

By Frank Hobson

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The impact of the two-child limit in Universal Credit



Summary

- 1 Background
- 2 Debate and evidence of impact

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Summary

Universal Credit awards can include additional amounts for each child or “qualifying young person” in education up to the age of 19 in a claimant’s household. This is similar to Child Tax Credit, which it is replacing. Child-related additions have long existed in the benefits system, and are designed to contribute to the extra costs of bringing up children, and to reduce child poverty.

As part of a series of measures announced in the Budget after the 2015 General Election to make savings in the welfare system, a “two-child limit” was imposed on these additional amounts. The policy was designed both to reduce the cost of the benefit system and to ensure households on means-tested benefits would “face the same financial choices about having children as those supporting themselves solely through work.”

With some exceptions, households with a third or subsequent child born from 6 April 2017 claiming Universal Credit or Child Tax Credit no longer receive additional amounts for these children. Plans to apply the two-child limit to all new Universal Credit claims from February 2019, including to children born before April 2017, were abandoned.

Exceptions are made for some claimants who did not choose to have a third or subsequent child, for example due to multiple births or non-consensual conception, and to encourage adoption where children might otherwise be looked after by a local authority.

The policy only applies to children born from 6 April 2017, so not all families with a third or subsequent child claiming Universal Credit will be affected until the mid-2030s. In April 2021, 317,500 (38%) of the 836,020 families with three or more children claiming Universal Credit or Child Tax Credit were affected.

Child Benefit, and help with childcare costs for working claimants in Universal Credit and Working Tax Credit, is not impacted by the policy.

Debate and evidence of impact

The two-child limit, and the operation of the exception for non-consensual conception in particular, has been controversial since it was introduced. The debates surrounding the introduction of the policy are explored in the Commons Library’s briefing covering the introduction of the [two child limit in tax credits and Universal Credit](#).

In 2019 the Work and Pensions Committee published two reports looking into the policy, the second of which recommended that it be abandoned. The Committee questioned the rationale, noting that many families would not know whether they might have to claim benefits in future when they have children, and that many pregnancies are not planned. They also worried that problems accessing affordable childcare would prevent families from making up shortfalls in income through work.

At the time of the Committee's inquiries, little quantitative research had been published looking at the impact of the two-child limit. However, the Committee heard predictions from expert groups that it would lead to significant increases in the numbers of children living in poverty, and that certain minority groups would be disproportionately impacted. The Government defended the policy by reiterating the original justifications, stressing the "considered and compassionate" exceptions, and pointing to other policies designed to help families with the cost of living.

Since then more families have been affected, and evidence has begun to emerge of the impact of the two-child limit, including:

- Relative poverty among larger families with three or more children, which has been rising since 2013, has continued to increase since April 2017. The Resolution Foundation estimates that nearly half of families with three or more children were in relative poverty in 2021/22, up from a third in 2012/13. The Government points to falling absolute poverty over the period, and questions the use of relative poverty measures.
- Fertility among larger families, which some had expected to be impacted by the two-child limit, has not decreased significantly in the years from 2017.
- Some evidence has been published noting increasing abortion rates among larger families since 2017, though a conclusive link to the two-child limit has been questioned.

A challenge to the lawfulness of the two-child policy was brought by two single mothers and their children, arguing that it unlawfully discriminates against certain groups, in breach of the European Convention on Human Rights (ECHR). Following an earlier unsuccessful appeal of the policy to the Court of Appeal, the case was unanimously dismissed by the Supreme Court in July 2021.

Two different families filed complaints with the European Court of Human Rights in December 2021.

1 Background

1.1 What is the two-child limit?

Households claiming Universal Credit or tax credits can get [extra amounts](#) if they have children. For children born from 6 April 2017 the two-child limit was introduced, generally limiting this additional support to the first two children in a household. With certain exceptions, families claiming these means-tested benefits can only get extra support for their first two children.

The two-child limit only applies to means-tested benefits and tax credits and does not apply to Child Benefit. Neither does it apply to help with childcare costs or some additional amounts provided for disabled children within Universal Credit.

How are children included in means-tested benefits

Universal Credit (UC) is a means-tested benefit which is replacing six existing benefits and tax credits for working-age households. It is available to those who are in work but on low incomes, as well as those who are unemployed or whose capability for work is limited by sickness or disability. It was introduced by the Coalition Government from 2013 to simplify and streamline the benefits system, improve incentives for work, tackle poverty, and reduce fraud and error.

For households who qualify, Universal Credit payments consist of a “standard allowance” plus additional “elements” designed to meet specific costs. These may be included on account of housing costs, disability and ill health, and caring responsibilities.

This briefing covers the child element, which households can receive for each child aged 16 or under, or a “qualifying young person” aged between 16 and 19 and in full time education or training.

The Universal Credit child element in 2022/23 is £244.58 a month for each child not affected by the two-child limit. This is increased by £132.89 if the child is disabled, or £414.88 if they are severely disabled.

A larger amount of £290 is available for only or eldest children born before 6 April 2017.¹ This was removed as part of the same package of reforms that introduced the two-child limit.²

The total amount of the standard allowance and additional elements a household receives is reduced by a 55p “taper rate” for every pound a household earns above a “work allowance”.

