

# Bereavement benefits and cohabiting parents



**One in five parents raising children can't claim bereavement benefits if their long-term partner dies, because they weren't married or in a civil partnership before the death. Bereavement benefits were reformed in 2017 but the Government did not adjust the eligibility criteria.**

**On 30 August 2018 the Supreme Court ruled that denying old-style Widowed Parent's Allowance to Siobhan McLaughlin, a mother who wasn't married to her partner who died, was incompatible with human rights legislation<sup>1</sup>. On 7 February 2020, the High Court ruled that denying the new-style Higher Rate Bereavement Support Payment to two bereaved fathers and their children was similarly incompatible<sup>2</sup>. The onus is now on Government to bring forward amendments to the legislation urgently to make the eligibility criteria for both benefits compatible across the UK, and to clarify the position for those previously ineligible.**

**Each day of delay, we estimate that another five grieving parents and their children will be hit by these discriminatory criteria.**

1. We estimate that every year, over 2,000 families face the double hit of one parent dying, and the other parent realising that they and the children aren't eligible for bereavement benefits.
2. Parents make the same National Insurance contributions whether they're married or not, and this builds up their entitlement to certain benefits including the State Pension. If they die before they are able to draw that pension, the contributions they made entitle their surviving partner and dependent children to bereavement benefits.
3. But their partner is only eligible if they were married or in a civil partnership. If they were living together without being married, the surviving family aren't eligible for bereavement benefits. That's the case even if the parents had been living together for many years and had children together.
4. Bereavement Support Payment (BSP), introduced in April 2017, is paid at a Higher Rate to those with children, with an initial payment of £3,500 and 18 monthly payments of £350: £9,800 in total<sup>3</sup>. This means that families where the parents weren't married or in a civil partnership currently lose out by almost £10,000.

## Why isn't this fair?

5. The higher rate of bereavement benefit currently paid to those with children is in recognition of the costs - emotional, practical and financial - of bringing up children when a partner has died. Children themselves have no influence over whether their parents are married or not, so it seems harsh to deprive some of financial support following a parent's death based on their parents' marital status. Most other Council of Europe member states and Canada either pay a survivor's pension directly to the children (regardless of their birth status) or to the surviving parent whether or not they were married to the parent who died.
6. Lots of couples don't realise they wouldn't be eligible: almost half (49%) of people cohabiting with a partner believe wrongly that living together for some time brings them the same legal rights as if they were married<sup>4</sup>. This figure is even higher (55%) among people with children. This lack of awareness has hardly changed over the last ten years, despite campaigns and coverage of high profile cases.
7. This confusion about the myth of the 'common law' marriage is partly because the means-tested benefits and tax credit systems treat couples as one unit, whether they are married or not. The Family Test<sup>5</sup> includes cohabitation within its definition of couple relationships, and the Family Law Reform Act 1987 identifies parents as being parents irrespective of whether they are married or not<sup>6</sup>. So sometimes a marriage certificate matters, and other times it doesn't. Sadly, for bereavement benefits, it definitely does.

<sup>1</sup> <https://www.supremecourt.uk/cases/uksc-2017-0035.html>

<sup>2</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2020/183.html>

<sup>3</sup> The old-style benefit, for those bereaved before April 2017, was Widowed Parent's Allowance. Structured differently, the amount by which unmarried cohabiting parents lost out varied by how long they would have been able to claim for if they had been married, how much NI their partner paid, and what they earned. For a parent bereaved before April 2017 and earning around £10,000 a year, Widowed Parent's Allowance (WPA) is worth around £55 a week, which means that those who weren't married lose out by £2,860 a year. In total, this sees them £15,700 worse off on average, but in the most extreme cases, a parent earning this amount is over £54,000 worse off over their children's childhood.

<sup>4</sup> <http://natcen.ac.uk/news-media/press-releases/2019/january/almost-half-of-us-mistakenly-believe-that-common-law-marriage-exists/>

<sup>5</sup> Department for Work and Pensions (2014) The Family Test: Guidance for Government Departments

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1987/42/section/1>

8. Unmarried partners are often in a worse position financially than those who were married: they may be ineligible for death benefits or pensions, and are treated differently for inheritance tax. If the person died without making a will, unmarried partners don't inherit anything automatically<sup>7</sup>.

