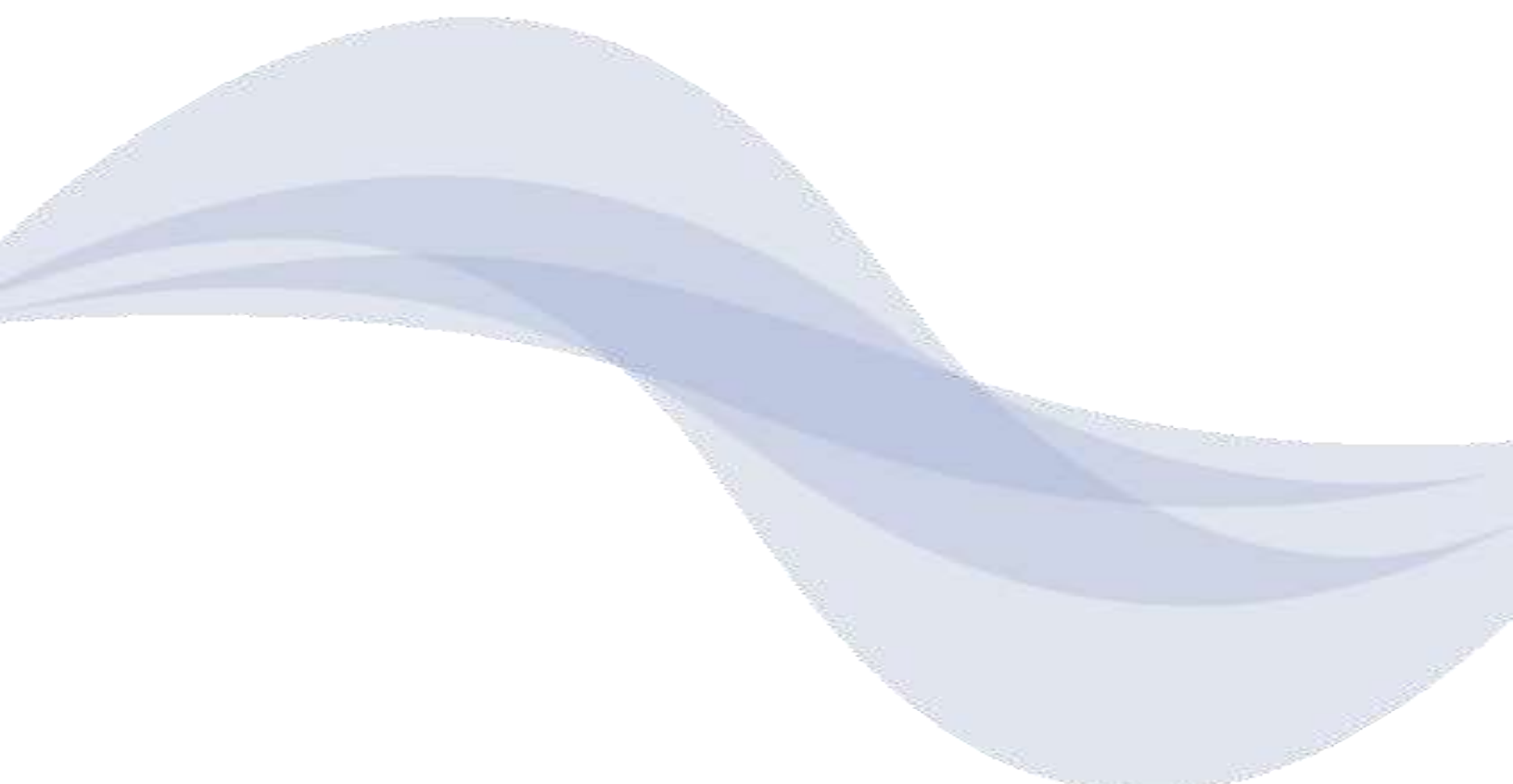


# **Bereavement Damages Research**

## **Summary of findings**



**A research project by the Association of Personal Injury Lawyers**

**November 2013**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has approximately 4,100 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

APIL undertakes regular research among the public and stakeholders, and is committed to producing authoritative research reports reflecting the needs of injured claimants, in order to guide and influence both internal and external policy.