Support for children through Child Tax Credit is structured in a broadly similar way, with additional “child elements” of £2,935 a year in 2022/23 for each child or qualifying young person, and additional amounts for disabled children.³

1.2 Why was the two-child limit introduced?

Child-related additions have existed in means-tested benefits⁴ going back to the 1930s, and were present in some earlier local Poor Law relief as far back as the 17th century.⁵ Since additions were generally provided support on a per-child basis, awards for large families could be significant.

There had at various points been efforts to cap the level of benefits resulting from this through policies such as the “wage stop”, which was in place from the 1930s to the 1970s. The wage stop generally prevented claimants of means-tested benefits from receiving more than they might expect to earn in their usual occupation.⁶ The [benefit cap](#), introduced from 2013,⁷ caps the total amount most families can receive in benefits. Since larger awards are made to families with children, disabled people, and high housing costs, these policies have already had the effect of reducing benefit awards for some larger families.

The two-child limit was announced in the 2015 Summer Budget, along with a series of other measures designed to reduce welfare spending in line with

¹ A similar “family element” of £545 a year in Child Tax Credit is also available for children born before 6 April 2017.

² Removing the family element in tax credits (and the corresponding first child premium in UC) for new claims from April 2017 was announced in the Summer Budget 2015, and legislated for in [sections 13 and 14 of the Welfare Reform and Work Act 2016](#).

³ A more detailed exploration of support through tax credits can be found in section 1 of [The two child limit in tax credits and Universal Credit](#), Commons Library briefing CBP-7935

⁴ And, during some periods, contributory benefits.

⁵ See Joan C. Brown, *Family Income Support Part 2: Children in Social Security*, 1984, Chapter 1: A Reluctant State

⁶ See Joan C. Brown, *Family Income Support Part 2: Children in Social Security*, 1984, Chapter 1: A Reluctant State; and *Welfare Reform and Larger Families*, [Capping benefits in the past: the Wage Stop](#), June 2021

⁷ And reduced as part of the same package of measures that introduced the child limit. See [Effect of Welfare Reform and Work Act 2016](#), Commons Library debate pack CDP 2018/72

commitments in the 2015 Conservative Party manifesto.⁸ The two-child limit was expected eventually to yield savings of around £3 billion a year.⁹

Beyond savings, the intention was to ensure that families claiming benefits would “face the same financial choices” as those who are in work who, unless they are also claiming benefits, do not receive child related additions to their earnings:

On top of Child Benefit for every child, an out of work family with 5 children can currently claim over £14,000 a year in tax credits alone. The government believes that those in receipt of tax credits should face the same financial choices about having children as those supporting themselves solely through work.

The Budget will therefore limit support provided to families through tax credits to 2 children, so that any subsequent children born after April 2017 will not be eligible for further support.¹⁰

The two-child limit, and the operation of the exception for non-consensual conception in particular, has been controversial since it was introduced. The debates surrounding the announcement and implementation of the policy are explored at length in the Commons Library briefing covering the [introduction of the two child limit in tax credits and Universal Credit](#).

Abandoned plans to extend the two-child limit to all new claims

It had been planned that the two-child limit would apply to all new Universal Credit claims with three or more children (with the same exceptions applying) from 1 February 2019, regardless of when children were born.

In January 2019 the then Work and Pension Secretary, Amber Rudd, announced that these plans would not go ahead. She continued to support the wider policy on the grounds that “those on welfare are asked to make the same considered decision as other taxpayers, who support themselves solely through work.” However, she argued that it would be unfair to apply the limit retrospectively.¹¹

1.3

How the two-child limit works

The two child limit in Universal Credit is legislated for in [section 10 of the Welfare Reform Act 2012](#), as amended by [section 14 of the Welfare Reform and](#)

⁸ For more on this see section 3 of [The aims of ten years of welfare reform \(2010-2020\)](#), Commons Library briefing CBP-9090

⁹ IFS, [Significant cuts to two parts of the benefit system to be phased in from next week](#), 30 March 2017

¹⁰ HM Treasury, [Summer Budget 2015](#), HC 264, para

¹¹ DWP and Amber Rudd MP, [Universal Credit: personal welfare](#), 11 January 2019

[Work Act 2016](#). Regulation 24 and Schedule 12 of the [Universal Credit Regulations 2013, SI 2013/376](#) (as amended) contain the detailed provisions.

The application of the two-child limit depends on when children are born, rather than the date of benefits claims. Claimants of Universal Credit and Child Tax Credit can receive additional amounts for any children born before 6 April 2017. Third or subsequent children in a household born from 6 April 2017 will not entitle the claimant to an additional amount unless an exception applies.

To determine whether a child is the third or subsequent in a household, each child is ordered by date of birth.

This ordering includes excepted categories of children (see below), so that exceptions only apply where the child in question is the third or subsequent child. The ordering does not count any children in non-parental caring arrangements, such as children of children or those who are adopted and would otherwise be in local authority care. A child element will be paid regardless of the order they joined the household.

Where separate households with children merge, the two-child limit applies and they will only be able to get additional amounts for two children, even if they would previously have been eligible for more support as separate households.

Detailed guidance can be found in the DWP's Universal Credit guidance on [additional amounts for children \(PDF\)](#).¹² RevenueBenefits also produce a [detailed briefing](#) on the policy, which includes examples (last updated 2 August 2021).

1.4

How many families does the two-child limit affect?

