

**Work and Pensions Committee Inquiry  
Support for the bereaved  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 LITRG welcome the opportunity to input into this inquiry, building on the background of our involvement with the Childhood Bereavement Network<sup>1</sup> and our understanding of the complex interactions taxpayers can face with the tax, tax credits and welfare benefits systems.
- 1.2 We have ongoing concerns that bereaved parents and children could be worse off under the bereavement support payment (BSP) regime than under the former combination of bereavement allowance (BA) and widowed parent's allowance (WPA). However, we have restricted our evidence gathering and substantive comments to tax, NI, tax credits and benefits interaction, which is our focus and area of expertise.
- 1.3 In terms of how the new benefit is working in practice, there seems to be some confusion as to whether BSP is reckonable as income for tax credits or not. If people are incorrectly declaring it as income, then this could be reducing their tax credits award unnecessarily, at a time when every penny counts.

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<sup>1</sup> <http://www.childhoodbereavementnetwork.org.uk/>

- 1.4 We recommend that accurate and clear guidance, including worked examples, is made available on GOV.UK, to help claimants understand the impact that receiving BSP may have on any other benefits they are receiving.
- 1.5 As to the question ‘How well has the Government done at explaining and promoting when people are eligible for the new bereavement benefit?’, we highlight that the National Insurance eligibility condition for BSP is more nuanced than GOV.UK implies. We explain that the way in which the guidance is currently worded may be raising hopes that people are eligible when they are not, or could mean that people assume they are not eligible when they are.
- 1.6 We take this opportunity to comment that while the overall National Insurance contribution (NIC) requirements for bereavement benefits have been simplified under BSP as compared to old regime they can still be problematic.
- 1.7 Someone must actually pay NIC (even if at 0%) for their surviving partner to be eligible – being credited with NIC because they were too ill or disabled to work will not qualify them. This is clearly a problem for young adults who, through no fault of their own, had not had enough time to build up entitlement before they died.
- 1.8 We attach, as Appendix 1, a recent news article written in response to a query to our website, illustrating the devastating impact this can have. Ideally, we would like to see some easements introduced to the eligibility criteria to help cover cases in which the late spouse may have paid insufficient contributions. For example, entitlement could be extended where Class 3 contributions have been paid or credited.
- 1.9 At the very least, we think better information as to the current NIC condition should be made available. This should include guidance as to what to do if you wish to challenge assertions that not enough NIC was paid or where NIC contributions have simply gone missing, or were not properly accounted for by an employer.
- 1.10 The decision in the *McLaughlin*<sup>1</sup> judicial review proceedings strongly suggests that BSP should also be made to families with bereaved children when the parents were recognised partners. We would urge the Committee to ask the government as to its intentions on this.
- 1.11 While we appreciate the challenges that exist in terms of identifying recognised partners, these are surmountable. One option could be to use the definition of ‘eligible partner’ as used by the Armed Forces Pensions Authority.

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<sup>1</sup> [2018] UKSC 48, see <https://www.supremecourt.uk/cases/uksc-2017-0035.html>

## **2 About Us**

- 2.1 LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 LITRG is a group of tax experts with an interest and insight into the complex interactions taxpayers can face with the tax, tax credits and welfare benefits systems.
- 3.2 We have been interested in the complexities for tax and benefits that occur on bereavement for many years.<sup>1</sup> We have also been working with the Childhood Bereavement Network since the changes to bereavement benefits were announced.
- 3.3 Our initial concern was to ensure that BSP had a 'tax-free' status. Our work on couples (looking at the confusing array of treatments of married couples, civil partners and unmarried couples in the tax and related welfare systems<sup>2</sup>) further prompted us to look at who would qualify for BSP.
- 3.4 Also, we were concerned that the shorter duration of the periodical payment, and the expectation that some parents should be looking for work after just six months, would worsen a child's outcome. We remain interested in this point, for example to understand if the government has any information/evidence as to the actual impacts of the new regime.

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<sup>1</sup> See for example, our 2009 report on Bereavement and the tax system:

<https://www.litrg.org.uk/latest-news/reports/091125-bereavement-and-tax-system>

<sup>2</sup> See our 2015 report Couples in the tax and related welfare systems – a call for greater clarity:

<https://www.litrg.org.uk/latest-news/reports/150511-couples-tax-and-related-welfare-systems---call-greater-clarity>

However, in this submission, we limit ourselves to responding to the following questions, as this is where we feel we can add most value within our technical remit:

- Is the new bereavement benefit (BSP) working well?
- How well has the government done at explaining and promoting when people are eligible for the new bereavement benefit?
- What should be done to support bereaved parents who were not married to their partner, and who are not currently eligible for the BSP?