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## Background to bereavement damages

In 1976 the Fatal Accidents Act<sup>1</sup> was amended to introduce damages for bereavement. This followed a recommendation made in the Law Commission's '*Personal Injury Litigation - Assessment of Damages*' report (1973) (Law Com no. 56). The original intention behind bereavement damages was that they should represent compensation for non-financial loss, such as grief and trauma, suffered by the surviving relatives.

The Law Commission highlighted the following five distinct purposes which an award of bereavement damages *might be seen to serve*<sup>2</sup>. These are:

- i. Compensating relatives for their mental suffering (that is, their grief and sorrow, both immediate upon the deceased's death and continuing).
- ii. Compensating relatives for the non-pecuniary benefits which they would have enjoyed (that is, the loss of the care and guidance of the deceased, and/or the loss of society with the deceased).
- iii. Providing practical help for the relatives.
- iv. Symbolising public recognition that the deceased's death was wrongful.
- v. Punishing the tortfeasor who caused the wrongful death.

Only a very restricted category of people can claim bereavement damages in England and Wales:

- Wife, husband or civil partner of the deceased;
- Parents of an unmarried legitimate child aged under 18; and
- The mother of an unmarried illegitimate child aged under 18.

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<sup>1</sup><http://www.legislation.gov.uk/ukpga/1976/30>

<sup>2</sup>[http://lawcommission.justice.gov.uk/docs/cp148\\_Claims\\_for\\_Wrongful\\_Death.pdf](http://lawcommission.justice.gov.uk/docs/cp148_Claims_for_Wrongful_Death.pdf), page 77, paragraph 3.127

In Scotland bereavement damages are governed by the Damages (Scotland) Act 1976 (updated in 1993 and 2011). In the Scottish courts, bereavement awards are made on a case-by-case basis (either by a judge or jury) and there is a wider group of possible recipients who can claim.

### **Summary of the research results**

- Over 70 per cent of people feel it is appropriate for a husband, wife, civil partner; or parents of a child under the age of 18, who has been killed by the negligence of someone else (i.e. another driver or an employer) to receive compensation.
- Over 80 per cent feel the level of bereavement damages should be above £15,000, while over half (57 per cent) of people think the level should be over £100,000 (the current level of bereavement damages is £12,980).
- More than a third (37 per cent) of people feel a parent should receive bereavement damages for the loss of a child regardless of the child's age.
- A third of people think that a child - regardless of age - should receive bereavement damages if a parent is killed through negligence.
- Nearly a quarter of respondents felt the dead person's co-habitee (23 per cent) and fiancé (23 per cent) should also be able to receive bereavement damages.
- Under current guidelines, someone can currently receive up to £28,352 for a very serious injury to a thumb. Nearly two-thirds (65 per cent) of people felt that someone should receive less for this than if they had lost a loved one.
- Comparing how much someone would receive for a seriously injured thumb, nearly three-quarters (74 per cent) of people felt that a bereaved person should receive more for grief and trauma.

- Nearly three-quarters (74 per cent) of people thought bereavement damages should be awarded on a case by case basis.
- 80 per cent of the public believes the Scottish system for bereavement damages to be fairer than the English and Welsh system.

## **Methodology**

The research was conducted by Canadean Consumer using its online omnibus panel (<http://www.canadean.com/custom-solutions/expertise-we-offer/consumer-and-shopper-insights/>). Canadean Consumer operates the longest established, most highly segmented consumer panel in the UK and has reach across 4 million consumers in more than 40+ markets. The panel has a 40 per cent response rate and collects over 200 individual screening criteria in relation to each respondent.

