined by the DWP²³. Given that the universal credit rules do not require decision makers to find the child benefit recipient is the one responsible for the children, then clearly developing government policy is already that this is a more sensible approach going forwards.
- In fact, changing the regulations would align this legacy benefit with universal credit (other changes to legacy benefits to make them more similar to universal credit have been explained on that basis – e.g., the increase in waiting days or the reduction of housing benefit backdating).

Conclusion

Amending the income support rules as suggested, and changing the approach of the Child Benefit Office when a competing claim for child benefit is submitted with cogent evidence that the children are living with the claimant in a refuge would ameliorate the problems identified in this report. CPAG's view is that this would be the responsible thing for the government to do.

²⁰ Reg 3(1) *Rule 1* Child Tax Credit Regulations 2002 (SI No. 2007) ("CTC Regs")

²¹ Reg 3(1) *Rule 2* CTC Regs.

²² Reg 4(2) *Rule 1* Universal Credit Regulations 2013 (SI No. 376) ("UC Regs") - A person shall be treated as responsible for a child or qualifying young person who is normally living with him (the "normally living with test").

²³ Reg 4(4) and (5) UC Regs