#### **4 Question – Is the new bereavement benefit (Bereavement Support Payment) working well?**

4.1 In response to this question, we would like to look at the interaction between BSP and other benefits – something which is not explained well and which may be impacting claimants negatively.

4.2 The tax and tax credit/universal credit (UC) treatment of BSP can be summarised as follows:

- BSP has a non-taxable capital payment and a non-taxable monthly allowance payable for up to 18 months.
- It is not counted as income for tax credits or UC (except any capital lump sum element left over after 12 months, which would attract a tariff income which might affect the level of benefit awarded or could affect their entitlement to claim altogether).

4.3 The official guidance on GOV.UK<sup>1</sup> as to BSP reduces the above to:

*‘Bereavement Support Payment will not affect your benefits for a year after your first payment. After a year, any payment you have left over could affect the amount of benefit you’re eligible for.*

You must tell your benefits office (for example, your local Jobcentre Plus) when you start getting Bereavement Support Payment.’

4.4 The line in italics is not quite correct. The second paragraph sounds completely contradictory.

4.5 It is also worth noting the tax and tax credit/UC treatment of the regime that BSP replaced, which can be summarised as follows:

- BA – taxable.

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<sup>1</sup> <https://www.gov.uk/bereavement-support-payment/what-youll-get>

- Bereavement payment (BP) – non-taxable.
- WPA – taxable.
- For tax credits – BA and WPA are counted as income. BP is not.
- For UC – BA and WPA are counted as income. BP is counted as capital.

4.6 Although the BSP interactions are a little easier to understand than those occurring under the old regime, we are aware that some people are still unsure as to the impact of their BSP on other benefits that they may receive.

4.7 For example, an adviser recently contacted us about a tax credit claimant whose BSP was being treated as taxable income (and thus reckonable as income for tax credits).

4.8 It seems likely she mistakenly declared it as income for tax credits. However, this is not surprising, as if you look on the tax credit claim form notes<sup>1</sup> they said you have to declare BA. She may well have assumed this is the same as BSP and thus declared it – it would have been a very easy mistake to make, particularly as the BSP was not included in the list of credits/benefits which *do not* need to be declared.

4.9 Although these notes have been withdrawn from 6 April 2019, the GOV.UK guidance<sup>2</sup> which replaces them, could well result in the same outcome, as it says:

‘Income includes money from [UK state benefits](#) (or their foreign equivalents) except income-based Jobseeker’s Allowance (JSA) or [‘tax-free’ benefits](#).’

If you follow the links, BA is listed as a taxable benefit, yet BSP is *not* listed in the non-taxable benefits section.

4.10 She may also have relied on information from other government related websites<sup>3</sup> that incorrectly state that BSP is reckoned as income for tax credits.

4.11 If people are incorrectly declaring it as income, then this could be reducing their tax credits award unnecessarily – at a time when every penny counts.

4.12 We recommend that clear, accurate guidance, including worked examples, is made available across all government sites as soon as possible, to help claimants understand the impact that receiving BSP may have on any other benefits they are receiving.

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<sup>1</sup> See section 5.2: <https://www.gov.uk/government/publications/tax-credits-getting-your-claim-form-right-tc600-notes>

<sup>2</sup> <https://www.gov.uk/claim-tax-credits/what-counts-as-income>

<sup>3</sup> See for example: <https://www.moneyadviceservice.org.uk/en/articles/claiming-bereavement-allowance-and-other-benefits#how-your-bereavement-benefits-affect-other-benefits>

**5 Question – How well has the Government done at explaining and promoting when people are eligible for the new bereavement benefit?**

- 5.1 We would like to focus on some technicalities around the National Insurance eligibility condition in answer to this question.
- 5.2 The basic contribution condition for BSP is at least one-year's actual 'payment' of Class 1 or 2 contributions with an earnings factor of at least 25 times the lower earnings limit (LEL).<sup>1</sup>
- 5.3 Again, on GOV.UK<sup>2</sup> this has been reduced to:
- 'You could be eligible if your partner ...
- paid National Insurance contributions for at least 25 weeks'
- 5.4 But the reality is more nuanced than GOV.UK<sup>3</sup> implies. For example, payment of Class 3 contributions does not count and on earnings between the LEL and the Primary Threshold, people do not actually pay NIC (because the rate is 0%) but this would still count.
- 5.5 This may be raising hopes that people are eligible when they are not or causing people to assume they are not eligible when they are. We suggest the wording is expanded as soon as possible.
- 5.6 We also take this opportunity to make some comments about the eligibility criteria more generally.
- 5.7 While the overall NIC requirements for bereavement benefits have been simplified under BSP than they were under the old regime, they can still be problematic.
- 5.8 Someone must actually pay NIC (even if at 0%) for their surviving partner to be eligible – being credited with NIC because they were too ill or disabled to work will not qualify them. This is clearly a problem for young adults who, through no fault of their own, had not had enough time to build up entitlement before they died.

