



## Widow's bereavement allowance

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All individuals receive a personal allowance which they can set against income tax. Two age-related additions are made to the allowance: the first, if someone is 65 or over, the second if they are 75 or over.<sup>1</sup> In April 2000 a number of personal tax allowances given under certain circumstances were withdrawn, including the married couples allowance (MCA) for couples under 65 years of age, and, aligned to it, the widow's bereavement allowance (WBA).

The WBA had been introduced in 1980, to relieve some of the financial distress of bereavement. It was given for a limited period only, from the date of the death to the end of the following tax year, and applied against the widow's own income in this period. In his 1999 Budget the then Chancellor Gordon Brown announced that the MCA and those allowances tied to it - the additional personal allowance, relief for maintenance payments, and the WBA - would be abolished from April 2000.<sup>2</sup> Widows already receiving this allowance in respect of deaths occurring before 6 April 2000 would retain their entitlement under the existing rules.

Widowers have not been entitled to a similar allowance to the WBA. In November 1999 the European Court of Human Rights was due to rule on a case brought by a widower, Christopher Crossland, that in withholding the WBA from widowers, the UK was in breach of the European Convention on Human Rights. In the event the Government elected to settle out of court, paying Mr Crossland what he would have received, had the WBA been given to widowers. In September 2000 the charity TaxAid launched a campaign for similar payments to be made to all widowers who had lost their spouses over the previous six years. However this campaign proved unsuccessful. In June 2003 the Court of Appeal ruled that although the provision of the WBA was incompatible with the Convention, the tax authorities had *not* acted unfairly in refusing to make this type of grant to widowers – a decision upheld by the House of Lords on 5 May 2005.<sup>3</sup>

This note provides a short history of the WBA, before looking at the Government's decision to withdraw the allowance, and the efforts of widowers who lost their spouses before the WBA was withdrawn to claim it.

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<sup>1</sup> Details of current allowances are given in [Direct taxes: rates and allowances 2009/10](#), Library Research paper 09/38, 27 April 2009.

<sup>2</sup> HC Deb 9 March 1999 cc 182-183

<sup>3</sup> *Regina v. Her Majesty's Commissioners of Inland Revenue (Respondents) ex parte Wilkinson (FC) (Appellant)* [2005] UKHL 30

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## Contents

<b>1</b>	<b>Introduction of the WBA</b>	<b>2</b>
<b>2</b>	<b>Criticism of the WBA</b>	<b>4</b>
<b>3</b>	<b>Withdrawal of the WBA</b>	<b>5</b>
<b>4</b>	<b>Legal challenges to the WBA</b>	<b>9</b>

## 1 Introduction of the WBA

The then Chancellor, Geoffrey Howe, announced the introduction of the WBA in his 1980 Budget speech, as a “small income tax [change] that [has] long merited action”:

I want ... to do something more for widows in the difficult time immediately following bereavement. I therefore propose to increase the present single allowance that widows receive for the tax year in which they are bereaved. The addition for that year will, at its maximum, bring the single allowance for widows up to the level of the married allowance.<sup>4</sup>

At this time a married woman’s income was treated, for the purposes of taxation, as part of her husband’s income. Single persons, both men and women, received the same allowance to set against their income for tax. On marrying, a couple’s joint income was taxed as the husband’s, and his single personal allowance was replaced by the married man’s allowance.<sup>5</sup> For 1980/81 the single personal allowance was £1,375, and the married man’s allowance was £2,145. As a result the WBA was set at £770.<sup>6</sup>

Initially the Conservative Government proposed that the allowance would be apportioned on a time basis, so that the full allowance was available only if the husband died in the first month of the year.<sup>7</sup> During the Committee stage of the Finance Bill that year, the then Financial Secretary, Nigel Lawson, accepted an amendment put forward by Sir Graham Page, to give the full allowance irrespective of the month of the husband’s death. Sir Graham argued that the use of apportionment was “unnecessary” and made “a mountain out of a molehill.” Mr Lawson acknowledged that “although apportionment is logical to begin on the date on which the widowhood occurs, it further complicates the scheme.”<sup>8</sup>

However, Mr Lawson rejected a second amendment to allow a widow the choice of using the allowance either in the year her husband had died, or in the following year: “in the year of bereavement - of all years - the widow is not likely to wish to grapple with such a complication; and we have taken the view that it is in the year of bereavement that help is needed. We therefore deliberately did not address ourselves to the following year.”<sup>9</sup>

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<sup>4</sup> HC Deb 26 March 1980 c1477

<sup>5</sup> Married women who did not work did not receive any allowance. Couples who both worked were entitled to receive the wife’s earned income relief (WEIR), set equal to the single personal allowance.

<sup>6</sup> The relevant legislation was introduced under section 23 of the *Finance Act 1980*, and incorporated in section 262 of the *Income & Corporation Taxes Act (ICTA) 1988*.

