



How do the recent court cases about widowed parents and bereavement benefits affect me?

Many parents have followed with interest the recent court cases about bereavement benefits for those who weren't married to their partners.

These cases involved Siobhan McLaughlin's eligibility for Widowed Parent's Allowance (WPA), and James Jackson and Kevin Simpson's eligibility for higher rate Bereavement Support Payment (BSP).

This note sets out the best understanding of the Childhood Bereavement Network (National Children's Bureau) and the Child Poverty Action Group (CPAG). It was last updated on 3 February 2021.

This note is for general information and it is not legal advice. If you need more details on your rights or legal advice about what action to take, please contact an adviser or solicitor (see the bottom of the note for signposting).

What happened in the cases?

The courts have ruled that denying bereavement benefits to these families because the parents were not married is incompatible with the European Convention on Human Rights (ECHR). The McLaughlin case on WPA went all the way to the Supreme Court, while the Jackson and Simpson case on higher rate BSP was ruled on in the High Court, but the Government did not appeal the judgment.

Will the parents in these cases automatically get payments?

No. At the moment the eligibility criteria for WPA and BSP remain as they did before. It is up to the Government to decide when and how to amend the law, and for Parliament to approve this.

On 28th July 2020, the Government said it would amend the laws that determine eligibility to WPA and BSP, so that these laws comply with the ECHR. It will do this by making a Remedial Order. Its exact words were *'It is our intention to take forward a Remedial Order to remove the incompatibilities from the legislation governing Widowed Parent's Allowance and Bereavement Support Payment by extending these benefits to cohabitants with children. We intend to lay the Order before the House in due course.'*

To make a Remedial Order, the Government must first publish a proposal of a draft remedial order, which MPs and peers have 60 days to comment on. The Government then publishes the actual draft remedial order, which Parliament approves after a further 60 days.

We are now waiting to see when the Government will publish its proposals, and what these contain. We expect it to amend the laws for families who are bereaved in the future. We are also actively campaigning for it to make backdated (retrospective) payments to those who were turned down for

these benefits in the past, or who never claimed them because they thought they would not be eligible. But there is no guarantee of this.

When the eligibility rules for cohabiting partners change, it is likely that all the other rules will stay the same. For example, your partner must have made enough National Insurance contributions for you to be eligible, and you must still be eligible for Child Benefit for at least one child.

When will this happen? What can I do to speed things up?

As a constituent, you can lobby your own MP on the issue. You can find suggestions of how to do this on the Childhood Bereavement Network [website](#).

I am not able to claim bereavement benefits because I wasn't married to or in a civil partnership with my partner, but I meet all the other eligibility criteria. What should I do?

If you are in similar circumstances to the parents who have won their cases (i.e. you meet all the other eligibility criteria apart from being married or in a civil partnership), you can put in a claim for bereavement benefits now. However, it is important to manage your expectations: putting in a claim now will not achieve anything immediately, and, depending on when your partner died and the final terms of the changes to the existing law, it may not get you any further in the long run. It is also important to warn you that your claim will be turned down (refused), as, until there is a final remedial order, the law will not have changed. Alternatively, DWP may decide simply not to process your claim until the law is actually changed. Below, we give you suggestions about what to do when this happens.

If you do not meet all the other (non-marriage) eligibility criteria you are not affected by these court decisions and you will not be able to make a claim.

I was not able to claim bereavement benefits because I wasn't married to or in a civil partnership with my partner, but I met all the other eligibility criteria at the time they died. I no longer meet all the other criteria. What should I do?

WPA (only applicable if your partner died before 6 April 2017) ends if you move in with a new partner or reach state pension age or you no longer have at least one child who qualifies for Child Benefit. BSP (if your partner died on or after 6 April 2017) ends after 18 months. Both benefits can only be backdated for a maximum of three months from the date that you claim.

You can try putting in a claim if you did meet the other criteria but no longer do so. However it is particularly important to manage your expectations in these circumstances. We will be campaigning for the Government to make retrospective payments to people who missed out, but there is no guarantee that this will be successful.

If you have never met the other (non-marriage) eligibility criteria (for example, your partner did not make enough National Insurance contributions) you are not affected by these court decisions and you will not be able to make a claim.

What are the advantages to putting in a claim now?

Putting in a claim now will mean that you are already in the system when the Remedial Order is finally made. This may mean that your claim would be processed more quickly if you become eligible once the law is amended, compared to someone who makes a claim when the Remedial Order is made. However, there is no guarantee that this will be the case. Also claiming now, rather than waiting until the law is actually changed, means that if your claim is ultimately successful, you will be

entitled to benefits from that earlier date of claim i.e. entitlement runs from when you claim, not from when DWP or an appeal tribunal makes any decision in your favour.