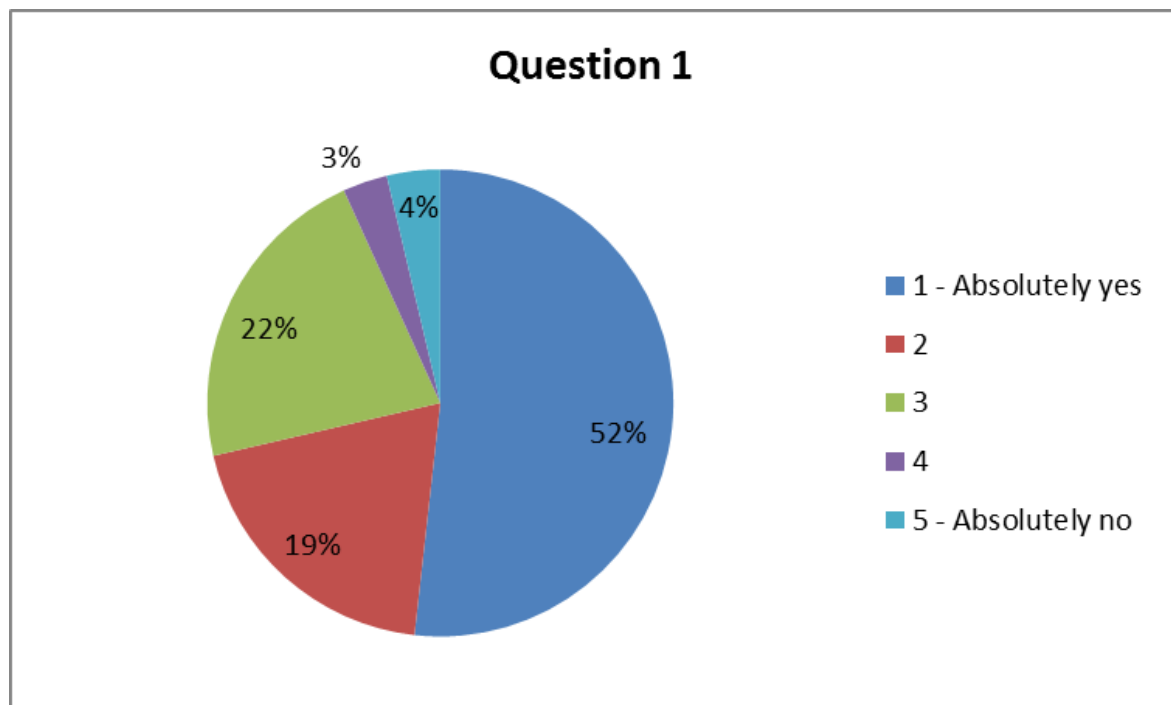
Fieldwork was conducted between 9<sup>th</sup> and 19<sup>th</sup> August 2013 with a 2,000 nationally representative (by age, gender, ONS region and SEG) respondent sample; the sample covers adults aged 18 and over and reflects the entire United Kingdom. This ensures that the results can be extrapolated to the general adult UK population.

In all, seven questions were asked, with each one answered by the full 2,000 sample.

## Results

### Question 1:

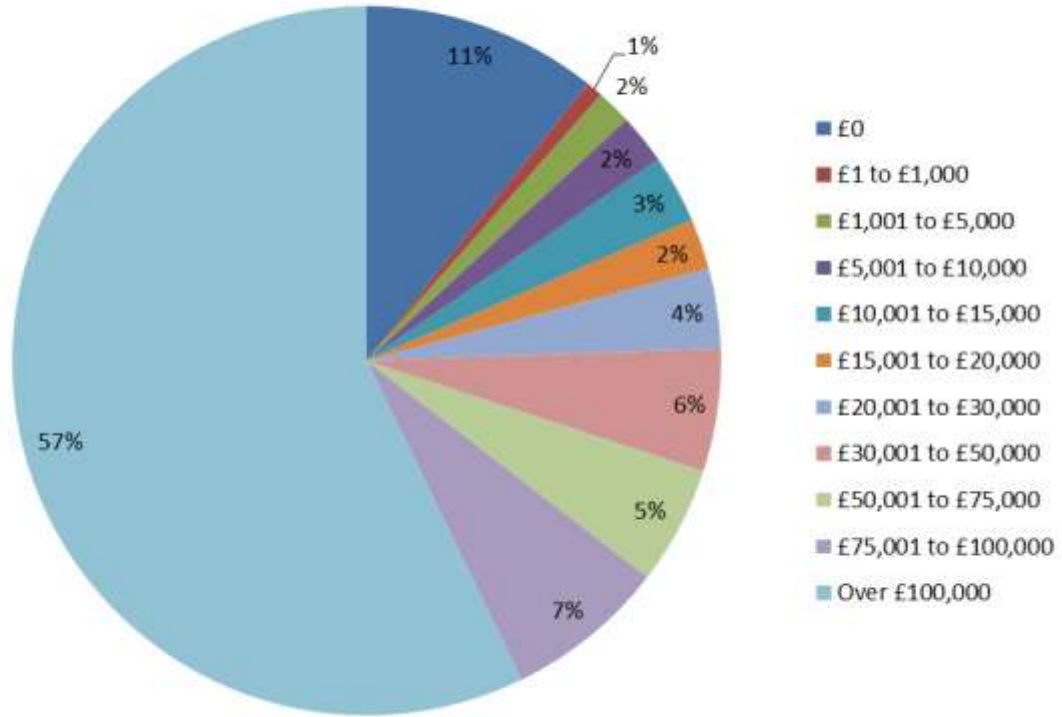
<u>Q1</u> - While no amount of money can ever fully compensate for the loss of a loved one, do you think it is appropriate that people should receive compensation for grief and trauma where a husband, wife, civil partner or child under the age of 18 has been killed by the negligence of someone else (i.e. another driver or an employer)?	Answers	No. of respondents	Percentage
	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	1 - Absolutely yes	1,036	52%
	2	392	19%
	3	437	22%
	4	62	3%
	5 - Absolutely no	74	4%



