

# Why is the two-child limit contrary to the UK's human rights obligations?



*“no social phenomenon is as comprehensive in its assault on human rights as poverty”*

Office of the High Commissioner on Human Rights<sup>1</sup>

The two-child limit is a policy that restricts welfare payments to families based on family size and is forcing these families into poverty and hardship by not providing them with an adequate income.

As we shall argue in this briefing, this policy is clearly contrary to the UK's international human rights obligations and its introduction cannot be justified by austerity. In one of the wealthiest nations in the world, the UK cannot afford to have a third of children living in poverty.

We need the UK Government to be using the maximum available resources to respect, protect, and fulfil children's rights to live free of poverty and this should include by removing the two-child limit.

## What is the two-child limit?

The two-child limit restricts welfare support provided to families to a maximum of two children and was introduced as part of a series of changes to the welfare system brought through the 2015 Summer Budget and came into force in April of 2017. These changes were justified by the UK Government as austerity related budget cuts.<sup>2</sup>

Prior to this policy a family was eligible to apply to receive means tested support for all children, however once the two-child limit policy came into force families who had a child born after April of 2017 who already had two siblings were not able to receive welfare support for this child or any subsequent children. There are some limited exceptions to this policy, notably children who are adopted from local authority care and multiple births. Parents of children who are disabled are able to claim the disability element however they are not eligible for the additional child element.

As of April 2020, there were 846,000 households who had three or more children who claimed either Child Tax Credit or Universal Credit. Out of this total there were 243,000 households who had children who were born after 2017 and were therefore impacted by the two-child limit meaning they were not receiving the child element for at least one of their children.<sup>3</sup>

The economic repercussions of COVID-19 including job losses and

reduced hours for many parents are likely to have had a further impact upon the number of families affected by the two-child limit. Child Poverty Action Group and the Church of England have estimated that an additional 60,000 families will likely be affected due to the pandemic.<sup>4</sup>



The purported aims of this policy was to make the welfare system “fairer and more affordable to tax payers.”<sup>5</sup>, that “those claiming benefits should face the same financial choices about having children as families who are supporting themselves solely through work”, and finally to encourage a parent or parents to increase their incomes from work.<sup>6</sup>

However the House of Commons Work and Pensions Committee reported after their inquiry into the policy that they “have seen no evidence that the two-child limit is working in the way the Government hoped for [...] But we have heard that it is having serious unintended consequences.”<sup>7</sup>

## **What impact does the two-child limit have?**

The full impact of this policy has yet to be seen as it only applies to children born after April 2017, the Institute of Fiscal Studies estimates that the long run impact will not be felt until the mid-2030's.<sup>8</sup>

However, from what we have seen so far, the two-child limit represents a serious financial blow to families on low incomes who have three or more children born after the cut-off date. Affected families are on average £50 per week worse off than families who had their third or subsequent child before April 2017.<sup>9</sup> Over the course of a year this represents an average loss of £3,000 or 10% of these families average annual income.<sup>10</sup>

As found in the analysis by Jamie Burton, Sarah Clarke, and Michael Spencer this policy is trapping families in poverty as "Once a third child [is born] there are no

practical options for mitigation, short of a significant increase in income, splitting up the family or putting the children into care." Significantly unlike a number of other welfare restrictions, "Parents cannot avoid the policy by moving house or moving into work."<sup>11</sup>

A recent report by members of the All Kids Count campaigning group found that "a single parent with three

children working 16 hours per week at the 'national living wage' of £8.21 per hour cannot ever compensate for the loss of a child element by increasing her hours, if she incurs childcare costs from doing so (because these are never covered in full by Universal Credit). Only if she can access free childcare (e.g. by using help from family members in addition to the free entitlement for 2-4 year-olds), can she compensate for the loss, but she would still have to more than double her hours from 16 to 40 per week."<sup>12</sup>



After his official visit to the UK, the UN Special Rapporteur on Extreme Poverty and Human Rights concluded that "reductions and restrictions, such as the imposition and subsequent intensification of a cap on benefits for working-age households and limiting benefits to two children per family, have made it much harder for people to make ends meet and stymied progress in reducing poverty."<sup>13</sup>

Research has found that children who were in families affected by the two child limit were missing out on basic essentials such as food or clothes, and that many families have been pushed into financial hardship and debt due to this policy.<sup>14</sup> The financial strain that this policy puts on families also impacts their mental health and wellbeing, as they are forced to struggle in order to try and get by.<sup>15</sup>



