



**THE COURT ORDERED** that no one shall publish or reveal the names or addresses of the Appellants who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellants or of any members of their family in connection with these proceedings.

9 July 2021

## PRESS SUMMARY

**R (on the application of SC, CB and 8 children) (Appellants) v Secretary of State for Work and Pensions and others (Respondents)**

[2021] UKSC 26

*On appeal from [2019] EWCA Civ 615*

**JUSTICES:** Lord Reed (President), Lord Hodge (Deputy President), Lady Black, Lord Lloyd-Jones, Lord Kitchin, Lord Sales, Lord Stephens

### BACKGROUND TO THE APPEAL

Child tax credit (“**CTC**”) is a non-contributory benefit intended to provide financial support to families with children. It consists of three elements: a family element, an individual element, and, in respect of disabled children, a disability element. By section 9(3A) and (3B) of the Tax Credits Act 2002 (“**the 2002 Act**”), the individual element is limited to the amount payable in respect of two children (“**the two child limit**”). No account is taken of third or subsequent children born on or after 6 April 2017, unless one of a number of exceptions applies. The fixing of the limit on the basis of the sum payable for two children reflects the fact that the average UK family contains 1.7 dependent children.

The appellants, SC and CB (“**the adult appellants**”), SC’s three youngest children and CB’s five children (“**the child appellants**”), brought proceedings against the respondents, the Secretary of State for Work and Pensions, the Lords Commissioners of HM Treasury, and the Commissioners for HM Revenue and Customs. They claim that the two child limit is incompatible with the European Convention on Human Rights (“**the Convention**”), as given effect by the Human Rights Act 1998. Their claim was dismissed at first instance by the High Court. Their appeal against that decision was dismissed by the Court of Appeal. The appellants now appeal to the Supreme Court.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Reed gives the sole judgment, with which the other Justices agree.

### REASONS FOR THE JUDGMENT

*Is the two child limit compatible with article 8 of the Convention?*

The Court rejects the appellants’ argument that the two child limit was intended to discourage women in receipt of child benefit from having more than two children, and therefore violates their right to respect for their private and family life, as guaranteed by article 8 of the Convention. The Court finds that the two child limit was not intended to affect the reproductive choices of women, and did not have such an effect on either of the adult appellants in this case [26], [28]-[32]. The Court also rejects the appellants’ argument that the two child limit has a damaging effect on the integration of third and subsequent children into their families, and therefore violates their article 8 rights. The Court finds that there is no evidence to support that assertion, and no reason to believe it is true [27], [33].

*Is the two child limit compatible with article 12 of the Convention?*

The Court rejects the appellants' argument that the two child limit violates article 12 of the Convention. That article protects the right to marry and the right to found a family within marriage. It does not apply in the present case. The adult appellants neither intend to marry nor to found a family with the father of their youngest child. Even if they had such an intention, article 12 would not impose a positive obligation on the state to provide the material means which would enable them to found a family [34]-[35].

*Is the two child limit compatible with article 14 of the Convention, read with article 8 and/or with article 1 of the First Protocol?*

The appellants' primary argument is that the two child limit breaches their rights under article 14 of the Convention, read with article 8 and/or with article 1 of the First Protocol ("A1P1"). In order for an issue to arise under article 14, the appellants need to establish that their complaint falls within the ambit of one or more of the rights guaranteed by the Convention, and that it concerns a difference in treatment, based on a relevant characteristic or status, between persons in analogous or relevantly similar situations [36]-[37].

The Court decides that the adult appellants can satisfy each of those requirements. Their complaint falls within the ambit of article 8 of the Convention, given that it relates to a benefit which is designed to facilitate or contribute to family life [41]. Their complaint also falls within the ambit of A1P1, which protects certain proprietary interests, including the adult appellants' entitlement to CTC [42]. The parties agree that, although the relevant provisions of the 2002 Act are couched in neutral language, the two child limit affects more women than men. This gives rise to a presumption of discrimination on the ground of sex, contrary to article 14 of the Convention, read with article 8 and with A1P1 [44]-[46], [53], [187].

The Court proceeds on the basis that the child appellants' complaint also falls within the ambit of article 8 of the Convention [66]. The child appellants accept that their complaint does not fall within the ambit of A1P1, since, unlike the adult appellants, they are not entitled to claim CTC themselves [43].