Question 2:

	<b>Answers</b>	<b>No. of respondents</b>	<b>Percentage</b>
	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	£0	215	11%
<p><u>Q2</u> - And while no amount of money can ever fully compensate for the loss of a loved one, if your husband / wife / civil partner or child under the age of 18 was killed due to the negligence of someone else (i.e. another driver or an employer), how much do you think is appropriate to compensate you for the grief and trauma you suffered?</p>	£1 to £1,000	15	1%
	£1,001 to £5,000	32	2%
	£5,001 to £10,000	46	2%
	£10,001 to £15,000	62	3%
	£15,001 to £20,000	46	2%
	£20,001 to £30,000	73	4%
	£30,001 to £50,000	112	6%
	£50,001 to £75,000	108	5%
	£75,001 to £100,000	147	7%
	Over £100,000	1,144	57%

### Question 2



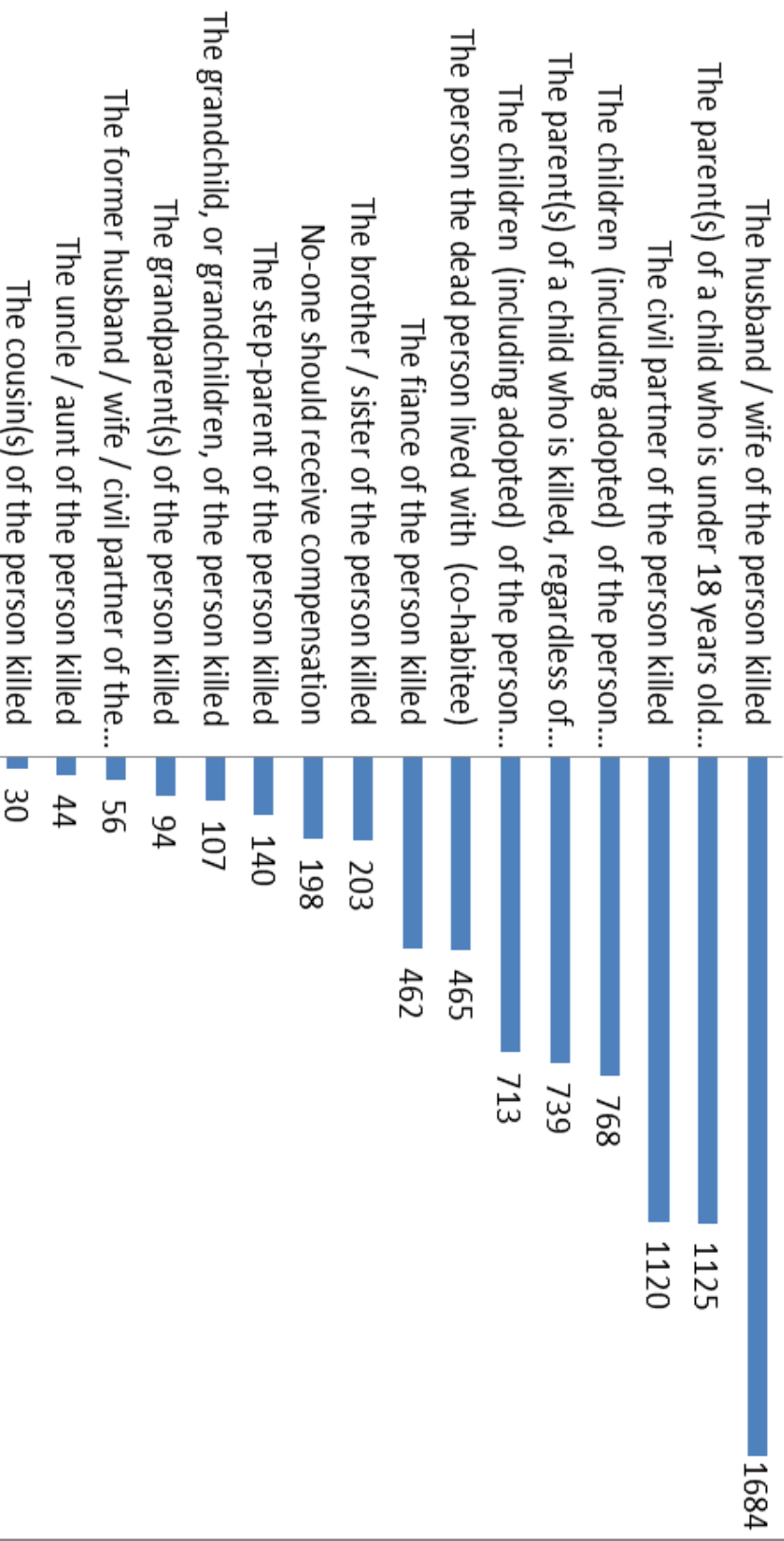


Question 3:

	<b>Answers</b>	<b>No. of respondents</b>
<p><u>Q3</u> - Thinking about eligibility for compensation, who do you think should be eligible to be awarded compensation for the grief and trauma when a person is killed due to the negligence of someone else (i.e. another driver or an employer)?</p>	<b>TOTAL</b>	<b>2,000</b>
	The husband / wife of the person killed	1,684
	The parent(s) of a child who is under 18 years old who is killed	1,125
	The civil partner of the person killed	1,120
	The children (including adopted) of the person killed (but only if they are under 18 years of age)	768
	The parent(s) of a child who is killed, regardless of the age of the child	739
	The children (including adopted) of the person killed, regardless of age.	713
	The person the dead person lived with (co-habitee)	465
	The fiancé of the person killed	462
	The brother / sister of the person killed	203
	No-one should receive compensation	198
	The step-parent of the person killed	140
	The grandchild, or grandchildren, of the person killed	107
	The grandparent(s) of the person killed	94
	The former husband / wife / civil partner of the person killed	56
	The uncle / aunt of the person killed	44
	The cousin(s) of the person killed	30