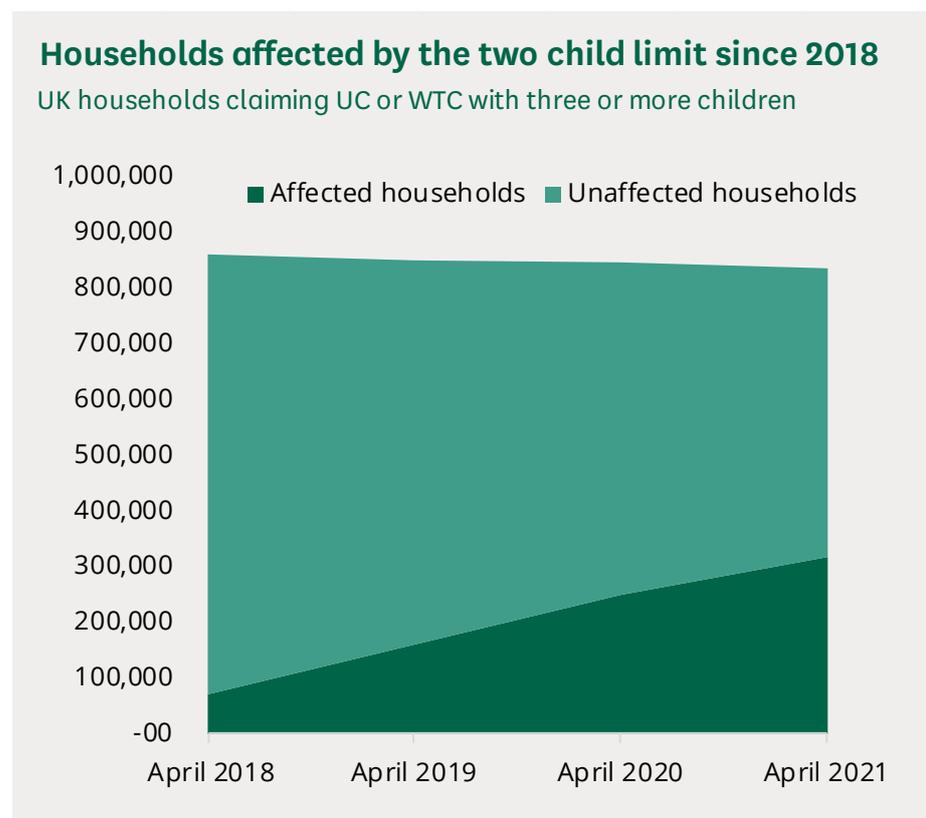
The two-child limit only applies to children born from 6 April 2017. As a result, the number of families and children affected has risen only gradually since 2017. Since children and qualifying young people can entitle households to child elements for up to 20 years, the two-child limit will not affect every unexempted household until the mid-2030s.

In April 2021, there were 3.69 million families with children claiming Universal Credit or Child Tax Credit. Of these 30% had three or more children.¹³ At 2 April 2021, 317,500 families, with a total of 1,138,650 children, were affected by

¹² DWP, [Universal Credit Guidance: Additional amounts for children v17.0 \(PDF\)](#), November 2021

¹³ Source: DWP Stat-Xplore and HMRC, [Child and Working Tax Credits Statistics: Provisional Awards-April 2021](#), 23 June 2021

the limit. This was 38% of the 836,020 families with three or more children claiming Universal Credit or Child Tax Credit.



Source: DWP and HMRC, [Universal Credit and Child Tax Credit claimants: statistics related to the policy to provide support for a maximum of 2 children, April 2021](#), 23 July 2021, table 11

Note: ‘affected’ households are those reporting a third or subsequent child on or after 6 April 2017. This includes those who are in receipt of an exception – 14,000 households in April 2021.

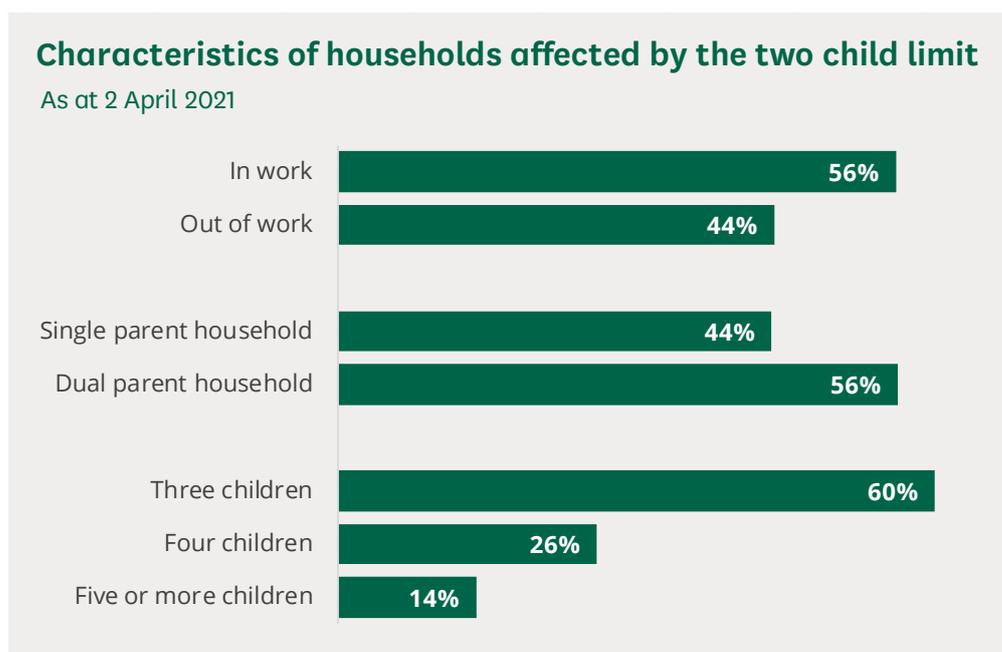
The Child Poverty Action Group (CPAG) estimates that by April 2022, 1.4 million children in 400,000 families will be affected, and that by the time it is fully rolled out, the two-child limit will affect 3 million children.¹⁴