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<sup>1</sup> Pensions Act 2014, s 30: <https://www.legislation.gov.uk/ukpga/2014/19/part/5>

<sup>2</sup> <https://www.gov.uk/bereavement-support-payment>

<sup>3</sup> Or the Money Advice Service for that matter (<https://www.moneyadviceservice.org.uk/en/articles/claiming-bereavement-allowance-and-other-benefits>): 'Your spouse or civil partner must have made National Insurance Contributions for at least 25 weeks during their working life for you to qualify. If your husband, wife or civil partner died because of an industrial injury, their national insurance contributions might not matter.'

- 5.9 We enclose, as Appendix 1, a recent news article that we have written, in response to a query to our website, which illustrates the devastating impact this can have.
- 5.10 There may also be problems meeting the NIC condition if the deceased was working but this was 'off the books', i.e. their 'employer' was not operating legitimately and failed to apply Pay As You Earn (PAYE) for tax and National Insurance. Or where they were in insecure work with such volatile or precariously low wages that they were not meeting the LEL. Given the nature of today's labour market and the propensity of employers in certain sectors to try and avoid certain costs and obligations of employment, this is very much a reality and, sadly, may not be something workers can do much about (if they want to keep their jobs).
- 5.11 Taking all of the above together, to help cover cases in which the late spouse may have paid insufficient contributions, we would like to see:
- entitlement to BSP extended to cases where the deceased had been credited with NIC
  - entitlement to BSP extended where Class 3 contributions have been paid or credited
  - the NIC of the claimant as well as those of the deceased (if inadequate of themselves) being taken into account when assessing eligibility to receive BSP, and/or that contributions across all years may be aggregated and treated as if made in one year.
- 5.12 At the very least, better/more detailed information as to the current NIC condition should be made available – including guidance as to what to do if you wish to challenge assertions that not enough NIC was paid or where NIC contributions have simply gone missing, or were not properly accounted for by an employer.

## **6 Question – What should be done to support bereaved parents who were not married to their partner, who aren't currently eligible for the Bereavement Support Payment?**

- 6.1 We were privileged to offer support to the Childhood Bereavement Network in its submission of evidence and legal arguments to the Supreme Court in the *McLaughlin*<sup>1</sup> proceedings.
- 6.2 Since children are unable to determine the marital status of their parents, it seems exceptionally harsh to deprive the children of non-married partners of the financial support offered to those children of married partners.
- 6.3 It also seems contrary to current understanding of what constitutes a 'family' and to how a 'family'/'co-habiting'/'partnering' is interpreted in other legislation (for example, co-habiting couples are recognised under tax credits and UC, and as such have to make joint claims).

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

6.4 In *Couples in the tax and welfare systems: a call for clarity*<sup>1</sup> (May 2015), LITRG reported on the inconsistent treatment of couples for tax and social security purposes, and made various recommendations for reform. On bereavement benefits, we said (at p. 66):

‘There is a blatant unfairness in the non-availability of bereavement support for unmarried or non-civil partner couples on the death of their partner. The restriction of the existing and proposed replacement benefit [now BSP] to married couples and civil partners seems to be formed on no immediately identifiable logic – particularly when we consider couples with dependent children (the children having no control over the decision of those who care for them to marry or not). This could be easily rectified by extending the benefit to those who lose a de facto spouse.’

6.5 In the *McLaughlin* case, the UK Supreme Court found that in refusing WPA to a survivor of an unmarried couple on the grounds that she was not married to her late partner, the legislation was incompatible with the European Convention on Human Rights (ECHR).

6.6 As we stated in our news piece at the time,<sup>2</sup> it is somewhat gratifying that our reasoning, in particular our comparing the situations of married and unmarried couples with dependent children, tallies with the judgment given by the Supreme Court.

6.7 Despite the fact there are certain ‘wrinkles’ in the court’s decision (namely, it is only a declaration of incompatibility, the decision only applies to WPA and applies to the separate Northern Ireland legislation only), it strongly suggests that BSP should also be made to families with bereaved children when the parents were recognised partners.