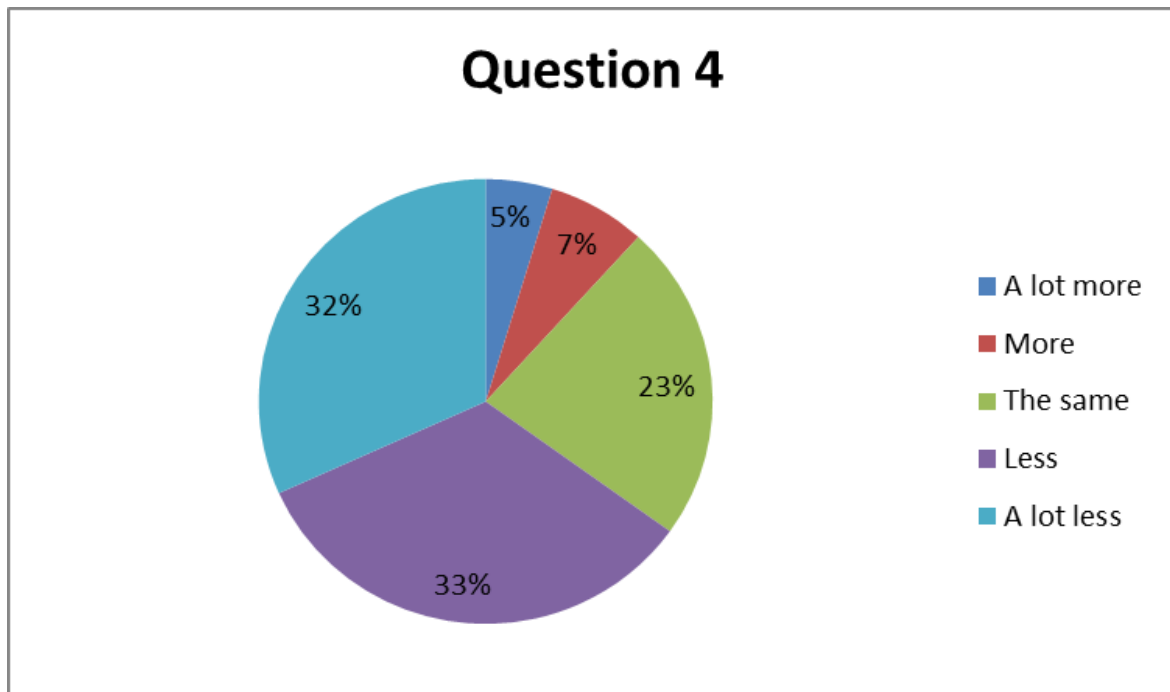
## Question 3

■ No. of respondents (total sample n = 2,000)



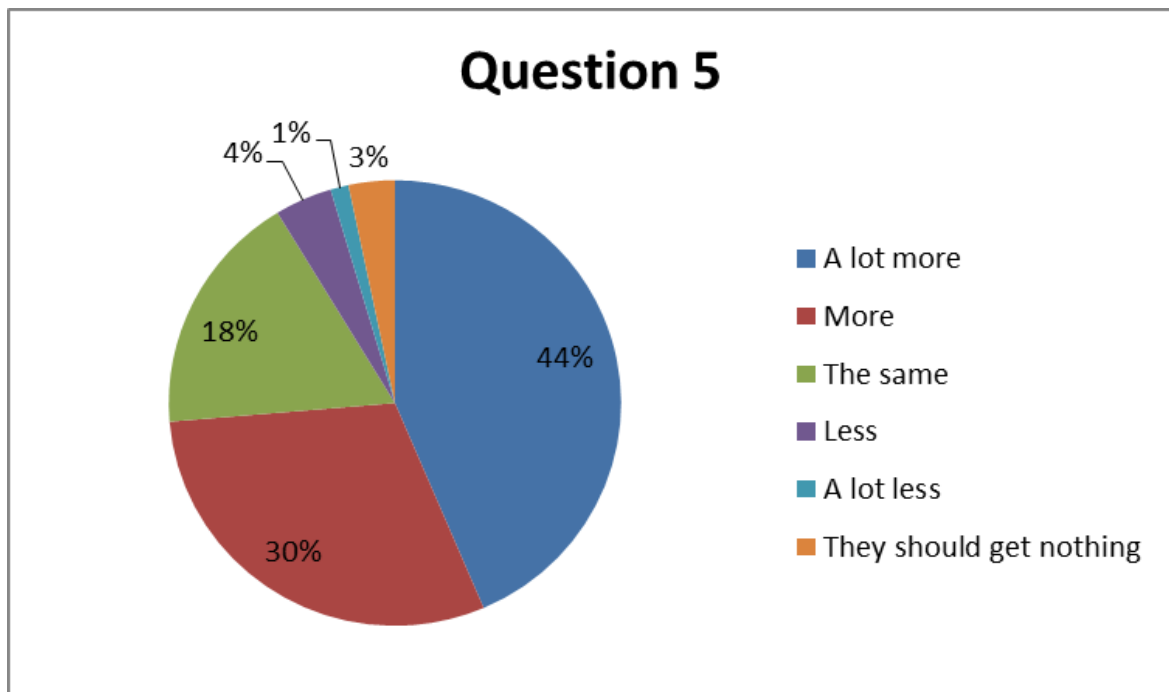
Question 4:

Q4 - If your thumb was very seriously injured (i.e. partially amputated or left virtually useless) due to the negligence of someone else, should you receive more or less compensation for your pain and suffering than for the grief and trauma if your wife / husband / civil partner, or your son or daughter who is under the age of 18, has been negligently killed?	Answers	No. of respondents	Percentage
	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	A lot more	95	5%
	More	140	7%
	The same	463	23%
	Less	666	33%
	A lot less	635	32%