Most families impacted by the two-child limit are in work, and all families affected by the policy will currently contain at least one child who is three or under due to the policy only coming into place in 2017.<sup>16</sup> This is important as the long-lasting consequences of poverty in early years is particularly detrimental to a child's life outcomes, as well as their physical and mental health and wellbeing.<sup>17</sup>

It is not just the two-child limit that impacts household budgets, as many families may also face the benefit cap and other welfare restrictions. As it stands, child benefit is estimated to cover a fifth of the cost of raising a child for a couple and less than a sixth of the cost for a lone parent.<sup>18</sup>

It has been estimated that each year, 10% of households with three

or more children are new to the welfare benefits system and therefore this system likely did not enter into the decision over how many children the family has.<sup>19</sup> It is also clear that very few families are able to guarantee their financial stability for the next 18 years whilst they raise a child and many unforeseen issues such as a relationship breakdown, job loss, or disability may push a household into needing to access the welfare safety net; this policy is denying them full support in their time of need. Furthermore a welfare safety net is a right that is afforded to all people regardless of the number of children they have or their order of birth and therefore we believe that this policy is in contradiction with the rights afforded to children and families.

### **Why is the two-child limit a human rights issue?**

The UK has signed a number of international human rights standards that uphold and protect the rights of the child and of families to an adequate standard of living, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1976 and the Convention on the Rights of the Child (CRC) in 1990.

States have an obligation to respect, to protect and to fulfil all rights contained within these treaties, however there is not yet a judicial mechanism for seeking a remedy for violation of economic and social rights in the UK. The obligations to respect means that State Parties should not interfere directly or indirectly with the enjoyment of children's rights. The obligation to protect requires measures by the state to ensure that non-state actors like commercial enterprises or

individuals do not deprive people of their rights. Finally, the obligation to fulfil incorporates the obligations to promote, facilitate and provide the conditions whereby people can access their rights.

The CRC has specific provisions that protect children from poverty and hardship, notably this includes:

- Article 26 “States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law”
- Article 27 “States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”.<sup>20</sup>

By restricting welfare access to only the first two children for those born after April 2017 means that subsequent children are not having their right to social security respected. In denying families the financial support their children need and therefore forcing households into hardship and poverty the UK Government is also not respecting a child's right to an adequate standard of living, including their right to food.

It is not just the rights of the child that are impacted by this policy but also the rights to family life. The right to family life is protected by a number of human rights standards including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In the UK, the right to family life is also protected by the

Human Rights Act 1998 (HRA) that incorporates the rights in the European Convention on Human Rights (ECHR) into domestic law. Article 8 of the Human Rights Act states that “Everyone has the right to respect for his private and family life”.<sup>21</sup>

Furthermore the Final Act of the 1968 UN International Human Rights Conference states, “parents have a basic human right to determine freely and responsibly the number and the spacing of their children”.<sup>22</sup> Women in particular are heavily impacted by the two-child limit despite article 16(e) of the Convention on the Elimination of Discrimination Against Women that reaffirms that women have the right “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”.<sup>23</sup>

### **Austerity measures and human rights**

The two child limit was introduced as one of a series of austerity measures that have been undertaken over the past decade by the UK Government to cut £12 billion from the UK's social security budget. By limiting entitlement to Child Tax Credits and Universal Credit to the first two children from April 2017 onwards the UK Government is hoping to save 1.2 billion.<sup>24</sup> However these calculations do not reflect the economic cost of poverty in terms of public services, healthcare, achievement gap in schools, adult social care, housing and homelessness, and police and criminal justice.<sup>25</sup> The cost of UK poverty has been estimated at £78 billion per year.<sup>26</sup> The calculations also do not take into account the

UK's human rights obligations, and in particular the principles of non-discrimination, non-retrogression, and the need for human rights to be included in all budgetary decision making.

Whilst "Austerity measures must respect the principle of equality and scrupulously avoid discrimination. They should be accompanied by the simultaneous adoption of measures to mitigate the effect of the crisis on the most vulnerable",<sup>27</sup> overall austerity measures including the two-child limit have disproportionately impacted those who were already the worse off, and these include single parents, disabled people, and those from black asian, and ethnic minority backgrounds.<sup>28</sup> Tax and benefit changes since 2015 have hit the poorest hardest while the wealthiest deciles have benefited the most. In the October 2018 budget, the UK Government prioritised tax cuts that will mostly benefit the wealthiest, costing the Treasury £1.4 billion a year.<sup>29</sup>

Certain groups and communities are disproportionately impacted by the two-child policy in particular, this includes Muslim and Jewish communities, Pakistani, Bangladeshi and Gypsy, Roma and Traveller communities, and families in Northern Ireland.<sup>30</sup>

Our research has found that tax and social security cuts undertaken since 2010 including the two child limit do not meet the requirements of non-retrogression and therefore breach the human right to social security.<sup>31</sup> The measures have not been justifiable in terms of the goals they were meant to achieve (a), they have not been proportionate (b) and the effects have been discriminatory



(c). The weight of local government funding cuts has fallen on people at risk of harm, discrimination and disadvantage (d), and benefit sanctions have been harmful and largely ineffective (e).