<sup>7</sup> 11/12ths of the full amount was available if he died in the second month of the year, and so on.

<sup>8</sup> SC Deb (A) 10 June 1980 cc 321, c324

<sup>9</sup> *op.cit.* c323

As an alternative, in 1983 the Conservative Government extended the provision of the WBA, so that widows would be entitled to claim it in *both* years. As the then Chancellor, Geoffrey Howe, explained in his Budget speech, “because their income in that year is already covered by other allowances, many newly widowed women receive no financial benefit from that allowance. Accordingly, it will now be extended to cover the year after the husband’s death as well.”<sup>10</sup> However, the allowance would be withdrawn for the year following bereavement, if the claimant remarried before the beginning of that year. It was estimated that 100,000 widows would benefit from the extended relief, as opposed to 45,000 who benefited from the original WBA.<sup>11</sup>

In 1990 the system for taxing married couples was reformed fundamentally with the introduction of independent taxation. From this point all taxpayers have been assessed as individuals, irrespective of the marital state. In 1989/90 the married man’s allowance (MMA) was worth £4,375, compared to the single person’s allowance of £2,785. The new system meant the abolition of the MMA, and as compensation – especially for couples where only the husband worked<sup>12</sup> – a new allowance was introduced. Announcing this reform in his 1988 Budget, the then Chancellor Nigel Lawson announced that the new married couples allowance would be set equal to the difference between the MMA and the single personal allowance under the old system: “this ensures that the tax system will continue to recognise marriage, as it should do.”<sup>13</sup> In addition, when the MCA was introduced, the WBA was set equal to it.<sup>14</sup>

Over its lifetime the nominal amount of the MCA was increased four times,<sup>15</sup> but in April 1994 both it and those allowances tied to it were ‘restricted’ in value.<sup>16</sup> In essence, these allowances – including the WBA – acted more like tax credits than personal allowances: ie, a fixed sum of money which could be set against someone’s final tax bill. By restricting the allowance in this way, the money value of the WBA was the same - £197 for 1999/00 - for all those who claimed it, whatever their marginal rate of tax.

Personal allowances are worth more to higher rate income taxpayers. This is because the allowance is a fixed sum which - if it had not been made exempt from tax - would be taxed at each individual’s marginal rate. If the WBA had not been restricted in this manner, it would have been worth £788 for higher rate taxpayers (ie, 40% of £1,970) but only £197 for those paying tax at the starting rate of 10%. One might argue that this result runs contrary to the original purpose of the allowance, as, when unrestricted, the allowance gave least to those on low incomes and most to those right at the top of the income scale.

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<sup>10</sup> HC Deb 15 March 1983 c143

<sup>11</sup> Inland Revenue press release, *Widow's bereavement allowance*, 15 March 1983

<sup>12</sup> The value of the family's combined tax allowances would have dropped from £4,375 to £2,785.

<sup>13</sup> HC Deb 15 March 1988 c998

<sup>14</sup> In the March 1990 Budget the then Chancellor John Major uprated the main allowances by 7.7% in line with inflation. The MCA was set at £1,720 for 1990/91, in line with this increase; had Mr Major simply frozen the allowance at the level Nigel Lawson had initially proposed, it would have been set at £1,590.

<sup>15</sup> To £1,790 from April 1996; £1,830 from April 1997; £1,900 from April 1998; and, £1,970 from April 1999.

<sup>16</sup> To 20% in 1994/95; to 15% over the four tax years 1995/96 to 1998/99; and to 10% for 1999/00.

## 2 Criticism of the WBA

During its lifetime, the WBA was criticised on two grounds: that it was given for a limited period, and it was given to widows only.

As noted above, the WBA was provided in the year of death and the year following, though it is clear that many widows will continue to face financial hardship in the years after bereavement. Though many families will face a sudden drop in their income, say through illness or unemployment, many would agree that it is appropriate for the State to go some way to recognise the financial costs all widows are faced with in the first years of their bereavement. One solution to this problem would be lengthening the amount of time that the WBA was given, though some commentators argued that it would be fairer to use the benefits system to target additional resources to those widows, and other individuals, whose incomes were too small for them to pay income tax.

