

## 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) of how the cases affect families in England, Scotland and Wales.

It was last updated on 24 August 2022.

**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 28 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 said it would do this by making a Remedial Order (RO). 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.'*

The proposal for a draft bereavement benefits RO was laid in July 2021 and the 60-day consultation period ended in November 2021. You can read more information about the draft [here](#), along with our thoughts on it [here](#).

We are now waiting to see when the Government will publish its final draft RO, and what this contains. After the final draft has been published, Parliament will be asked to approve this after a further 60 'sitting' days (ie days when Parliament is sitting).

Pressure is mounting on the Government to lay the final draft order. In July 2022, the Secretary of State for Work and Pensions wrote to the Chairs of the Work and Pensions Select Committee and the Joint Committee on Human Rights in response to their joint request for an update on progress. At that time, they said: *'this issue remains an absolute priority for this department, and my officials*

*are working at pace to lay the Order as soon after the return to Parliament as progress and parliamentary time will allow’.*

### Who will be affected by the RO?

We expect the RO to amend the laws for families who are bereaved in the future.

We have also campaigned actively 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.

The Government’s proposal for a draft RO included backdated payments to those who would have otherwise qualified for the benefits on 30 August 2018 (the date of the Supreme Court judgment in Siobhan McLaughlin’s case).

We argued that these retrospective payments should go back further to February 2016, when the courts first ruled that the system was discriminatory. We are waiting to see what the RO says in its final form and there is no guarantee of how far back these payments will go. If the final draft RO does not go back to February 2016, we are likely to call for an ex gratia payments scheme for families who will miss out.

When the eligibility rules for cohabiting partners change with the RO, 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 the cases outlined above (i.e. you meet all the other eligibility criteria apart from being married or in a civil partnership), you should look out for any updates about the RO, and get ready to put in a claim. This could include gathering any evidence that helps to prove you were cohabiting with your partner when they died.

It is likely that there will be a time limit for putting in retrospective claims. If this is the case, it will be very important that you claim within this time limit.

### Will there be any risks to putting in a claim?

- 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.**
- If your partner died before 6 April 2017, then the benefit you would have been eligible for was Widowed Parent’s Allowance (WPA) (rather than Bereavement Support Payment).

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. We hope that the RO will be clear about how any retrospective payments will be made and treated. 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.

### [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.

It is possible that in the future the courts will rule on whether or not there has been any breach of the rights of unmarried couples without children, however, as things stand, this group are not within the scope of the cases which Siobhan McLaughlin and James Jackson/Kevin Simpson brought, and they are not expected to be covered by the RO.

### [My partner is terminally ill and we are not married. How should the judgment 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 judgment 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](#). 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 about 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/>