Under Article 4 of the CRC the UK is legal bound to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation".<sup>32</sup> Here "all appropriate measures" includes the UK's duty to ensure that laws and policies are in place "to support resource mobilization, budget allocation and spending to realize children's rights";<sup>33</sup> "[all] government branches, levels and structures that play a role in devising public budgets shall exercise their functions in a way that is consistent with the general

principles” of the CRC which include non-discrimination (art 2), best interests of the child (art 3) and the right to life, survival, and development (art 6).<sup>34</sup> Notably “legislative measures”, which the UK takes in relation to public budgets, include reviewing existing legislation, and developing and adopting legislation that aims to ensure that budgets are sufficiently large for the realization of children’s rights”.<sup>35</sup> The UK should not take deliberate retrogressive measures or allow the level of enjoyment of children’s rights to deteriorate.<sup>36</sup>

In terms of budgets, “implementing children’s rights” means that States Parties are obliged to mobilize, allocate and spend public resources in a manner that adheres to their obligations of implementation.

**How does the two child limit compare with welfare in other countries.**

The UK is an outlier for having a policy that restricts welfare past a certain number of children, as most countries do not have a comparable measure in place.

In the USA welfare family caps were introduced in some states in the 1990’s. At it’s peak nearly half of states had a welfare family cap however now only a handful have such a policy in place. The welfare family caps were usually introduced in a state through “welfare reform”

that was linked to the introduction of a new cash aid programme called Temporary Assistance for Needy Families (TANF). Similar to the justification given by the UK Government for the two-child limit, the reasons for introduction centred around discouraging further births and also to reduce the amount of cash that was distributed to low income families. As is the case in the UK, there is little evidence that the welfare family cap achieved its purported aim of reducing family size but rather it has led to increased poverty amongst low income families.<sup>37</sup>



One example of the welfare family cap’s application was in California where assistance was denied to any family who was had received CalWORKS cash aid assistance ten months before the child’s birth. There were exceptions to this, namely in the case of contraceptive failure (from a list of approved types of long-term contraceptives) or incest and/or rape. In the latter case the exemption would only apply if a

woman reported the rape to law enforcement or medical professional within twelve months of it occurring. Funds were provided in the 2016 state budget to repeal the CalWORKs Maximum Family Grant (MFG) rule, so this restriction is no longer in place.<sup>38</sup>

All children deserve to have the best start in life, but by limiting financial support given to families the two-child limit is pushing households into hardship and poverty.

Eradicating poverty is not just the right thing to do, it is a core part of a series of human rights standards that successive UK Governments have ratified.

More and more people are being pushed into financial difficulty due to the economic turmoil caused by the COVID-19 pandemic and this has brought to the fore some of the major flaws in the UK's welfare system as more and more people are having to use it.

We need a welfare system that is fit for purpose and supports all people in their time of need therefore we recommend that the UK Government:

- Urgently lifts the two-child limit restricting welfare support
- Restores the link between social security entitlements and the cost of living so as to ensure that people are not pushed into poverty
- Conduct an expert assessment of the cumulative impact of tax and spending decisions since 2010, and the UK Government and prioritizes the reversal of particularly regressive measures beyond the two-child limit, including the benefit cap, and the reduction of the housing benefit for under-occupied social rented housing.
- Ensures that fiscal policy is adequate, progressive and socially equitable and improves tax collection so as to increase resources available to ensure economic and social rights.
- Lifts the No Recourse to Public Funds condition so as to ensure that all children and their families are able to access the welfare safety net when they need it.
- Works together with the devolved governments to develop a clear framework for the binding incorporation of economic and social rights as included in the International Covenant on Economic, Social, and Cultural Rights, as well as the treaties including the Convention on the Rights of the Child and the Convention on the Rights of People with Disabilities.



Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating for economic and social rights.

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Just Fair is a proud member of the [All Kids Count campaign](#) alongside organisations such as Child Poverty Action Group, the Equality Trust, and Amnesty International.

This campaign is calling on the UK Government to lift the two-child limit and help all children thrive.

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