The second criticism made of the WBA was it was only given to widows. At the time the allowance was introduced, the consensus appears to have been that it was more likely that their spouses would act as the main bread winner for the household, rather than themselves; as Nigel Lawson said during the Committee stage of the *Finance (No 2) Bill 1980*, "All members of the Committee will know how many letters they receive from widows and how much concern there is about widows and the tax system. The hon. Gentleman will know that concern is particularly acute in the year of bereavement ... that is why we thought that, even in the context of an economic situation that called for very great stringency, we should do something this year for widows."<sup>17</sup>

Clearly the tax system at any one time will be the result of many conflicting pressures, only one of which will be the concern that men and women are treated exactly the same in *all* cases. Another concern will clearly be the implications of extending tax relief in terms of the Exchequer's revenues. Set against this, one might argue that it remains the case that it is more likely that widows, rather than widowers, will be the group hardest hit by bereavement, given that, overall, women are less likely than men to be in relatively well-paid employment, supporting their spouse (say, if their spouse has elected to stay at home to bring up the family). Of course, many would suggest that the tax system should have neutrality as its central principle, even though men and women are not treated in the same way in all other situations in life. For their part, the Conservative Government ruled out extending the WBA to widowers,<sup>18</sup> though in a written answer given in July 1998, the then Financial Secretary, Dawn Primarolo, suggested the issue was being considered by the Labour Government.<sup>19</sup>

During the proceedings of the *Finance Act 1998* David Heathcoat-Amory MP put down a probing amendment to extend the allowance to widowers; part of Ms Primarolo's response is reproduced below:

The widow's bereavement allowance was introduced in 1980 to deal with an anomaly whereby a bereaved husband continued to receive the higher personal married allowance in the year of his wife's death, whereas a bereaved wife was entitled only to the standard allowance. As the right hon. Gentleman will be aware, the married

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<sup>17</sup> SC Deb (A) 10 June 1980 cc 322-323

<sup>18</sup> For example, in answer to a written question in May 1993 (HC Deb 25 May 1993 c535W).

<sup>19</sup> HC Deb 3 July 1998 cc 330-331W

couples allowance is available to the widower now ... In asking that the amendment be rejected, I can assure the Committee that the Government are looking carefully at all aspects of the personal tax system, especially those that may be seen as discriminatory. Clause 26, which will extend the additional personal allowance, shows that, unlike the previous Administration, the Government have moved quickly to tackle the matter where possible.<sup>20</sup>

However, the widow's bereavement allowance raises wider and more complex issues than those relating solely to the tax system. For example, it raises the question of social security benefits paid to widows. Because of that read-across, the Government are taking a more considered approach than was possible with the additional personal allowance. We shall of course report our proposals to the House in due course, once we have ensured that the interplay between social security and the tax system delivers our objective.<sup>21</sup>

### 3 Withdrawal of the WBA

In his 1999 Budget the then Chancellor Gordon Brown announced that the MCA and those allowances tied to it, including the WBA, would be abolished from April 2000. A written answer given at the time indicated the numbers affected:

**Mr. Rendel:** To ask the Chancellor of the Exchequer (1) how many widows bereaved in each of the five years after 5 April 2000 he estimates will no longer be able to claim widow's bereavement allowance; and what total amount they will lose in relation to previous entitlement as a result; (2) what estimate he has made of the savings to be achieved as a result of the abolition of the widow's bereavement allowance.

**Ms Hewitt:** It is estimated that around 220,000 widows claim the widow's bereavement allowance each year, in respect of a bereavement in that or the previous year. In 1999-2000, the allowance is £1,970, given at the rate of 10 per cent., but only three quarters of claimants - 170,000 - have sufficient income to use the allowance. The full year revenue effects of withdrawing the allowance is estimated to be £30 million in 2001/02. Separate estimates are not available for subsequent years.<sup>22</sup>

In a press notice issued at this time the Government argued that the allowance was discriminatory, as it went only to widows; in addition, "widows will be more than compensated for the loss of this allowance by the proposed Bereavement Payment in the Welfare Reform and Pensions Bill. This will be available to widows and widowers, and will help taxpayers and non-taxpayers alike."<sup>23</sup>

The "Bereavement Payment" was part of a wider reform in the benefits provided to survivors, introduced in April 2001. Prior to this, widows could be entitled to three types of contributory

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<sup>20</sup> [In previous years the allowance had only been given to a father whose wife was incapacitated, but not to those women with children in this situation. In the 1998 Budget this anomaly was abolished, and the allowance was extended to mothers caring for a family and an incapacitated spouse, backdated to have effect from 6 April 1997. The allowance was also aligned to the basic MCA, and withdrawn from April 2000.]

<sup>21</sup> SC Deb (E) 14 May 1998 c142

<sup>22</sup> HC Deb 15 April 1999 c331W. see also, HC Deb 8 March 2007 c2219W

<sup>23</sup> Inland Revenue Budget press notice IR1, 9 March 1999. As noted above, the WBA was made under s 262 of *ICTA 1988*; s 34 of the *Finance Act 1999* repealed this in relation to deaths occurring on or after 6 April 2000.

benefit, based on their late husband's payment record for National Insurance (NI) contributions:

- a £1,000 lump sum Widow's Payment;
- a Widowed Mother's Allowance (if that person has children or is pregnant); and
- a Widow's Pension for those without dependent children (if the person concerned is at least 45 when widowed).<sup>24</sup>

Notably, there were *no* equivalent NI benefits for widowers.