What are the disadvantages?

It will take you some time to make your claim, including finding evidence that can prove you were cohabiting with your partner before they died. Many parents find it upsetting and painful when their claim is turned down, even if they were expecting it. Keeping up with the deadlines for appealing etc also takes time.

Are there any other risks?

If you were claiming benefits or tax credits as a single person when your partner died, it will be difficult for you to prove that you were cohabiting with them at that time. If you do try and prove this, it is possible that the Government will re-open your previous single person claim and investigate this for fraud. You could end up having to pay money back, and might also have to pay a fine. **If you are in any doubt about whether it is sensible for you to pursue a claim for bereavement benefits, you should discuss this with an adviser.**

I have considered all the advantages and risks, and I want to put in a claim now. What should I do?

If you do decide to apply now, you can

- (i) make a claim for the appropriate bereavement benefit (see below)
- (ii) when it is refused, ask for the decision to be reviewed on the basis that it breaches your human right not to be discriminated against compared to married couples (this is called a Mandatory Reconsideration).
- (iii) when the refusal is maintained, put in an appeal form to the Tribunal, in which you could simply say that the denial of the benefit is a breach of your and your children's rights under the Human Right Act, as per *Siobhan McLaughlin vs Department for Communities [2018] UKSC 48* and *R (Jackson & Others) v SSWP [2020] EWHC 183*.
- (iv) In your appeal you should also request that your appeal is 'stayed' or put on hold behind the existing appeal in the Upper Tribunal of CG317/2019. (That appeal has itself been stayed pending the finalisation of the Remedial Order).

The arrangements for putting in a claim are different, depending on when your partner died.

My partner died before 6 April 2017

Receiving WPA could affect other benefits you are getting, including Income Support, Incapacity Benefit, Jobseeker's Allowance, Carer's Allowance, Employment and Support Allowance, and Universal Credit. It can also affect your tax position, as WPA is taxable. You should speak to an advisor to find out what overall difference claiming WPA would make to your total income. It may be that it makes no difference, or even reduces the overall amount you receive.

If you do decide to put a claim in for WPA now, you can do so by completing form BB1 at <https://www.gov.uk/government/publications/bereavement-benefits-claim-form>. On p3, the form asks about your marriage or civil partnership. Leave this page blank apart from the last question 'Are you, or have you been living with someone else as if you were married to them, or as if you are civil partners?' (This question is about anyone new you have lived with since your partner died. It is not about your partner who died). Then explain your circumstances in the box on page 14, with any proof of your partnership. Keep a copy of your completed form for your records.

My partner died on or after 6 April 2017

If you do decide to put a claim in for BSP now, you can do so by completing form BSP1 <https://www.gov.uk/government/publications/bereavement-support-payment-claim-form>. On p3, the form asks about your marriage or civil partnership. Tick 'no' to the question 'Were you still married or in a civil partnership with the deceased person when they died' and then leave the rest of the page blank. Then explain your circumstances in the box on page 9, with any proof of your partnership. Keep a copy of your completed form for your records.

Do the judgments affect all unmarried couples with children?

The Supreme Court did warn that 'It does not follow that the operation of the exclusion of all unmarried couples will always be incompatible' (paragraph 43). In other words, there may be some circumstances - which differ from Siobhan McLaughlin's or James Jackson/Kevin Simpson's- in which the Government is justified in refusing bereavement benefits to unmarried partners with children.

I don't have children. Do the judgments affect me?

The children were a crucial aspect to the cases that have been won. It is important to note that when Siobhan McLaughlin first brought her case to the High Court, the judge ruled that it was unlawful to deny her WPA (which requires there to be children in the household) but it was not unlawful to deny her Bereavement Payment (which does not require there to be children). It is unlikely that these cases have implications for those without dependent children, for either WPA or BSP.

My partner is terminally ill and we are not married. How should the judgement affect our decisions about what to do?

It is important to remember that at the moment, the eligibility criteria for Bereavement Support Payment have not changed. Until they do, you should not let this judgement affect any decisions you make.

It is important to make sure you and your partner are claiming all the benefits to which you are currently entitled. There is a good guide [here](#), with [specific information](#) for people whose death 'can reasonably be expected' in the next six months. It makes sense for unmarried couples to seek advice about how they can make sure their family is supported after the death. You can find an adviser [here](#): (select 'benefits').

The [Plan If](#) website has more suggestions for parents of things they might want to put in place in case they die before their children grow up.

Where can I get more advice?

Neither CBN nor CPAG are able to offer direct advice to parents. You can get advice from your local Citizens Advice Bureau <https://www.citizensadvice.org.uk/> or other benefits adviser <https://advicefinder.turn2us.org.uk/>