The Court rejects the argument that the two child limit gives rise to direct discrimination between children and adults [65]. Children whose parents receive CTC are not in a relevantly similar situation to adults who receive benefits such as job seekers' allowance ("JSA"). Children have no entitlement to CTC. It is paid to the adults responsible for them as a lump sum, without the amount being allocated to particular children in their household. It is not therefore discriminatory for CTC to be subject to the two child limit, without an equivalent limit being imposed on, for example, JSA [57]-[58]. Nor is there indirect discrimination arising from the fact that the households affected by the two child limit contain more children than adults. CTC is not paid to adults for their own benefit, but in order to assist them in meeting the needs of the children for whom they are responsible. Children and adults are not therefore affected by the two child limit in comparable ways [63].

The Court decides that the two child limit does, however, give rise to a relevant difference in treatment between children living in households with more than two children, as compared with children living in households with that number of children or fewer, contrary to article 14 of the Convention, read together with article 8 [70]-[72], [187].

The remaining question, then, is whether the relevant differences in treatment (between men and women, and between children in families with two or fewer dependent children, and children in larger families) are justified [53], [72]. In relation to that question, the Court considers three issues of general importance which arise from the parties' submissions [73]. First, the Court decides that it is not appropriate for domestic courts to determine whether the United Kingdom has violated its obligations under unincorporated treaties, such as the United Nations Convention on the Rights of the Child. It is a fundamental principle of our constitutional law that an unincorporated treaty does not form part of the law of the United Kingdom [77]. Neither the Human Rights Act nor the case law of the European Court of Human Rights requires the domestic courts to depart from that fundamental principle [79], [83]-[84].

Secondly, the Court clarifies that a low intensity of review is generally appropriate, other things being equal, in cases concerned with judgments of social and economic policy in the field of welfare benefits and pensions. In other words, the courts will generally accept the judgment of the legislature or the executive that a difference of treatment is appropriate in that field, unless it is manifestly unreasonable. This is not, however,

a mechanical rule. The intensity of the court's scrutiny can be influenced by a wide range of factors, depending on the circumstances of the case. In particular, "very weighty reasons" will usually be needed to justify a difference in treatment on so-called "suspect" grounds, such as sex, gender or race [158]-[159].

Thirdly, the Court considers the use which can be made of parliamentary materials when considering whether primary legislation is compatible with Convention rights. The Court makes clear that the will of Parliament finds expression solely in the legislation which it enacts [167]. Ministerial statements cannot be attributed to Parliament or treated as indicative of Parliament's intention [166], [170]. Material placed before Parliament, and statements made in the course of debates, may, however, be relevant as background information in ascertaining the objective of the legislation and its likely practical impact. Material of that kind may also be relevant in demonstrating, as a matter of fact, that issues bearing on proportionality were considered by Parliament during the course of legislative proceedings. Nevertheless, the proportionality of a statutory measure is not to be judged by the quality of the reasons advanced in support of it in the course of parliamentary debate, or by the subjective state of mind of individual ministers or other members of the legislature [174]-[184].

Applying those principles to the facts of this case, the Court concludes that the two child limit has an objective and reasonable justification, notwithstanding its greater impact on women. The measure pursues a legitimate aim: to protect the economic wellbeing of the country by achieving savings in public expenditure and thus contributing to reducing the fiscal deficit [190]-[193]. It was inevitable that, if that aim was to be achieved, there would be a disproportionate impact on women, since women are disproportionately represented among parents responsible for bringing up children [195]-[198]. Parliament decided that the disproportionate impact of the two child limit on women was outweighed by the importance of achieving its aims. There is no basis on which the Court could properly take a different view [199].

Finally, the Court concludes that the difference in treatment between children living in households with more than two children, and children living in households with that number of children or fewer, is justifiable. Parliament's objective in ensuring that the CTC scheme is fair and reasonable, by limiting the extent to which recipients of CTC are guaranteed a rise in income if they have additional children, is legitimate, and could only be realised if a limitation on entitlement based on the number of children living in a household were introduced [204]. Parliament took account of the impact of the limitation on the interests of affected children, and decided that the impact was outweighed by the reasons for introducing it [207]. The assessment of proportionality therefore ultimately resolves itself into a question as to whether Parliament made the right choice. That is a question of intense political controversy, which cannot be answered by any process of legal reasoning [208]. There is no basis, consistent with the separation of powers under our constitution, on which the Court could overturn Parliament's judgment that the two child limit was an appropriate means of achieving its aims [209].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

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