In November 1998 the then Secretary of State for Social Security, Alistair Darling, published proposals for reform; in his statement to the House, Mr Darling argued that the system failed on four specific counts:

First, it is unfair to men: 15,000 husbands bereaved each year get no help at all. That unfairness cannot continue, and it is already being challenged in the European Court of Human Rights - so doing nothing, as some urge, is not an option. Secondly, the system does not provide enough help with the immediate costs of bereavement, such as unpaid bills or funeral costs. Thirdly, money often goes to those who have the least need of it. Widows without children who have substantial incomes can get benefits for years, but a man - who may have growing children and modest means - gets nothing at all. Finally, the present system fails to support the poorest mothers on income support. Widows who have children to care for lose their benefit pound for pound, and so get no financial gain from their widows benefit.<sup>25</sup>

In brief, Mr Darling proposed four important changes:

- The lump sum Widow's Payment would be doubled from £1,000 to £2,000 and extended to widowers.
- Widowed Mother's Allowance would be replaced by a Widowed Parent's Allowance, for widows and widowers. Once these reforms were introduced they would apply not only to newly bereaved widowers, but also to existing widowers with children.
- The poorest widowed parents on Income Support would receive up to £10 per week through a new disregard.
- Widows and widowers aged 45 and over without dependent children would receive a transitional benefit known as a 'bereavement allowance' for six months in addition to the lump sum £2,000.

These proposals were carried forward into the *Welfare Reform and Pensions Act 1999*, specifically sections 54-56. These new benefits were brought in from April 2001.<sup>26</sup> In answer to two PQs in May 1999, Angela Eagle, then Minister at the Department for Social Security, gave some details of the implications of this shift in resources:

**Dr. Cable:** To ask the Chancellor of the Exchequer what estimate he has made of the widows who will (a) lose bereavement tax credit in the 1999-2000 budget and (b) will be eligible for the new benefits which replace the tax credit.

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<sup>24</sup> Widows over 65 did *not* receive widows' benefits. A widow in this position would get a Retirement Pension based on her own contributions, those of her late husband or some combination of the two contribution records. Widows between the ages of 60 and 65 may get either a Widow's Pension or a Retirement Pension.

<sup>25</sup> HC Deb 18 November 1998 cc 939-940. The background to the reform is discussed in, Library Research Paper 98/100, *Widows' Benefits (revised edition)*, 23 November 1998.

<sup>26</sup> Further details on this legislation are given in the Library Research paper on the Bill (Research paper 99/19, 19 February 1999), and, *Bereavement Benefits*, Library standard note SN/SP/431, 26 March 2004.

**Angela Eagle:** I have been asked to reply. The Widows' Bereavement Allowance will not be abolished for existing claimants, but there will be no new claims to the allowance for deaths occurring after 5 April 2000. As a result of the reforms of widows' benefits it is estimated that, in the first full year of implementation:

- around 40,000 widows and 20,000 widowers will be entitled to the Bereavement Payment;
- around 10,000 new widows and 20,000 widowers will be entitled to Widowed Parent's Allowance; and
- around 10,000 new widows and 10,000 widowers will be entitled to Bereavement Allowance.

*Note:* Figures have been supplied by the Government Actuary's Department. They are rounded to the nearest 10,000 and are subject to a wide range of uncertainty.

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**Dr. Cable:** To ask the Chancellor of the Exchequer what estimate he has made of the revenue implications in 1999-2000 and 2000-01 of the abolition of bereavement tax credit for widows and its replacement by benefits.

**Angela Eagle:** I have been asked to reply. The Widows' Bereavement Allowance will not be abolished for existing claimants, but there will be no new claims to the allowance of deaths occurring after 5 April 2000. The revenue effect of this change is estimated to be a saving of £15 million in 2000-01. The new bereavement benefits, which are unlikely to be implemented before April 2001, are estimated to cost around £140 million in the first year of implementation.<sup>27</sup>

In answer to a third PQ, the Minister underlined that in the Government's view, help for widows and widowers was best provided through the benefits system:

**Dr. Cable:** To ask the Secretary of State for Social Security what arrangements are being made to ensure that widows who have lost bereavement tax credit receive comparable benefits.

**Angela Eagle:** No one who already has the Widow's Bereavement Tax allowance will lose it. Anyone who claims the allowance before 5 April 2000 will receive it in the normal way - for the tax year they claim and the following year. In the future, widows and widowers who are under pension age will be able to claim the new bereavement benefits, which will include the Bereavement Payment - a tax free lump sum of £2,000 payable to widows and widowers. This is double the amount of the current lump sum, Widow's Payment.<sup>28</sup>

Clearly there are considerable advantages in terms of targeting relief to those on limited resources, by providing a benefit to all widows and widowers, compared to a tax credit which is only of benefit to widows who pay tax. Moreover, as the Secretary of State mentioned in his statement in November 1998, the practice of providing social security benefits exclusively to widows was legally challenged, as being contrary to the European Convention on Human Rights.<sup>29</sup> There have also been challenges in the domestic courts, though these have not proved successful: more details are given in the following section of this note.