Claimant characteristics

Of the 317,500 families affected in April 2021, 56% were working and 44% were out of work. The majority, also 56%, were in dual parent households, while 44% were single parents.

60% of households affected had three children in the family, and 40% had four or more.

¹⁴ CPAG, [“It’s heart-breaking that I feel I cannot fully provide for my youngest without struggling”: the impact of five years of the two-child limit policy](#), 6 April 2022



Source: DWP and HMRC, [Universal Credit and Child Tax Credit claimants: statistics related to the policy to provide support for a maximum of 2 children, April 2021](#), 23 July 2021, tables 3, 4 and 10

1.5

Exceptions to the two-child limit

As noted above, one of the main reasons for this policy was the Government’s aim that families claiming benefits would “face the same financial choices about having children as those supporting themselves solely through work.”¹⁵

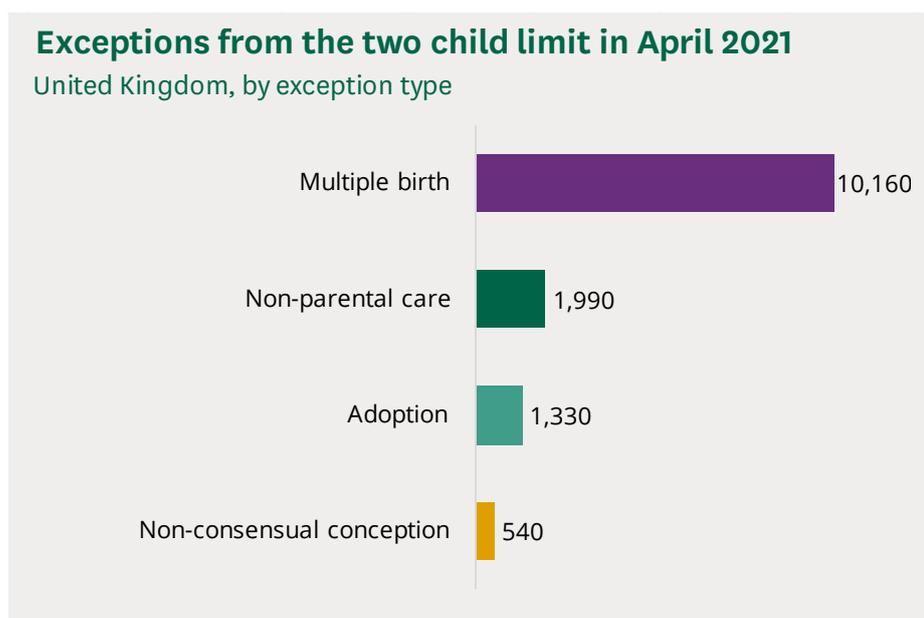
During debate on the Welfare Reform and Work Bill 2015-16, which legislated for the two-child limit, the Government explained that certain claimants who could not exercise this choice would be exempt from the limit. Exceptions apply to third or subsequent children who:

- Are born as part of a multiple birth
- Are born as a result of non-consensual conception

In addition, the Government recognised that some non-parental carers, such as parents of children with children or those in other non-parental caring arrangements, are also not in the same position to make choices about the size of their family.

Overall, around 14,000 of the 317,500 households in receipt of Universal Credit and Child Tax Credit affected by the two-child limit in April 2021 qualified for an exemption.

¹⁵ HM Treasury, [Summer Budget 2015](#), HC 264, 8 July 2015, para 1.245



Source: DWP and HMRC, [Universal Credit and Child Tax Credit claimants: statistics related to the policy to provide support for a maximum of 2 children, April 2021](#), 23 July 2021, table 2

Multiple births

The multiple birth exemption is the most common, and is built around the expectation that each pregnancy would lead to one birth. It is applicable where:

- The household already has one or more children in the claim and then has a multiple birth.
- The household does not have any children and then has triplets or more.

Not every child born in a multiple birth is exempted from the two-child limit. If a household already has two or more children and then has a multiple birth after 6 April 2017, the first child in that multiple birth will not get a child element. However, the second, and subsequent, child will. The key is that the parents would have expected to have one child when they made a choice to have a third or subsequent child, and will therefore get support for the second and subsequent child in the multiple birth.

The DWP's Universal Credit guidance provides illustrations of how the policy works in practice:

A claimant has 2 children on their claim, they then have twins. The additional amount for children will only be paid for one child in that multiple birth (meaning that in total the claimant will be entitled to an amount for 3 out of their 4 children).

