



Observations on the Bereaved partners Bill 2024

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Background

Treoir has supported John O'Meara and his family throughout his case. The O'Meara family situation is one that many non-marital families face. Treoir believes that all families should be protected by legislation, regardless of marital status. Cohabiting couples, when they lose a partner, already face much more financial hardships in relation to accessing public and private pensions and inheritance and property rights than their married counterparts and this should be rectified. Treoir welcomes the introduction of this legislation and acknowledges the work of the Department of Social Protection on this Bill.

Ireland has a diversity of family types, including blended families and kinship care families. Treoir is keen to ensure that all these family types are given some degree of protection in the event of the death of a partner. Where there are children, priority must be given to ensuring that they are financially provided for. We recognise that the department is endeavoring to ensure equality with this Bill, and this is welcome, however there needs to be careful consideration to ensure that we do not create other unintended inequalities in the process. There has been an increase in calls to our information line in relation to a surviving partner's pension entitlement and the implications of the O'Meara judgement. The Civil Partnership and certain rights and obligations of cohabitants Act 2010 provides a legislative framework for this Bill and can be drawn upon to move this legislation forward.

We would like to make the point that we do not wish to see anyone who is currently in receipt of a payment, lose their payment because of the enactment of this new legislation, so separated or divorced currently in receipt of a payment they were entitled to, should be allowed to keep this payment.

We have outlined possible scenarios which should be considered in relation to eligibility, these are informed by calls to our information line. We also have included case studies at the end of this document.

Backdated Specific

If a surviving cohabitant's partner died before or since John O'Meara took his High Court case (2021) they should receive backdated payments back to when the O'Meara case was taken. If someone would have been eligible at the time (2021-2024) but is now not because of their age (now over-66)/ children are no longer dependent/ now in a new relationship, then they should receive the respective backdated payments (January 2021-present).

Especially as many surviving cohabitants were awaiting the result of John O'Meara case. We understand from Mr. O'Meara that his claim was backdated to his application for the Widows Pension.

Bereavement Grants that were rejected based on cohabitation should be paid back in full for any surviving cohabitant.

Scenario 1: A cohabiting couple had no (dependent) children.

Should receive the full Widow's (Contributory/Non-Contributory) Pension and Bereavement Grant (and no qualified child increase).

Scenario 2: Cohabiting Couples that couldn't marry when their families began (pre-legalisation of divorce-1995).

Special attention should be given to cohabiting couples who couldn't marry initially when their families began because one partner was previously married & separated.

This would be particularly relevant for example where the deceased had been married and later cohabited.

Cohabitants that didn't have the option to initially marry should be treated the same as the married partner. When deciding between the two - it should not come down to marital status but other criteria such as length of relationship, number of (dependent children), shared property etc.

Scenario 3: The deceased partner had a marriage and a cohabiting partner.

Based on the John O'Meara ruling, the legislation should not define a marital relationship as superior automatically to a cohabiting relationship.

It also should not immediately dismiss it if the couple were legally separated/ divorced/ broken up as it should also depend on their continuing financial obligations, especially in relation to their children.

If two people are making claims for a Widow's Pension for the same person, the criteria for deciding who gets it should not be marital status alone.

The legislation should account for these factors ***before*** marital status:

1) the financial responsibilities of the deceased to their dependent children (where they are living with children/child maintenance payments being made/ child maintenance order). The best interests of all dependent children of the deceased should be accounted for primarily as the judgement made clear that a parent's financial obligations to a child do not end in death.

2) The financial dependence that the surviving partners had on the deceased - (was a current cohabitant financially reliant on them (shared home etc.)/ was there spousal maintenance being made/was a former cohabitant receiving money through the cohabiting couples redress scheme)

3) For the Bereavement Grant - it should specifically look at which partner was financially responsible for the funeral arrangements.

4) The length of both relationships.

5) The recency of the relationship.

6) Did the deceased have a recent will indicating their wishes for inheritance etc.?