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<sup>27</sup> HC Deb 6 May 1999 cc 453-454W

<sup>28</sup> HC Deb 19 April 1999 c 460W

<sup>29</sup> The background to these challenges is set out in, *Widowers' benefits – legal challenges*, Library standard note SN/SP/563, 27 October 2005.

Following the 1999 Budget, there was relatively little comment on the abolition of the WBA - possibly because widows only enjoyed the allowance for a maximum of two years (compared, say, to the MCA, which would be given as long as a couple remained married). One exception was a piece appearing in the *Daily Telegraph*, which made the point that widows benefits do not go to women over 65, so that the new bereavement payment would not benefit them:

More than 100,000 widows currently helped by the tax system will get nothing in future, contrary to written statements by the Inland Revenue on Budget Day ... The widow's bereavement allowance which is being abolished is given to widows of any age who pay tax ... But the proposed Bereavement Payment, although it will be a lump-sum of payment of £2,000, will normally only go to widows and widowers who are under pension age when their spouse dies. Figures from the Inland Revenue confirm that of the 220,000 widows who benefited from the widow's bereavement allowance in 1998/99, half were already aged 65 or more - five years beyond the normal maximum qualifying age of 60 to get the new bereavement payment. The Department of Social Security has also confirmed that the payment will not be introduced when the tax allowance for widows is abolished in 2000/01. It will only be paid to people who are widowed from April 2001 leaving all the newly bereaved widows in 2000/01 with neither tax relief nor an increased cash payment ...

Jo Warlow, director of the National Association of Widows, says that the Budget changes make it seem as if the Government is targeting widows ... 'There have been reams written on the married couple's allowance being abolished but very few people seem to have realised that the widow's bereavement allowance is linked to that and will go too.'<sup>30</sup>

The then Paymaster General, Ms Primarolo, acknowledged this error in the Budget press notice when the provisions to abolish the WBA were debated at the Committee stage of the Finance Bill.<sup>31</sup> She went on to summarise the Government's case for withdrawing the WBA:

The widows bereavement allowance is an anachronism. It is available to a widow but not a widower, and it is available to a widow for no more than two years, after which time she can no longer claim the allowance, regardless of her financial position. That is why the Welfare Reform and Pensions Bill will provide a better package of benefits for widows and widowers. The Budget delivered a package of measures designed to target more help to where it is needed most--to families, children and pensioners. As part of the package, we shall replace the married couples allowance and associated allowances with the new children's tax credit<sup>32</sup> ... To retain the widows bereavement allowance after the married couples allowance had been largely abolished would make no sense. It would leave us with a system of allowances that recognised marriage only when a husband has died. That is nonsense.<sup>33</sup>

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<sup>30</sup> "Widows in the firing line", *Daily Telegraph*, 20 March 1999

<sup>31</sup> SC Deb (B) 20 May 1999 cc 321-322

<sup>32</sup> From April 2003 the children's tax credit was replaced by the *child* tax credit, as part of a wider reform of tax credits. For details see, HM Treasury, *Tax credits: improving delivery and choice: a discussion paper - The Modernisation of Britain's Tax and Benefit System Number Twelve*, May 2008.

<sup>33</sup> SC Deb (B) 20 May 1999 c324.



## 4 Legal challenges to the WBA

In November 1999 the European Court of Human Rights was due to rule on a case brought by a widower, Christopher Crossland, that in withholding the WBA from widowers, the UK was in breach of the Convention. However, the Government settled the case out of court – as a note published by the Court explains:

### ARTICLE 14 DISCRIMINATION (SEX)

Tax allowance available only to widows: *friendly settlement*.

CROSSLAND - United Kingdom (N° 36120/97) Judgement 9.11.99 [Section III] The applicant gave up his employment to care for his children following the death of his wife. He was informed by the tax authorities that the bereavement tax allowance was available only to women on the death of a husband and that no equivalent allowance was available to widowers. The bereavement tax allowance will be abolished as from April 2000, and in settlement of the case the Government will pay the applicant the £575 which he would have received if the allowance had been available for widowers, as well as £3,962.48 in respect of legal costs.<sup>34</sup>

The Government refused to publish the legal advice it received on the case, but estimated that the “cost of extending widow’s bereavement allowance to men retrospectively whose wives died between 1995/96 and 1999/00 could be about £150 million.”<sup>35</sup>

In September 2000 the charity TaxAid, which provides help for taxpayers on low incomes, launched a campaign to persuade the Government to offer payments to all widower who lost their spouses over the last six years.<sup>36</sup> In November 2000 the Government stated it had no intentions of extending the WBA to men retrospectively:

**Mr. Todd:** To ask the Chancellor of the Exchequer if he will make a statement on the implications of the Crossland case for the claims of widowers for equality of treatment.