A claimant currently has 2 children on their claim then has triplets. The additional amount for children will only be paid for 2 of the children in that multiple birth (meaning that in total the claimant will be entitled to an amount for 4 out of their 5 children).

If the first child of the multiple birth is either the first or second child in the household, the additional child amount of Universal Credit will also be awarded for that child (the first born of the multiple birth).¹⁶

Non-consensual conception

Children born as a result of non-consensual conception, or at a time when the claimant was in a coercive or controlling relationship with the other parent, can be exempt from the two-child limit. The other parent must not still be a member of the household.

In order to claim support for a third or subsequent child under this exemption, claimants must either be able to point to a conviction for rape or coercing, controlling behaviour, or a Criminal Injuries Compensation scheme award, or have a third party such as a health professional or social worker fill in the [NCC1 form](#).

DWP decision makers are not supposed to question the claimant on the incident other than to take the claim and receive supporting evidence.¹⁷

This exception, sometimes characterised the “rape clause”, has been one of the most controversial elements of the two-child limit.¹⁸

Non-parental caring arrangements and adoption

There are exceptions where a claimant is responsible for a child of a friend or relative, or a child of a child.

To qualify for the non-parental carer exception for an **informal** caring arrangement, it must be likely that the child being cared for would otherwise be likely to be looked after by a local authority – a social worker must provide evidence supporting this.

Where there is a formal caring arrangement, the claimant must provide evidence of one of the following:

- entitlement to Guardian’s Allowance
- Special Guardianship Order
- Child Arrangement Order
- appointment as a guardian

In Scotland, Kinship Care Orders and permanence orders which give legal parental responsibilities or rights are also accepted.

¹⁶ DWP, [Universal Credit Guidance: Additional amounts for children](#) (PDF), v17.0, November 2021

¹⁷ Ibid.

¹⁸ See [The two child limit in tax credits and Universal Credit](#), Commons Library briefing CBP-7935, section 5

Any child or qualifying young person adopted by a claimant from local authority care. Children adopted in other situations, such as from abroad or as children of partners, do not qualify for this exception.

Changes to the kinship care policy

From 28 November 2018, an additional exception to the two-child rule was added for certain families looking after children under kinship care arrangements, or who have adopted a child. This was in response to the High Court's judgment on 20 April 2018 in the case of *SC & Others v Secretary of State for Work and Pensions & Others* [2018] EWHC 864 (Admin).¹⁹ Previously, a child element was available to three children if the family had two biological children and then took on a child in kinship care, but not if the child in kinship care arrived first.²⁰

A wider challenge to the lawfulness of the two-child rule as breaching human rights to private and family life and to non-discrimination is covered in section 2.3 below.

Disabled children

Disabled children are not exempt from the two-child limit - the core child element will not be payable for a disabled unexempted third child or subsequent children. However, the extra amounts payable where children are disabled are not affected by the two-child limit.

To receive these disabled child additions, the child must be blind or receiving support from an extra-costs disability benefit such as Disability Living Allowance.

¹⁹ [\[2018\] EWHC 864 \(Admin\)](#).

²⁰ See CPAG, [High court finds two-child rule exception perverse](#), 20 April 2018; [Extending support in Universal Credit and Child Tax Credit: Written statement - HCWS653](#), 27 April 2018; and DWP, [More support for non-parental carers](#), 27 April 2018

2

Debate and evidence of impact

2.1

Select Committee reports and Government response

The Work and Pensions Committee has published two reports on the two-child limit – in January 2019 and November 2019.²¹ In its second report, the Committee recommended scrapping the two-child limit, observing that the policy “not only fails to achieve the Government’s own objectives but has evident, unintended consequences that no Government should be willing to accept.” The Committee concluded that the policy was based on assumptions that “simply do not hold true”, and on a distinction between families that are in work and those in receipt of benefits that is “crude and unrealistic”.

At the time of its publication, little quantitative evidence had been produced on what was still a relatively new policy. However, the Committee made a series of observations about the principles underlying the policy, as well as the expected impact of the policy, and drew on early reports from organisations working with those affected. These observations included:

- Anyone currently working could lose their job, fall ill or experience a change in their circumstances such that they might need help from the benefits system. The Government’s logic, they argued, was that “only the wealthy few” with the financial resilience to “withstand all of life’s misfortunes without recourse to benefits could responsibly decide to have more than two children.”
- The policy assumes that all pregnancies are planned and in full knowledge of social security policy, but the Committee noted that only around a third of pregnancies are planned.
- The Government had suggested that the policy might encourage parents to increase their incomes from work. The Committee suggested, in contrast, that the absence of affordable childcare, as well as the costs of transport, made it all but impossible for some families to increase their working hours to compensate for their losses, or to get back into work after having a child.
- The Committee had seen no evidence that the two-child limit was working in the way the Government hoped for, not least because the Government itself had produced no evaluation. Organisations had given

²¹ See [“No Government should be willing to accept” consequences of two child limit](#), Work and Pensions Committee press release, 3 November 2019

evidence suggesting the policy was having serious unintended consequences, however.