6.8 We therefore recommend that the government, without any further delay, should address the incompatibility of BSP with human rights legislation as highlighted (by extension of the same principles) in the *McLaughlin* decision.

6.9 We recognise that it is hard to legislate for a range of relationships that span a partnership of twenty years or one of a few months. However, this problem is not insurmountable. Perhaps the definition for long-term partners such as ‘eligible partner,’ as used by the Armed Forces Pensions Authority (APVA),<sup>3</sup> should be adopted when considering who is eligible for BSP for their children? That is:

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<sup>1</sup> <https://www.litrg.org.uk/latest-news/reports/150511-couples-tax-and-related-welfare-systems---call-greater-clarity>

<sup>2</sup> <https://www.litrg.org.uk/latest-news/news/180913-widowed-parent's-allowance-supreme-court-win-survivor-unmarried-couple>

<sup>3</sup>Page 7

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419740/20150312\\_AFPS15\\_YPSE\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419740/20150312_AFPS15_YPSE_FINAL.pdf)



‘Someone with whom a scheme member was cohabiting, in an exclusive and substantial relationship with financial dependence or inter-dependence with whom they were not prevented from marrying or forming a civil partnership.’

- 6.10 To establish whether a relationship is ‘exclusive and substantial’ in this context, we understand that various factors are taken into consideration by the APVA including children, financial dependence or interdependence, shared commitments such as a mortgage, prime beneficiary of a will, shared accommodation, the length of the relationship, and no legal spouse or civil partner (on either side).

LITRG  
29 May 2019

**Appendix 1 – LITRG news article from 23 July 2018**

## **Any questions – am I entitled to Bereavement Support Payment?**

We regularly receive queries via our website. We do not give advice, but we try to signpost sources of further information and support. Some of the replies might be useful to others, so occasionally we will post them anonymously as ‘question and answer’ news items. We have received a question recently on the National Insurance conditions related to Bereavement Support Payment.

*Please note – this is posted as a ‘news’ item, which means the information and links are not reviewed and updated. You should not rely on it without checking the full facts of your case with HMRC or a tax adviser.*

**Question:**

My husband, 28, passed away recently, leaving behind myself and our 3 children. He worked as a self-employed tradesman until he got sick (about three years ago), at which point he had to rely on sickness benefits. I’ve just been told that I am not eligible for the new Bereavement Support Payment due to insufficient National Insurance contributions paid. I’m confused by this, because I thought the new regime was supposed to make it easier for people to qualify and in any case, his sickness benefits came with Class 1 National Insurance credits, which I thought counted. Please help.

**Answer:**

I’m very sorry about your husband, this must be a dreadful time for you. Here is some information that I hope will help you.

### **The basics**

In order to qualify for certain benefits, you must have paid or been credited with National Insurance (NIC). The exact NIC conditions can differ depending on which benefit you are talking about.

In order for you to qualify for the new Bereavement Support Payment, your husband had to have paid some NIC (Class 1 or Class 2) in any one year of his working life prior to death. Class 1 NIC is the NIC that employees pay and Class 2 is the NIC that the self-employed pay.

If your husband died because of an industrial injury, their NIC payments might not matter.

The [exact rules](#) say that:

***'Bereavement support payment: contribution condition and amendments***

*(1) For the purposes of section 30(1)(d) the contribution condition is that, for at least one tax year during the deceased's working life—*

*(a) he or she actually paid Class 1 or Class 2 national insurance contributions, and*

*(b) those contributions give rise to an earnings factor (or total earnings factors) equal to or greater than 25 times the lower earnings limit for the tax year.'*

The best way to explain this is by way of an example:

Let's take the 2018/19 tax year (the current tax year). At the moment, the 'lower earnings limit' is £116 per week.

Class 1 National Insurance is **payable** at 12% when a person's employment earnings exceed the primary threshold of £162 per week. This is paid on earnings up to £815 a week, with 2% payable above that.

Between the lower earnings limit of £116 a week and the primary threshold of £162 a week, a person is treated as paying NIC even though they do not physically pay anything.

Class 2 NIC is payable at a flat rate of £2.95 per week of self-employment – where profits are over £6,205. Below this amount, Class 2 NIC can be paid voluntarily.

To meet the '25 times the lower earnings limit for the tax year condition' for 2018/19, someone paying Class 1 NIC would need to have earned £2,900 (25 x

£116 – note that any weeks in which earnings failed to reach the lower earnings limit are disregarded).