**Dawn Primarolo:** The case of Christopher Crossland has no implications for other claims for Widow’s Bereavement Allowance. The Government recognise that the system of tax allowances which applied before 2000 did not target support fairly on those who needed it most. A new system has now been introduced, which focuses resources on families with children. Most widows and widowers with children under 16 will, from next April, be entitled to the Children’s Tax Credit, worth over twice as much as the Widow’s Bereavement Allowance. We believe that this will give the right support to those who need it most.<sup>37</sup>

The Revenue gave more details of its position in a letter to TaxAid, having met with the charity in December 2000; an extended extract is given overleaf:

The Government’s position on Widow’s Bereavement Allowance (WBA) is part of a very clear policy commitment to use the tax system to target help on families with children. Existing legislation was not focussing resources on those who most needed support and Ministers chose to change that legislation to ensure their policy intentions

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<sup>34</sup> ECHR, *Information note No. 12 on the case-law of the Court*, November 1999

<sup>35</sup> HC Deb 1 February 2001 cc 280-1W ; HC Deb 10 July 2001 c502W. The PQ noted that the tax authorities did note “generally hold information on whether men are widowed and therefore any costing is very approximate.”

<sup>36</sup> “Widowers are urged to claim bereavement allowance”, *Financial Times*, 16 September 2000. In general, taxpayers may claim an allowance up to six years after the tax year for which the claim is made.

<sup>37</sup> HC Deb 27 November 2000 c480W

were met. As part of that process the WBA legislation was repealed with effect from April 2000. The legislation no longer treats widows and widowers differently.

We discussed your intention to bring judicial review proceedings in the Administrative Court. Your argument would be that the Revenue should have used its care and management powers to give WBA to widowers, on the basis that the existence of those powers means that the provisions of Section 6 of the Human Rights Act, which do not require public authorities to act in a way that is incompatible with primary legislation, cannot apply. The Board's care and management powers allow us to make relaxations which give taxpayers a reduction in liability to which they are not entitled under the strict letter of the law. Most concessions are made to deal with what are, on the whole, minor or transitory anomalies under the legislation and to meet cases of hardship at the margins of the code where a statutory remedy would be difficult to devise or would run to a length out of proportion to the intrinsic importance of the matter. You cite in your letter the example of Commerzbank. However, the Revenue's announcement of the extension of repayment supplement to EC residents was made in response to the judgement of the European Court of Justice (ECJ) in that case. ECJ judgements have direct effect upon UK legislation. In giving effect to the judgement in that case we did not use our care and management powers; we were required by EC law to reconstrue the existing legislation.

The care and management powers do not allow the Inland Revenue to contradict unambiguous, primary legislation, such as the provisions that govern entitlement to WBA. The Human Rights Act makes it unlawful for a public authority to act in a way that is incompatible with a Convention right unless it is required to do so by primary legislation. In applying the rules of the WBA legislation, the Inland Revenue was applying a provision of primary legislation, Section 262 Income and Corporation Taxes Act 1988. The intention of the legislation was clear: to help widows, not widowers.

If the effect of the Human Rights Act was to require us to grant WBA to widowers under our care and management powers, notwithstanding the clear terms of the legislation, that would effectively undermine Parliamentary sovereignty which the Human Rights Act was careful to preserve. It follows from what I have said that the Inland Revenue considers that a judicial review would be misconceived and would accordingly be likely to oppose an application for leave. I can give you no undertaking at this stage as to our position on costs.

In your letter, you also make reference to the case of Christopher Crossland. The settlement reached in the Crossland case does not preclude us from defending a case at the European Court of Human Rights should one be brought in the future. Nor does it imply that the Inland Revenue would have lost the case. We would have to examine the facts and specific circumstances of each case as it was brought before the court and decide our course of action at that time. I would add, in response to your question, that we would not be prepared to release any legal advice relevant to that case.

You asked about the grounds for refusing claims from widowers for WBA. At present, when our Network offices receive a claim to Widow's Bereavement Allowance from a widower, it is rejected because there is no entitlement to this allowance under UK law. Of course, under existing legislation, if widowers wish to pursue their claim, they can do so through our normal appeals procedure and would be dealt with, initially, by the Tax Commissioners. To this end, we have been outlining the rights to and procedures for appeal on the letters where taxpayers have wanted to pursue their claim further.<sup>38</sup>

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<sup>38</sup> TaxAid press notice, *TaxAid meets with Revenue officials and seeks volunteer for a test case*, 4 January 2001

In February 2002 Liberty (the National Council for Civil Liberties) supported a test case, seeking a judicial review of the Revenue's refusal to provide the WBA to widowers; their summary of the case is given below:

Adrian Wilkinson's wife died in June 1999. He wrote to the Inland Revenue late the following year, requesting the widows' tax allowance (a tax relief available to widows in the year of their bereavement and the following year) and was refused on the grounds that he was male. (Mr Wilkinson is 50, a father of two from Essex).