- A range of expert organisations, including the Institute for Fiscal Studies, had predicted that the two-child limit would lead to significant increases in the numbers of children living in poverty, and push hundreds of thousands even deeper into poverty. The effects would be felt more severely in communities which tend to have larger families – the Committee heard evidence that Muslim and Jewish communities, Pakistani, Bangladeshi and Gypsy, Roma and Traveller communities, and families in Northern Ireland would all be disproportionately affected.²²

Government response

The Government response, published in December 2019, defended the policy, by reiterating the original justifications, stressing the “considered and compassionate” exceptions, and pointing to other policies designed to help families with the cost of living. It also responded to particular concerns raised by the Committee.²³

Changes in family circumstances

Responding to the concern that all but the wealthiest families cannot know if they may claim benefits in the future, and so cannot plan, the Government noted:

Families who were not previously claiming benefits have made decisions about the affordability of various life choices in the knowledge that their financial (and other) circumstances could change over time.²⁴

Non-consensual conceptions

In response to the observation that only around a third of pregnancies are planned, the Government pointed to the exceptions in place for non-consensual conception and situations of domestic abuse, explaining that “compassionate” processes had been set up to deliver exceptions.²⁵

Disproportionate impact on certain groups and nations

In response to the Committee’s fears of disproportionate impacts on certain minority groups across the UK, the Government argued that the two-child limit “does not attempt to limit the number of children people have”, and noted that claimants “are able to have as many children as they choose, in the knowledge of the support available.” The response also noted that

²² Work and Pensions Committee, [The two-child limit \(PDF\)](#), HC 51 2019, 3 November 2019

²³ Work and Pensions Committee, [The two-child limit: Government Response to the Committee’s Third Report of Session 2019 \(PDF\)](#), HC 1079, 9 December 2019

²⁴ Ibid. p1

²⁵ Ibid. pp2-3

Northern Ireland, where the Committee feared there could be a particular increase in poverty, had powers to mitigate the policy.²⁶

Impact on poverty

In response to the Committee's concern about the impact of the two-child limit on poverty, the Government outlined other policies designed to address the issue, such as encouraging employment, uprating benefits in April 2020 following a four-year freeze, helping families with childcare costs, and changes to the Flexible Support Fund.

Recommendation to abolish the two-child limit

On the Committee's central recommendation to reverse the policy and provide support for all children through the benefits system, the Government restated its belief that the policy was "fair and proportionate", and noted that 85% of all families with dependent children had a maximum of two children in the household.

2.2

Evidence of impact

As more families have been affected by the two-child limit, further evidence has emerged, allowing the impact of the policy to be analysed.

Poverty among larger families

Relative poverty had been increasing in the years since 2012/13, before the implementation of the two-child limit. Analysis from the London School of Economics' Centre for Analysis of Social Exclusion (CASE) suggested that this has been driven almost entirely by rising poverty among households with three or more children.²⁷ Exploring other possible explanations for this trend such as changing household composition and employment patterns, the study concluded that changes in social security policy are more significant for larger families and were substantially responsible for both the fall in relative poverty for larger families up to 2012/13, and the rise since.

This trend, they argue, began before the impact of the benefit cap or two-child limit became substantial. They note that that rising poverty among larger families has been observed:

...despite the fact that no policies were targeted on family size until the benefit cap and the two-child limit. These two latest reforms are therefore particularly worrying. Given that poverty rates were already rising among larger families, it

²⁶ Ibid. p3

²⁷ LSE Centre for Analysis of Social Exclusion, [A time of need: Exploring the changing poverty risk facing larger families in the UK](#), 28 July 2021, pp29-30

seems precisely the wrong time to implement policies that specifically target this group for more cuts.²⁸

Resolution Foundation analysis predicts that poverty will continue to rise for families with three or more children. With around a third of households with three or more children having been in relative poverty in 2012/13, they estimate that may have reached nearly half in 2021/22, and will be a clear majority by the end of their forecast period in 2026/27.²⁹

An April 2022 report from the Child Poverty Action Group and Church of England explored the impact of the policy on individual family budgets. The report looked at how the incomes of families claiming benefits compared to a measure of the costs of raising a child.³⁰ The analysis found that, in 2022, the shortfall between benefit awards and the cost of a child would increase for both families with two children and those with three children. However, families with three children will see the shortfall grow by £938 to £7,143 a year, a shortfall twice as large as that faced by families with two children. The greater increase in the shortfall for larger families, they argue, can be attributed to the two-child limit, benefit cap, and rising cost of living.³¹

The Government has questioned the use of relative poverty, and has responded to questions about trends in poverty by citing falls in absolute poverty since 2010.³² Explaining this preference in evidence to the Work and Pensions Committee, the Secretary of State for Work and Pensions, Thérèse Coffey said:

The vast majority of the British population do not accept the concept of relative income being the driver of whether somebody is poor or not. That is shown by the British Social Attitudes survey. I understand the statistical reasons, but it is why I strongly believe it is not the right approach.³³

Disproportionate impact

Like the earlier Work and Pensions Committee inquiry, the CPAG and Church of England report also highlights the disproportionate impact of the two-child limit on poverty experienced by certain groups.

Since 40% of households affected by the limit are single-parent families, and just 5% of single-parent families are headed by men, they argue that women are disproportionately affected by the policy.

