

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. On 30 August 2018 the Supreme Court ruled that denying Widowed Parent's Allowance to Siobhan McLaughlin, a mother who wasn't married to her partner who died, was incompatible with human rights legislation¹.

The onus is now on Government to bring forward amendments to the legislation urgently to make the eligibility criteria for Widowed Parent's Allowance (and for Bereavement Support Payment which replaced it in 2017) compatible across the UK, and to clarify the position for those previously ineligible because of their marital status.

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. Different widowed parents miss out by different amounts depending on several criteria including when their partner died, how long they would have been able to claim for if they had been married, how much National Insurance their partner paid, and what they earn. For a parent bereaved before 6 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 childhood².
5. On 6 April 2017, WPA was replaced by Bereavement Support Payment for newly bereaved parents. This is worth £9,800 in total, so unmarried, cohabiting parents bereaved after that date are worse off by that amount.

Why isn't this fair?

6. 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 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.
7. 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 married³. 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.
8. 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 Test⁴ 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 not⁵. So sometimes a marriage certificate matters, and other times it doesn't. Sadly, for bereavement benefits, it definitely does.

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

² Calculations by Low Incomes Tax Reform Group. Assumes one child and no housing costs. £55.17 WPA x 52 weeks x median claim of 5.5 years = £15,730. £55.17 WPA x 52 weeks x max claim of 19 years = £54,340

³ <http://natcen.ac.uk/news-media/press-releases/2019/january/almost-half-of-us-mistakenly-believe-that-common-law-marriage-exists/>

⁴ Department for Work and Pensions (2014) The Family Test: Guidance for Government Departments

⁵ <http://www.legislation.gov.uk/ukpga/1987/42/section/1>

9. 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 automatically⁶.

Is there wider support for change?

10. In 2012, the Government ran a consultation on 'Bereavement Benefits for the 21st 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 21st century has seen⁷.
11. A new benefit – Bereavement Support Payment (BSP) – replaced the old system of bereavement benefits in April 2017, but cohabiting couples still aren't eligible. 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'*.
12. 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'⁸. In March 2016, The Work and Pensions Select Committee said the policy 'unfairly penalises the bereaved children of cohabittees' and recommended the Government should extend eligibility to these families.

How much would it cost?

13. The Childhood Bereavement Network believes that around 20% more parents would be eligible for bereavement benefits if the rules were extended to cohabiting couples who had dependent children together. So the costs would go up by the same percentage. Under the new system of BSP this would cost around £20 million p.a.

Would it be difficult to administer?

14. During passage of the Pensions Bill, which introduced the new BSP, the Minister of State for Pensions 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 there are undoubtedly difficulties in establishing the nature of a cohabiting relationship, these aren'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.
16. **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?

17. Since 2011, we have coordinated a group concerned about this issue. We are part of the Life Matters taskforce. Along with the Child Poverty Action Group, and with pro bono support from specialist public lawyers at Irwin Mitchell LLP and human rights barrister Stephen Broach from Monckton Chambers, we intervened in Siobhan McLaughlin's case⁹. We will continue to campaign on this injustice.

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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.

⁶ <http://lawcommission.justice.gov.uk/areas/intestacy-and-family-provision-claims-on-death.htm>

⁷ 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=tcn%3A77-401852>

⁸ Social Security Advisory Committee (2015) *Bereavement Benefit Reform: Occasional Paper No.16* p33

⁹ <http://www.childhoodbereavementnetwork.org.uk/media/73376/Approved-Submissions-NCB-5289501-1-29318-MAIN-SUBMISSIONS.pdf>