Liberty's case argued that the failure to grant this allowance breaches the Human Rights Act - specifically in relation to article 14 (discrimination) and article 1 of the 1st protocol (peaceful enjoyment of possessions- tax allowance is a possession for tax purposes). We argue that the Inland Revenue has the power to grant this allowance to men as well as women; we therefore sought a judicial review of the Revenue's refusal to refund this money to Mr Wilkinson ... The widows' tax allowance was abolished in April 2000, shortly before the Human Rights Act took effect in October 2000. But because tax allowances can be claimed for six years, we say that the Inland Revenue should honour claims made after October 2000 ...

[The Revenue's] refusal is rendered still more extraordinary by the circumstances of a previous European Court of Human Rights case on this point - brought by Liberty for Mr Christopher Crossland. In that case, the Government did not contest admissibility, and elected to settle Mr Crossland's claim. As they paid this allowance to Mr Crossland, it's clearly unfair not to pay it to everyone else in the same position: the Government has a duty to act fairly.<sup>39</sup>

The 'Wilkinson case' went to the Court of Appeal in June 2003, when the court found in favour of the Revenue.<sup>40</sup> One important part of the judgement referred to the tax authorities' "care and management powers", mentioned above in the Revenue's letter to Tax Aid; an extract from the *Times* law report is given below:

Section 1 of the Taxes Management Act 1970 permitted the commissioners to set about that task pragmatically and to have regard to principles of good management. Concessions could be made where those would facilitate the overall task of tax collection. However, the commissioners' managerial discretion was as to the best manner of obtaining for the national exchequer the highest net return that was practicable. Section 1 of the 1970 Act could not authorise the commissioners deliberately to refrain from collecting taxes Parliament had unequivocally decreed should be paid, not because that would facilitate the overall task of collecting taxes, but because the commissioners took the view that it was objectionable that the taxpayer should have to pay the taxes in question.

The Court went on to uphold the Revenue's decision not to meet the taxpayer's claim:

In essence widow's bereavement allowance was an anachronistic relic of a tax regime abandoned by 1994. Under the new regime there was no legitimate justification for granting a widow that allowance on the death of her husband. The allowance no longer reflected an adverse fiscal consequence of the husband's death. While the allowance discriminated in favour of widows, it provided widows with an unjustified advantage not merely over widower taxpayers but over all taxpayers. Before the Human Rights Act

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<sup>39</sup> Liberty Press Release, *Tax discrimination: widower goes to Court of Appeal*, 28 February 2002

<sup>40</sup> *Regina (on the application of Wilkinson) v Inland Revenue Commissioners* [2003] EWCA Civ 814

came into force the Revenue had taken steps to remove that anomaly by abolishing widow's bereavement allowance prospectively, with effect from April 6, 2000.

To award Mr Wilkinson or other taxpayers in his position an equivalent payment would be to swell the numbers of those who had received tax allowances for which there was no legitimate justification. The principle of just satisfaction did not require any such payment. The commissioners could not be said to have acted unfairly or irrationally in declining to settle the taxpayer's claim.<sup>41</sup>

Prior to this judgement the Parliamentary Ombudsman considered a series of complaints that the Revenue's failure to make payments to other widowers similar to the one to Mr Crossland constituted maladministration. In her report, published in December 2002, the Ombudsman noted that in the Revenue's view, "the settlement reached with Mr Crossland [was not] an exercise of discretion [on their part] ... it [was] a policy decision by Ministers following legal advice. Furthermore ... [they] **could not** make a general concession to widowers" as they did not have "that discretion under their care and management powers."<sup>42</sup> The Ombudsman concluded to discontinue her investigation, arguing that "insofar as there is an injustice [for widowers in this position] I see it as derived from legislation rather than from maladministration."<sup>43</sup>

The House of Lords upheld the Court's decision on 5 May 2005.<sup>44</sup> Three extracts from the judgement are given below. In his speech Lord Hoffman examined the question whether the tax authorities had the power to make an extra-statutory allowance to all widowers:

On this point the judgment of the Court of Appeal is in my opinion unanswerable. The commissioners are not "the Crown", owners of the consolidated fund and able to deal with its property like any other owner ... The commissioners are a statutory body created by the Inland Revenue Regulation Act 1890. They are charged by section 13(1) of that Act to "collect and cause to be collected every part of inland revenue." Section 1 of TMA gives them what Lord Diplock described in *R v Inland Revenue Commissioners, Ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 636 as "a wide managerial discretion as to the best means of obtaining for the national exchequer from the taxes committed to their charge, the highest net return that is practicable having regard to the staff available to them and the cost of collection."