²⁸ Ibid, pp

²⁹ Resolution Foundation, [The Living Standards Outlook 2022](#), 8 March 2022, figure 21

³⁰ Based on the Joseph Rowntree Foundation's Minimum Income Standard. See CPAG, [The cost of a child in 2021](#), 13 December 2021

³¹ CPAG, ["It's heart-breaking that I feel I cannot fully provide for my youngest without struggling": the impact of five years of the two-child limit policy](#), 6 April 2022

³² [HC Deb 9 March 2020, c8](#)

³³ Work and Pensions Committee, [Oral evidence: The work of the Secretary of State for Work and Pensions](#) (PDF), HC 514, 7 July 2021. For further exploration of the topic, see Work and Pensions Committee, [Children in poverty: Measurement and targets](#), HC 188, 22 September 2021

In addition, they raise concerns that, while there are no official statistics looking at the ethnicity of families affected, “Pakistani, Bangladeshi and Black families are all more likely to have three or more children than the national average and are therefore likely to be disproportionately affected”, together with certain religious groups. The policy, they fear, risks “exacerbating existing inequalities”.³⁴

In April 2021 the then Minister for Welfare Delivery, Will Quince, when asked about the potential disproportionate impact of the two-child limit, acknowledged that certain minority households were more likely to be impacted because they are more likely to be claiming means-tested benefits and have, on average, larger families. He added, however, that:

...the government does not collect sufficiently robust data on the ethnic background or religious beliefs of benefit claimants to enable a fuller assessment of the impact of the policy on particular ethnic or religious groups. The Government has assessed the impact of the policy from an equality and human rights perspective, meeting our obligations under the Public Sector Equality Duty, and ensuring compliance with the Human Rights Act 1998, the Equality Act 2010 and the UN Convention.³⁵

Fertility rates

Concerns have been raised that the two-child limit and other policies restricting social security support to larger families may cause, or contribute to, falling fertility rates.

An April 2022 report [funded by the Nuffield Foundation](#) using birth records in the years surrounding the implementation of the policy, found that the two-child limit “had a measurable, but relatively small impact on the number of births to women in households who were affected by the limit.”³⁶

This was smaller than the researchers had expected, given previously observed increases in fertility rates associated with increases to child-related benefits.³⁷ The study does not claim to establish the full causal mechanisms, but pointed to qualitative research showing low levels of awareness of the two-child limit among families affected, though the study’s authors concede that awareness could rise, resulting in a greater fertility response in the long term.

They also noted there may be religious and cultural reasons for not changing conception decisions in light of benefits policy. Finally, the study speculated that:

³⁴ Ibid. pp5-6

³⁵ [PQ 181197, 20 April 2021](#)

³⁶ Reader M, Portes J, Patrick R, [Does cutting child benefits reduce fertility in larger families? Evidence from the UK’s two-child limit](#), Benefit changes and larger families, 6 April 2022

³⁷ The report cites Brewer M, Ratcliffe A, Smith S, [Does welfare reform affect fertility? Evidence from the UK](#), Journal of Population Economics, 2012

[...] it is at least possible that even in the UK reducing access to economic resources has negative impacts on choice and agency, resulting in reduced access to contraception, worse mental health, and less interaction with health services; all of these could potentially increase fertility and thereby attenuate the response to financial incentives.³⁸

The authors argue that discouraging families claiming benefits from having more children was an implicit aim of the two-child limit.³⁹ If this was the case, they argue, it has not substantially worked so far, but has increased child poverty among larger families:

Since the two-child limit does not appear to have changed fertility behaviour or the number of births in larger families, it appears inevitable that it will increase child poverty further among larger families.⁴⁰

Abortion rates

There has also been concern that the two-child policy might lead to higher rates of abortion among potentially affected families.

Jonathan Bradshaw of the University of York Social Policy Research Unit analysed ONS abortion statistics covering the period up to 2019. This analysis, published in a CPAG blog, found rising levels of abortions in the years since the policy was introduced:

1. There was a sharp increase in abortion numbers after the two-child limit started (births after April 2017)[...] The rate of abortion per 1000 women in 2019 was the highest it has ever been. This is pre-COVID-19, 2019 fertility rates are at a nearly record low and so are conceptions, though we await ONS Conception data for 2019.
2. Older women who are more likely to have had two children have had the sharpest increases in abortion.
3. Abortion rates are closely associated with deprivation.⁴¹

³⁸ Reader M, Portes J, Patrick R, [Does cutting child benefits reduce fertility in larger families? Evidence from the UK's two-child limit](#), Benefit changes and larger families, 6 April 2022, pp22-23

³⁹ This is argued more strongly in an accompanying 6 April 2022 Guardian article by Mary Reader and Jonathan Portes, [Who paid the price of George Osborne's two-child benefit cap? Britain's poorest children](#), which quoted David Cameron and George Osborne, Prime Minister and Chancellor at the time the two-child policy was announced. While this claim might be argued to be a logical conclusion of ensuring families on benefits face "the same financial choices" as those supporting themselves solely through work, the Government has said, for example in its [December 2020 response to the Work and Pensions Committee](#), the policy "does not attempt to limit the number of children people have."

