

Bereavement Support Payment and Cohabitees



Adviser Legal Information Briefing

This Legal Information Briefing provides guidance on what action to take if a claimant is told they do not fulfil the eligibility conditions for a successful claim to Bereavement Support Payment.

For free, tailored advice on any of the issues discussed in this document or any other aspect of social security, please call (028) 9024 4401 and ask to speak to a social security adviser.

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What is Bereavement Support Payment (BSP)?

BSP is a social security benefit which is paid to people of working age after the death of their spouse or civil partner to help them with the immediate costs of the death. It is made up of an initial lump sum followed by up to 18 monthly amounts. It is paid at two rates, with the higher rate for people who have dependent children or are pregnant at the time of their partner's death.

To qualify for BSP:

- your spouse or civil partner must have died on or after 6 April 2017. (This is when BSP replaced the previous bereavement benefits.)
- you were under State Pension age when your spouse or civil partner died
- you were resident in the UK at the time of the death or live in a country where the UK has a relevant European Union or reciprocal agreement
- your partner had paid national insurance contributions.

You need to claim within 12 months of your spouse or civil partner's death to receive the lump sum and within 3 months for the additional monthly amounts.

For full details and how to apply see [nidirect](https://www.nidirect.gov.uk).

The rights of cohabiting partners

The legislation specifically rules out the surviving partner of a cohabiting couple from claiming BSP if they were not married nor in a civil partnership. However, in February 2020 the High Court ruled that for the higher rate of BSP this is incompatible with the European Convention on Human Rights.¹ The ruling recognises that children of bereaved parents are all equally entitled to support, whether or not their parents were married or in a civil partnership. (Eligibility for the lower rate, where the couple do not have dependent children, was not challenged.)

This follows an earlier Supreme Court ruling in August 2018 that denying Widowed Parent's Allowance, one of the pre-2017 bereavement benefits, to Siobhan McLaughlin, a mother of four children, was incompatible with human rights law.²

¹ [High Court Judgment Template \(cpag.org.uk\)](https://www.cpag.org.uk)

² [In the matter of an application by Siobhan McLaughlin for Judicial Review \(Northern Ireland\) \(supremecourt.uk\)](https://www.supremecourt.uk)

The current situation

The UK government has stated that it intends to remove the incompatibilities from the legislation governing Widowed Parent's Allowance and Bereavement Support Payment by extending these benefits to cohabitees with children.³ Westminster has indicated that it will introduce legislation "in due course". It is now over two years since the Supreme Court judgment and there still has been no change in the law.

Social security legislation is devolved in Northern Ireland, so the Assembly could legislate separately here to resolve the injustice. The Communities Minister has said she is liaising with the Department of Work and Pensions to determine the way forward.⁴

Advising cohabiting partners

In light of the current uncertainty, LCNI advises that the surviving partner of a cohabiting couple **with children** should submit a claim for BSP. in order to protect their claim for when the legislation is ultimately changed.

When a client's claim is refused, you may wish to challenge the decision on behalf of your client. LCNI can help with any advice you may need. We have set out a template supporting statement to assist you in challenging the decision on behalf of your client. (See the template letter in the Appendix). This can be sent in with the MR2(NI) mandatory reconsideration form or the NOA1 appeal form.

Two further grounds for challenging a refusal of BSP

1. In 2020 the Court of Appeal in Northern Ireland judged that the denial of BSP to the family of a deceased woman who had been unable to work and pay National Insurance contributions because of her severe disability was incompatible with human rights legislation.⁵ Anyone in this situation should therefore treated as if they had met the NI contribution conditions for the benefit.

³ [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

⁴ <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=292126>

⁵ [Michael O'Donnell v Department for Communities.pdf \(judiciaryni.uk\)](#)

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2. LCNI would like to hear from bereaved partners without children as we believe that there is a strong case for extending BSP to the surviving partners of cohabiting couples with or without children.

For advice on specific cases, please call 028 9024 4401 and ask to speak to a social security adviser.

Appendix: Template letter to challenge refusal of entitlement

Bereavement Support Payment

[Your Address]

Mail Opening Unit

PO Box 42

Limavady

BT49 4AN

To Whom it may concern,

Re: Refusal to allow BSP claim

You have advised me that as the unmarried partner of the deceased I am not entitled to make a claim for Bereavement Support Payment (BSP). .

R (Jackson & Others) v SSWP [2020] EWHC 183 is a GB case which established that the requirement to be married or in a civil partnership in order to claim higher rate bereavement support payment (BSP) was not compatible with the European Convention on Human Rights. The UK Government have accepted this decision and it is not subject to appeal.

Bereavement Support payment in Northern Ireland has been introduced under largely identical but secondary legislation. The Department for Communities are therefore under a legal obligation to interpret the legislation in a Human Rights Compatible way - *Re NICCY [2009] NICA 10* (§17) and *RR v SSWP [2019] UKSC 52* (§27-30) relied upon.

Please can you therefore allow my application and award BSP in these circumstances.

To be told that I cannot claim BSP at a time when I am dealing with this bereavement

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is cruel. There is no difference in the impact of this loss on myself and my children than that of a married widow and children. This treatment causes upset, distress, annoyance, inconvenience, worry and humiliation. I believe you are aware that this provision breaches my Article 14 rights when read with Article 8 and A1P1 yet continue to implement this non-human rights compliant approach. Should you not therefore reverse your position it will be my intention to challenge your policy and seek compensation for this continuing breach of my human rights.

I trust that you will consider this matter urgently and look forward to receiving your response.

Yours faithfully,

[Add Name]

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