For Class 2, as each Class 2 contribution is treated as equivalent to one week of Class 1 NIC at the lower earnings limit, someone paying Class 2 NIC would need to have paid £2.95 for 25 weeks.

## National Insurance credits

National Insurance credits can be available to help protect the state pension and benefits entitlement of individuals in a wide variety of circumstances, where people are unable to work. This might be for example:

- due to illness or unemployment;
- because they are caring for a child or disabled person; or
- where they do not earn enough to pay or be treated as paying contributions (such as where they earn less than the lower earnings limit in a job).

NIC credits do not automatically count towards all contributory benefits – each benefit has its own specific requirements.

For the new Bereavement Support Payment, NIC credits do not count. However, there are two reasons why people may be confused about this:

1. As stated above, for Class 1 NIC, if you earn between the lower earnings limit and the primary threshold, you essentially pay NIC at 0%. So a person could have earned between the lower earnings limit and the primary threshold for 25 weeks and would still have qualified for BSP, even though they haven't actually paid anything. This scenario is sometimes referred to as being credited with NIC but actually the person has paid NIC at a nil rate and for Bereavement Support Payment purposes, that must be distinguished from instances of being credited with NIC as a result of not working, which do not count.
2. Under the old bereavement benefit regime, NIC credits used to help people qualify.

For example, the first contribution condition for Bereavement Allowance and Widowed Parent's Allowance was that the husband, wife or civil partner who had died must have actually paid sufficient Class 1, 2 or 3 NI contributions in any one tax year before they died to achieve a "qualifying year". This condition did not need to be satisfied if they were getting long-term Incapacity Benefit or the support or work-related activity component of Employment and Support Allowance in the year they died.

The second contribution condition was that the late husband, wife or civil partner must either have paid, or been credited with, sufficient Class 1, 2 or 3 NI contributions for the requisite number of years (which varies according to a number of factors). If the second contribution condition was not satisfied in the requisite number of years, a reduced rate of Widowed Parent's Allowance or Bereavement Allowance might have been payable, provided it was met in at least 25 per cent of the requisite number of years.

Therefore, while the overall National Insurance contribution requirements for bereavement benefits have been simplified under BSP compared to the old regime, they can still be problematic. Someone has to actually pay NICs (even if at 0%) for their surviving partner to be eligible – being credited with NICs because they were too ill or disabled to work will not qualify them. This is clearly a problem for young adults who, through no fault of their own, had not had enough time to build up entitlement before they died.

## **Will my husband have paid enough NIC?**

It sounds like the authorities don't think that your husband paid enough NIC for you to qualify for Bereavement Support Payment.

However, there are a number of reasons why this may be wrong. Sometimes NIC records can be incomplete due to late, wrong or missing the information sent to HMRC by employers. Or it might be because there has been an error or mistake in capturing the information at HMRC's end, for example they have populated the information against an incorrect National Insurance number. It may be worth doing some digging.

If your husband was a self-employed tradesman before he got ill, then he should have registered his self-employment with HMRC in order that he could complete tax returns every year to declare his income. As part of this registration process, he should have signed up to pay Class 2 NIC. Payment used to be made by either monthly direct debit or quarterly arrears – upon receipt of a bill sent by HMRC. If he had 'small earnings' then he could apply for a certificate of exemption. From the 2015/16 tax year, Class 2 is payable usually alongside their income tax after the end of the tax year.

If, for whatever reason, your husband never registered his self-employment with HMRC or never paid any Class 2 NIC, then there may be other periods in which

he was working which may have seen him pay enough NIC to qualify? For example, did your husband ever have a job? When he left school and before he became a tradesman for example? Can you find any old payslips or bank statements that suggest he had an employment or was paying Class 2 NIC? An old P60 or a letter from HMRC about NIC?

If you find anything helpful that suggests he did pay some NIC while he was alive, the next thing to do is to get hold of a copy of your husband's NIC record by writing to:

HMRC National Insurance Contributions and Employer Office  
HM Revenue and Customs  
BX9 1AN

If you think he has paid more National Insurance than the record shows, you should let them know. It's best to write - keep a copy so you have a record of what you've asked. You should explain why you think the record is wrong and include copies of any evidence you have (but keep the original documents).

Post the letter at the Post Office and ask them for proof of postage.

If the new information you have found means you will qualify for Bereavement Support Payment, you should [challenge the decision to turn you down](#). If you're successful, your payments will be backdated to when you were refused.

If you do start receiving Bereavement Support Payment, you can find out more information about it [on our website](#), including whether it is taxable and how it interacts with other benefits you may be receiving.

I hope this has been helpful. Good luck!