Scenario 4: Proof of cohabitation

Proof of cohabitation should be as expansive as possible to not only accept joint mortgages, council agreements and tenancy agreements, bills, etc.

We've seen many scenarios where the surviving partner is the only person listed on the mortgage or council house (for complex reasons) and therefore would struggle with the current proof. For example, one partner, paying the other for their portion of the mortgage should be considered. Sworn affidavits from family or friends should be considered also or who paid for the funeral etc.

Family Courts for Automatic Guardianship of a Father accept other forms of proof so the Widow's Pension should too.

Scenario 5: Blended Families

If a couple enter a relationship where one of them have a child from a previous relationship and their co-habiting partner takes on the role of stepparent, and the day-to-day care of the child over the specified two-year period, is this classed as the two years with children period? If they also go on to have another child of that relationship, in the event of one of them passing away, do both children get the qualified child payment, or just the child of the relationship, even if that child is a dependent? The 2010 Act does not seem to make a distinction between children of one or both parties. In the supreme court judgement of the O'Meara case the judgement lays out what is defined as a qualified child:

“Section 127(1) provides that the weekly rate of pension, shall be increased by a set amount in respect of each qualified child who has not attained the age of twelve years who normally resides with the beneficiary, and by another set amount in respect of each qualified child who has attained the age of twelve years who normally resides with the beneficiary.”

Kinship care Families

Consideration should be given to Kinship care families, who take on the care of the children of a family member. If the Kinship carer is cohabiting and their partner passes away, these children could be considered dependent.

Just a note on kinship carers who are grandparents might need to focus specific attention on the Widow's Pension age limit of 66 in some cases.

Surviving cohabitants face a significant number of additional barriers than their married counterparts on the death of their partner.

Special consideration should be taken in relation to their unique position.

They had no automatic right to inheritance, unlike a spouse and have a higher tax burden on inheritance even on a shared home (Capital Acquisition Tax).

They are legally allowed to be discriminated against for private pensions, though married couples cannot.

Surviving cohabitants have much less access to financial support than married couples from the state, from private employers and obviously have no right to maintenance etc.

For example, the surviving cohabitant who bought a home with their deceased partner may have to pay up to 33% tax on their partner's share of the home, regardless of whether they had children together.

For example, Sarah (36) from Cork, was cohabiting with her partner, Dennis, for 5 years, and had bought their shared home together 18 months before Derek's tragic car accident.

They had a two-year-old child together (now 4) who Sarah would have to raise alone. Sarah and Dennis had worked all their lives. She may not be eligible for the Dwelling House exemption from Revenue and will therefore have to pay a large tax amount while not receiving the Widow's Contributory Pension.

Although this is not the direct subject of the bill, we believe for cohabiting couples the Widow's Contributory pension should not be taxable as they already have a higher taxable and financial burden upon the death of a partner, than a married cohabitant.

Appendix

Case Studies for John O'Meara Case

Trish (Anonymous)

Trish (not real name) lost her partner Adam (not real name) in July 2020. Trish and Adam lived together, in a home owned by Trish, in which Alan made payments towards the mortgage. They also had a child together, who is now 6 years old, but when Trish applied for the Widow's pension in 2020, she was rejected. Trish is a single parent raising a young child and paying back a mortgage.

Prior to his relationship with Trish, Adam was cohabiting with another partner whom he had three children with. These children are now aged 19, 18 and 15 and all still live at home with their mother, Adam's previous cohabiting partner.

Are these children from another relationship also considered eligible for the Increase for a Qualified Child (IQC (Increase for a Qualified Child)) payment?

Louise (use information anonymously)

Louise (not real name) lost her partner Niall very suddenly in a tragic accident. They lived together with their daughter, who was only 2 years old at the time of Niall's death. Louise and Niall lived together for over 5 years, but because they were not married, she

is considered ineligible for the Dwelling House Tax exemption meaning she already has a higher tax burden when Niall died than her married counterpart. When Louise applied to for the Widow's Pension she was rejected and was told by the DSP (Department of Social Protection) that her application would be reviewed based on John O'Meara's legislation.