### Is there wider support for change?

9. In 2012, the Government ran a consultation on 'Bereavement Benefits for the 21<sup>st</sup> Century'. But they specifically said this wouldn't include a review of the situation for cohabiting couples – even though the growing proportion of couples living together without marrying is one of the biggest social changes the 21<sup>st</sup> century has seen<sup>8</sup>.
10. MPs and Peers questioned this in Parliament during passage of the legislation, but the Government reiterated its position. In the Northern Ireland Assembly however, the Minister for Social Development accepted the Committee for Social Development's recommendation that his department should investigate how cohabiting relationships could be verified '*with a view to including unmarried cohabiting partners through the BSP*'.
11. In November 2015, The Social Security Advisory Committee identified that eligibility for BSP is '*inconsistent with other benefits, including Universal Credit, and appears incompatible with the Family Test*'<sup>9</sup>. In March 2016, The Work and Pensions Select Committee said the policy '*unfairly penalises the bereaved children of cohabitantes*' and recommended the Government should extend eligibility to these families. In October 2018, the Committee reiterated this recommendation and the Chair described the situation as a '*terrible injustice*'<sup>10</sup>.
12. On 12 February 2020, Sir Edward Davey MP asked the Prime Minister about the recent High Court case. The Prime Minister appeared to agree with the court ruling by describing the situation as an '*injustice*' and saying the Government would do '*what we can to remedy this*'<sup>11</sup>.

### How much would it cost to extend BSP to cohabiting, unmarried parents?

13. The Department for Work and Pensions estimates this would cost around £15million per year<sup>12</sup>. This is small compared to the annual savings of £100million the Government will make through its overall 2017 reforms<sup>13</sup>.

### Would it be difficult to administer?

14. The Government has raised the practical difficulties of determining the nature of a partnership, saying how uncomfortable it would be to ask intrusive questions about a relationship, shortly after one person had died. However, many of the administrative processes around a death could be seen as intrusive, but are recognised as being necessary, and it seems unlikely that families would find making a claim for bereavement benefits any different (particularly if it was going to make a significant financial difference to the family).
15. While it may be more difficult to prove cohabitation than marriage or civil partnership, this isn't insurmountable. The tax credit and means-tested benefit systems are already set up to manage cohabiting couple claims: and many couples will have had such a joint claim before one of them died. The Armed Forces Pensions Scheme successfully uses a definition of 'eligible partner' to determine who can receive a pension. Or provision could be made for the children directly, in which case their parents' marital status wouldn't matter.

**We strongly recommend that eligibility for bereavement benefits should be extended to unmarried, cohabiting partners with dependent children with the person who died.**

### What is the Childhood Bereavement Network doing?

16. Since 2011, we have coordinated a group concerned about this issue. Along with Child Poverty Action Group & with pro bono support from Irwin Mitchell LLP and human rights barrister Stephen Broach, we intervened in Siobhan McLaughlin's case<sup>14</sup>. Our Director provided a witness statement in Jackson and others vs SSWP.

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The [Childhood Bereavement Network](#) is the national hub for those working with children and young people before or after the death of someone important in their lives. We underpin our 250+ members' work with essential representation and support, advocating for bereaved children's needs and helping professionals access the information and support. We are hosted by the National Children's Bureau, registered charity no 258825.

<sup>7</sup> <http://lawcommission.justice.gov.uk/areas/intestacy-and-family-provision-claims-on-death.htm>

<sup>8</sup> The percentage of couples with children who are cohabiting & un married rose from 13% in 1999 to 21% in 2015 <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-401852>

<sup>9</sup> Social Security Advisory Committee (2015) *Bereavement Benefit Reform: Occasional Paper No.16* p33

<sup>10</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/support-bereavement-payment-report-published-19-20/>

<sup>11</sup> <https://hansard.parliament.uk/Commons/2020-02-12/debates/CD531541-499B-4110-8134-4986C0317FD3/PrimeMinister#contribution-145384E4-16B6-4C19-8892-EC056D0D2F82>

<sup>12</sup> <https://www.gov.uk/government/publications/bereavement-support-payment-forecasts-for-april-2020-to-march-2025/bereavement-support-payment-forecast-on-the-effect-of-extending-eligibility-to-cohabitantes-april-2020-to-march-2025>

<sup>13</sup> <https://www.legislation.gov.uk/ukdsi/2017/9780111153062/memorandum/contents>

<sup>14</sup> <http://www.childhoodbereavementnetwork.org.uk/media/73376/Approved-Submissions-NCB-5289501-1-29318-MAIN-SUBMISSIONS.pdf>