



How does the Supreme Court judgement on Siobhan McLaughlin's case affect me?

Many parents have followed Siobhan McLaughlin's case with interest, and are keen to know how the Supreme Court's judgement on 30 August 2018 might affect them. 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 28 August 2019.

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).

Will Siobhan automatically get her payments now?

No. The Supreme Court has ruled that denying her the benefits is incompatible with the European Convention on Human Rights (ECHR). That does not mean that the law has changed. At the moment the eligibility criteria for WPA 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. However, the ruling does mean that it is likely that the Government will bring forward legislation to amend the law so that the eligibility criteria are compatible with ECHR.

Will Siobhan's payments, and those of others, be backdated?

We would certainly hope so, but in the first instance it is up to the Government to decide whether they feel that they need to backdate any payments, for how long and in what circumstances. We are urging them to clarify the position as soon as possible.

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](#).

What were Siobhan's circumstances?

She lived with her partner John Adams for 23 years before he died. They had four children together, who were aged 11, 13, 17 and 19 when John died in 2014. He had paid sufficient National Insurance contributions for Siobhan to have claimed Widowed Parent's Allowance if she had been married to him.

I am in very similar circumstances to Siobhan and my partner died before 6 April 2017. Should I put a claim in now?

The judgement was a year ago, and the Government has still not given any indication of how and when it proposes to amend the legislation on WPA or what families in similar positions to Siobhan

should do. It is advisable to put in a claim in now, pending any announcement by the Department for Communities and Department for Work and Pensions about how and when they intend to amend the legislation.

If you do decide to put a claim in now, you can do so by completing this form <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.

It is possible that any claim is stayed (put on hold) until a new system is put in place. If the claim is refused before the new system is in place, the next step would be to make an application direct to the European Court of Human Rights in Strasbourg. If you are interested in being kept up to date with the possibility of cases going to Strasbourg, you can register your interest here <https://www.surveymonkey.co.uk/r/DHC9DG3>

[I don't live in Northern Ireland. Does the case affect me?](#)

Siobhan lives in Northern Ireland and brought her case there. The legislation setting out the eligibility criteria for WPA is separate for Northern Ireland and for the rest of the UK. However, the wording is the same. So, if the Supreme Court has decided that current policy is in breach of the Human Rights Act in Northern Ireland, it must be in breach in the rest of the UK too.

[I live in Northern Ireland. How can the law be changed here if the Stormont Assembly isn't functioning?](#)

It is not clear yet how the law governing the eligibility of WPA could be changed in Northern Ireland. We are waiting for the Department for Communities and the Department for Work and Pensions to clarify this.

[Does the judgement 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's - in which the Government is justified in refusing WPA to unmarried partners.

[My partner died after 6 April 2017. Will I get payments?](#)

This judgement does not cover the new Bereavement Support Payment (BSP). Eligible parents whose partner died after 6 April 2017 claim the new BSP rather than the old WPA and Bereavement Payment. The legislation governing the new BSP is separate, and was not considered by the Supreme Court. The judgement specifically said that it does not follow from this judgement that the new law governing BSP is incompatible in the same way as the old law governing WPA (paragraph 44).

The Government's position appears to be that BSP (even at the higher rate) is distinguishable from WPA and so the reasoning in the Supreme Court judgment does not apply to the new bereavement benefit. We are arguing strongly that the Supreme Court has established a principle that bereavement benefits should not disadvantage children because their parents chose not to marry (paragraph 42). We argue that the Government should recognise the way the wind is blowing, and extend eligibility to unmarried partners under the new law governing BSP.

In the meantime, a number of parents are bringing test cases about their eligibility to BSP, and CPAG has started judicial review proceedings on behalf of two separate households. Other families are bringing appeals which are likely to be put on hold ('stayed') by the Tribunal behind any final judgment in the judicial review case.

To protect your position, you can also make a claim for Bereavement Support Payment now using this form <https://www.gov.uk/government/publications/bereavement-support-payment-claim-form>. You can explain your circumstances in the box on p9 of the form.

When you are turned down for BSP (as you are likely to be) you should then apply for a Mandatory Reconsideration of the decision. When that is refused you should put an appeal form to the Tribunal. You can simply say that the denial of BSP is breach of your and your children's human rights as per *McLaughlin*. Your appeal is then likely to be 'stayed' behind the cases described above. It is important that you apply for Mandatory Reconsideration, and appeal the decision, within the time limits that you are given.

[I don't have children. Does the judgement affect me?](#)

Siobhan's case was specifically about Widowed Parent's Allowance, and her children were a crucial aspect to the case. It is important to note that when she 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 this case has implications for those without dependent children.

[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](#).

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/>