⁴⁰ Reader M, Portes J, Patrick R, [Does cutting child benefits reduce fertility in larger families? Evidence from the UK's two-child limit](#), Benefit changes and larger families, 6 April 2022, pp24

⁴¹ CPAG, [The two-child limit: Impact on abortion](#), 6 December 2020

In a December 2020 report, the British Pregnancy Advisory Service (BPAS) found that “57% of women who were aware of and likely to be affected by the two-child child limit saying it impacted their choice.”⁴²

Mary Reader, Jonathan Portes and Ruth Patrick, in their study of fertility and the two-child limit, questioned how substantive any conclusion drawn from the BPAS study or official data could be, noting that BPAS conducted “a small survey with a highly selected sample”. They added that:

... we examined published data on abortions by the number of previous live births in England and Wales (Department of Health and Social Care 2021). There is no evidence in the data of a substantial abortion response among those with two or more children; existing trends (towards more abortions, and a shift in the age distribution of abortions towards older women) do not appear to have shifted substantially at the time of the policy change.⁴³

2.3

July 2021 Supreme Court decision

On 9 July 2021, the Supreme Court handed down its judgment in a test case which sought to challenge the lawfulness of the two-child limit.⁴⁴ The claimants – two lone mothers already with more than one child before 6 April 2017 who each gave birth to a further child after that date – were supported in the appeal by the Child Poverty Action Group (CPAG). The Supreme Court appeal followed an unsuccessful appeal on the lawfulness of the policy to the Court of Appeal.⁴⁵

The claimants’ primary argument was that the two-child limit unlawfully discriminated against certain groups, in breach of the European Convention on Human Rights (ECHR). They argued that the policy was incompatible with:

- The rights of women compared with men, under Article 14 (the right not to be discriminated against), taken together with Article 8 (right to private and family life) or Article 1 of the First Protocol (A1P1) (right to peaceful enjoyment of possessions).
- The rights of children compared with adults, under Article 14 taken together with Article 8 or A1P1.
- The rights of children in larger families compared with those in smaller families, under Article 14 taken with Article 8.

They also argued that the two-child limit was a direct breach of Article 8, and of Article 12 (the right to marry and found a family), because it discouraged

⁴² BPAS, [Forced into a corner: The two-child limit and pregnancy decision making during the pandemic](#), December 2020

⁴³ Reader M, Portes J, Patrick R, [Does cutting child benefits reduce fertility in larger families? Evidence from the UK’s two-child limit](#), Benefit changes and larger families, 6 April 2022

⁴⁴ [R \(SC, CB and 8 children\) v Secretary of State for Work and Pensions and others \[2021\] UKSC 26](#)

⁴⁵ [R \(SC & Ors\) v The Secretary of State for Work and Pensions & Ors \[2019\] EWCA Civ 615 \(16 April 2019\)](#)

the creation of larger families and hindered the integration of third and subsequent children into families.

The Supreme Court unanimously dismissed the appeal.

The Court rejected the arguments that the two-child limit directly breached Article 8 or Article 12 of the ECHR. It held that it was not the aim of the policy to affect women's reproductive choices, and there was no evidence that it had for either appellant. Nor was there any evidence that it had had any damaging effect on the integration of additional children into their families. In relation to Article 12, neither appellant had intended to marry, or found a family with, the father of their youngest child. Furthermore, neither Article 8 nor Article 12 imposed any obligation on the state to provide additional support for every additional child parents might choose to have, or to enable people to found a family.

The Court also rejected the argument that the two-child limit discriminated against children compared with adults. It held that there was no direct or indirect discrimination against children since – unlike adults – they had no individual legal entitlement themselves to means-tested benefits. As such, any comparison was false.

The Court did conclude that the policy gave rise to relevant differences in treatment between women and men, and between children in larger families and those in larger families. The question was whether these differences in treatment were justified.

In relation to women and men, the Court held that the two-child limit had an objective and reasonable justification, notwithstanding its greater impact on women. The measure had legitimate aims: protecting the economic wellbeing of the country while ensuring the benefit system was fair and reasonable. Parliament had decided that the disproportionate impact of the policy on women was outweighed by the importance of achieving its aims. As such, there was no basis on which the Court could properly take a different view.

The Court also concluded that the differential treatment of children in larger families compared with children in smaller families because of the two-child limit was justifiable. Parliament had, when considering the measure, considered its impact on children, decided that the impact was outweighed by the reasons for introducing it. The Court held that the question of whether Parliament had made the right choice could not be answered by any process of legal reasoning. There was no basis, consistent with the separation of powers, on which the Court could overturn Parliament's judgment that the two-child limit was an appropriate means of achieving its aims.

Responding to the judgment, Carla Clarke, Head of Strategic Litigation at Child Poverty Action Group, said:

This is a hugely disappointing judgment which fails to give any meaningful recognition to the reality of the policy on the ground and its desperately unfair impact on children. We know the two-child limit increases child poverty, including child poverty in working households, and forces women to choose

between an abortion and raising their families without enough to live on. It limits the life chances of children by reducing them from a person to a number.

It is well established that the ultimate safeguard against discrimination, particularly on contentious issues, lies with our courts. That is simply not in evidence in this judgment.⁴⁶

CPAG said that it continued to believe that the policy was unlawful, and was considering taking the matter to the European Court of Human Rights.⁴⁷

In December 2021, complaints were filed with the European Court of Human Rights on behalf of two different families.⁴⁸

⁴⁶ CPAG press release, [Supreme Court decision on two-child limit](#), 9 July 2021

⁴⁷ Ibid.

⁴⁸ CPAG, "[Current Test Cases: Two child limit challenge](#)", (accessed on 14 April 2022)

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