Could the Widow's Pension be non-taxable income for cohabiting couples seeing as they already face a higher tax burden on the death of a partner?

Michael Smith

A father, Michael Smith, (permission to use publicly) was with his partner who died suddenly from a rare heart condition in 2018. They had two young children together, now 9 and 7 years old, and rented a property together in Kerry. Overnight, he was solely responsible for the two children. They had met in work, and he continued to work there for 3 years after she died. After she passed away, he went to his local Intreo Office and was told if he had been married, he would have gotten the Widow's Pension and Bereavement Grant.

He is not currently working and is receiving Jobseeker's Transitional Payment.

Jean (Not real name) (calling on behalf of aunt)

Jean is calling on behalf of her aunt who lost her partner of 32 years, as she is still grieving his sudden death. They lived together and had 2 children who are now 21 and 18 years old. Her aunt's partner was self-employed and her aunt a homemaker. She is now without her partners income which she had been reliant on for raising and caring for her children. Her aunt's partner was previously married, but legally divorced over 30 years ago, so she is unsure if she will qualify for the Widows pension with the current legislation.

Further Q for Jean's aunt: Do the children still live at home and are they in further education?

Linda Mullen

Linda's previous partner Greg died in April 2024. She had lived with Greg from 2009 until 2014 but she no longer lives in this home. They had a child together who is now 13 years old. When Linda and Greg split, Greg paid maintenance to Linda, but this ceased in 2019.

Before Linda, Greg had been previously married and divorced and had a 20-year-old daughter from this relationship. After his relationship with Linda, Greg remarried and had 2 children. This relationship broke down and they informally separated before his death.

We have encouraged Linda to apply for the widow's pension on the basis that she receives IQC payment. Greg's children should not be discriminated against. The children's welfare should be put first, and all should have the right to payment.

Sheila Duffy

Sheila Duffy (permission to use publicly) was with her partner, Johnny, in a loving, committed, relationship for over 35 years until his death in 2021. When they met, divorce was not legal in Ireland he had previously been married. They had a daughter together who is now grown up with her own husband and children. Sheila Duffy was forced to sell her home when he died because she was refused the Widow's Pension.

Maria Doyle

Maria Doyle (permission to use publicly) is a mother of 2, Mia (17) and Daniel (9). Her partner and father, Alan Keely, of her children passed away suddenly in May 2021. Alan Keely had two children together before he suddenly passed away in 2021. It has been two years since her partner passed but unfortunately, Maria was forced to give up her job shortly after he died. Maria worked in Dunnes Stores and regularly had to work evenings and weekends.

"As an 'unskilled' worker who does not work a 9-5 schedule, there is no affordable childcare available to me. My entire pay check would be spent on childcare.

Maria and Alan had lived together for 18 years and had two children together and yet she was not entitled to the Widow/Widower's/ Surviving Civil Partner Pension.

"Children shouldn't be discriminated against because of their parent's marital status."

Anne (anonymous name)

Anne (not real name) lost her partner in spring 2024 after living together for 30 years. They had an adult son together. Anne had been a stay-at-home mother while her partner had worked. Unfortunately, a few years ago he suffered an accident and was receiving Disability Allowance with Anne listed as a dependent. However, without the Non-Contributory Pension or Bereavement grant, she is unlikely to be eligible for other payments.

Sorcha (anonymous name)

Sorcha (not real name) from Galway was living with her partner for over 30 years until he died in March 2024. They had three children together aged 2, 6, 11. She will be without the father's income while raising three young children and has made all the necessary PRSI contributions. *

*The only concern she would have had that they lived in her home (she was the breadwinner) and he was not on the mortgage so she might have difficulty proving cohabitation even though obvious to everyone in their lives and she paid for funeral etc.