This discretion enables the commissioners to formulate policy in the interstices of the tax legislation, dealing pragmatically with minor or transitory anomalies, cases of hardship at the margins or cases in which a statutory rule is difficult to formulate or its enactment would take up a disproportionate amount of Parliamentary time. The commissioners publish extra-statutory concessions for the guidance of the public and Miss Rose [Counsel for Mr Wilkinson] drew attention to some which she said went beyond mere management of the efficient collection of the revenue. I express no view on whether she is right about this, but if she is, it means that the commissioners may have exceeded their powers under section 1 of TMA. It does not justify construing the power so widely as to enable the commissioners to concede, by extra-statutory concession, an allowance which Parliament could have granted but did not grant, and

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<sup>41</sup> "Law report: Tax allowance restricted only to widows", *Times*, 28 June 2003

<sup>42</sup> Parliamentary Ombudsman, *Second Report: Equality Under the Law? Treatment of Widowers by the Inland Revenue and the Department for Work and Pensions*, HC122 December 2002 para 21

<sup>43</sup> HC122 December 2002 para 22

<sup>44</sup> *Regina v. Her Majesty's Commissioners of Inland Revenue (Respondents) ex parte Wilkinson (FC) (Appellant)* [2005] UKHL 30 5 May 2005

on grounds not of pragmatism in the collection of tax but of general equity between men and women. It follows that in my opinion the legislation gave the commissioners no power to act otherwise than to disallow claims for allowances by widowers ...<sup>45</sup>

Lord Hoffman went on to address the issue of compensation:

A general principle applied to affording just satisfaction is to put the applicant so far as possible in the position in which he would have been if the State had complied with its obligations under the Act. In a discrimination case, in which the wrongful act is treating A better than B, this involves forming a view about whether the State should have complied by treating A worse or B better. Normally one would conclude that A's treatment represented the norm and that B should have been treated better. In some cases, however, it will be clear that A's treatment was an unjustifiable anomaly. Such a case is *Van Raalte v Netherlands* (1997) 24 EHRR 503, in which the Court found a breach of article 14 read with article 1 of the First Protocol because the law exempted unmarried childless women over 45 from paying contributions under the General Child Benefits Act without exempting unmarried childless men. The exemption for women was abolished in 1989 but judgment was not given until 1997. The court rejected a claim for repayment of the contributions from which the applicant would have been exempt if he had been a woman.

In my opinion the reason for the rejection of this claim is that if the State had complied with its Convention obligations, it would have done what it did in 1989 and not exempted either men or women. It follows that the applicant would have been no better off. He would still have had to pay. In the circumstances, the judgment itself was treated as being sufficient just satisfaction.

The same is true in this case. There was no justification whatever for extending the widows' allowance to men. If, therefore, Parliament had paid proper regard to article 14, it would have abolished the allowance for widows. Mr Wilkinson would not have received an allowance and no damages are therefore necessary to put him in the position in which he would have been if there had been compliance with his Convention rights.<sup>46</sup>

In his speech Lord Scott of Foscote addressed the question of the friendly settlement the Revenue had made to Christopher Crossland in settling his case before the ECHR, and a similar settlement made to a Mr Fielding who had petitioned the authorities in June 1997:

A comparison of the appellant's position with that of the widower, or widowers, who had instituted proceedings in Strasbourg and whose complaints were then settled by the Revenue agreeing to a repayment of tax does not, in my opinion, assist the appellant. A settlement of litigation instituted by a taxpayer does not place the Revenue under an obligation to treat taxpayers who have not instituted litigation in the same manner.<sup>47</sup>

The final stage in the legal campaign for compensation came in late 2006 when the ECHR judged that the practice of giving the WBA to widows only was discriminatory, but that damages were due neither for the loss of this allowance, nor for distress or emotional

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<sup>45</sup> para 20-22

<sup>46</sup> para 26-28

<sup>47</sup> para 41. TaxAid provide some commentary on this case on their site at:  
<http://www.taxaid.org.uk/help.cfm?secNav=17&thirdNav=19>

damage.<sup>48</sup> On the question of compensation, the Court followed the reasoning of the House of Lords in the *Wilkinson* case, quoted above: that there was “no reason to remedy the inequality of treatment by “levelling up” and awarding the value of tax benefits which had been found to be unjustified.” As a consequence, it decided to make “no award by way of just satisfaction in respect of the pecuniary loss alleged to have been suffered.”<sup>49</sup>

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<sup>48</sup> “Law reports: UK bereavement tax regime was discriminatory”, *Times*, 28 November 2006. see also, TaxAid press notice, *End to long running tax discrimination case*, 6 June 2007

<sup>49</sup> *Hobbs, Richard, Walsh and Geen v. United Kingdom* (nos. 63684/00, 63475/00, 63484/00 and 63468/00), 14 November 2006 para 69