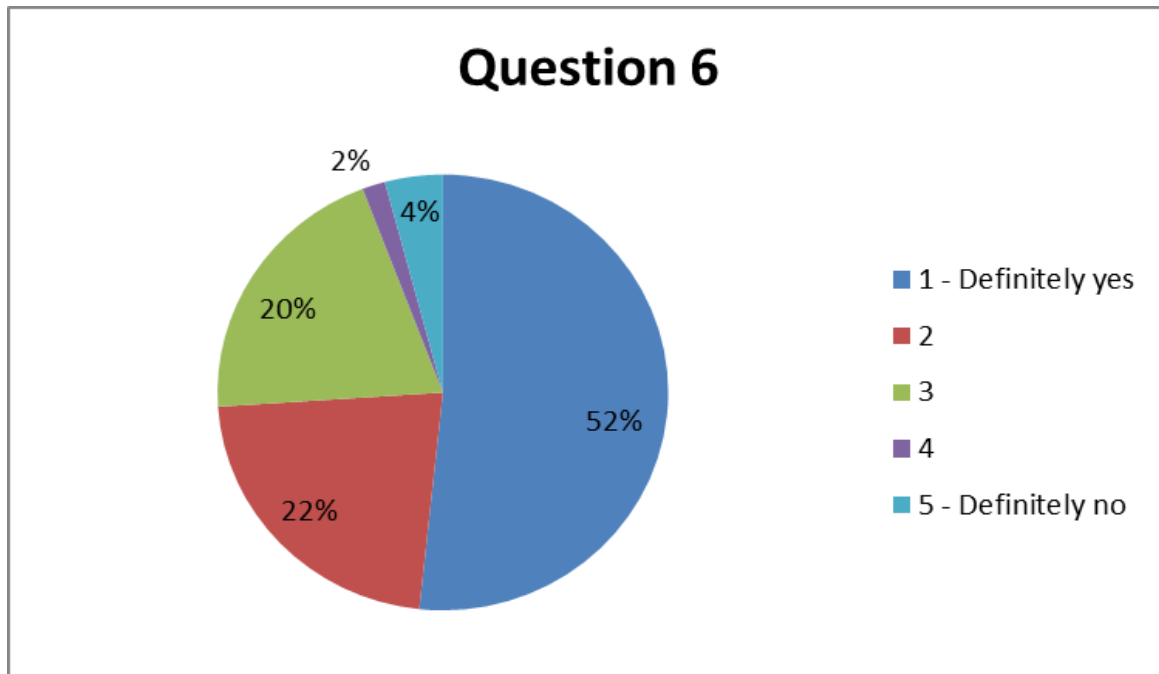
Question 5:

Q5 - Current court guidelines indicate that if a person's thumb has been very seriously injured (i.e. partially amputated or left virtually useless) through someone else's negligence they should receive between £14,000 and £25,000 for pain, suffering and the impact on their quality of life. Do you think that if someone was killed through someone else's negligence (i.e. another driver or an employer), the family (parents or wife/husband/civil partner) should get more or less than this for their grief and trauma?	Answers	No. of respondents	Percentage
	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	A lot more	872	44%
	More	602	30%
	The same	353	18%
	Less	82	4%
	A lot less	26	1%
	They should get nothing	66	3%



Question 6:

	Answers	No. of respondents	Percentage
<p><u>Q6</u> - And when someone has been negligently killed, should the level of compensation for grief and trauma, and the people who can receive it, be decided on an individual case-by-case basis?</p>	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	1 - Definitely yes	1,034	52%
	2	446	22%
	3	405	20%
	4	33	2%
	5 - Definitely no	83	4%



Question 7:

<u>Q7</u> - In Scotland, when someone is killed due to the negligence of someone else (i.e. another driver or an employer), a judge or jury decides how much compensation should be awarded for grief and trauma and to which relatives. In England and Wales, when someone is killed due to the negligence of someone else (i.e. another driver or an employer), only the husband / wife / civil partner or parents of a child under the age of 18 can receive compensation, of only £12,980. Which system do you think is fairer?	<b>Answers</b>	<b>No. of respondents</b>	<b>Percentage</b>
	<b>TOTAL</b>	<b>2,000</b>	<b>100%</b>
	Scottish	1,603	80%
	English and Welsh	397	20%

