



Joint Committee on Human Rights Inquiry: Fatal Accidents Act 1976 (Remedial) Order 2019

A response by the Association of Personal Injury Lawyers – May 2019

A step in the right direction

1. The Fatal Accidents Act 1976 (Remedial) Order 2019 is a small but significant step forward for bereaved people. APIL has long campaigned for reform of the law of bereavement damages, and we welcome the proposal by the Government to extend eligibility to some cohabiting couples.
2. Speaking after she won her legal battle against the Government, Jakki Smith, whose case has resulted in this proposed change, said “it felt unfair to me because I couldn’t have the bereavement damages. I felt they were saying: ‘You weren’t married, you weren’t bereaved, it didn’t count’. I wanted it to count”¹.
3. The proposal by the Government is a long overdue acknowledgment that the injustice and loss suffered because of a needless death is not limited to those who are married, but is felt equally by Ms Smith, and the one in eight of the population who are cohabiting. Latest figures from the Office of National Statistics reveal that in 2017, 5.98 million people over the age of 16 were cohabiting in England and Wales. This trend has increased steadily since 2002, when 3.96 million people were cohabiting².

¹ <https://www.bbc.co.uk/news/uk-england-lancashire-42152782>

² Population estimates by marital status and living arrangements, England and Wales: 2002 to 2017, Office of National Statistics
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/populationestimatesbymaritalstatusandlivingarrangements/2002to2017>

4. This remedial order is to be welcomed, but it is extremely disappointing that it will not apply to all cohabiting couples. Section 3 of the remedial order limits the extension of eligibility to those who have been living with the deceased in the same household for at least two years before the date of death. The law in Scotland allows a claim for bereavement damages by a cohabitee without the need for a minimum cohabitation period³. If the law in Scotland can recognise that a couple's relationship is determined by their feelings for each other, and not how long they have lived together, there should be no reason why the law cannot do the same in England and Wales.
5. This remedial order is just the start of many reforms which are needed to bring the law on this matter in England and Wales into the 21st century. There are wider issues of eligibility, and also the level of bereavement damages, which still need to be addressed, and which are discussed later in this response.

Delayed action

6. The proposal by the Government to extend the eligibility of bereavement damages to cohabiting couples is long overdue.
7. In a report published in November 1999, the Law Commission concluded it was "unjustified that the award of bereavement damages, which compensates non-financial losses (such as grief and sorrow) is currently available only to the deceased's spouse and parents"⁴. The Law Commission expressed the view that "the exclusion of cohabitants from the list of those able to recover damages was contrary to the premise that the damages should be available to those closest to the deceased, and most likely to be aggrieved by the death"⁵.

³ Section 14, Damages (Scotland) Act 2011

⁴ The Law Commission (LAW COM No 263) Claims for Wrongful Death, November 1999, page iii

⁵ The Law Commission (LAW COM No 263) Claims for Wrongful Death, November 1999, page 96

8. This recommendation was accepted by the then-Labour Government in 2007, when it launched a consultation paper on the law on damages. After that consultation, the proposal was included in a further consultation on a Draft Civil Law Reform Bill, published in December 2009. In January 2011, the coalition Government responded to the consultation, and announced it would not proceed with the Bill. It concluded that the Bill “would not contribute to the delivery of the Government’s key priorities”⁶.
9. It is unknown how many people like Ms Smith have been denied bereavement damages just because they made the decision not to marry their partners. It should not have taken 20 years since the Law Commission’s recommendation to correct this unfairness, which will have left these people feeling as if they were living in second-class relationships. It is extremely disappointing that an opportunity for reform was missed in 2011 and that it took a Court of Appeal decision finally to effect this change.

An opportunity to look further

10. We appreciate that the role of the joint committee is to consider only the issues in the remedial order. We believe Parliament and Government should, however, use this opportunity to look at the wider unfairness of statutory bereavement damages in England and Wales.
11. The law on bereavement damages differs in each of the United Kingdom’s three separate legal jurisdictions. The same eligibility criteria in England and Wales applies in Northern Ireland. In England and Wales, the amount has been £12,980 since May 2013, while in Northern Ireland bereaved people receive £15,100. The amount was last increased in Northern Ireland in May, following a previous increase in April 2016. It is disappointing that while Northern Ireland has been able to increase the amount twice in three years, there has been no increase in England and Wales.

⁶ Civil Law Reform Bill, response to consultation, January 2011, page 3

The law in Scotland

12. By total contrast, the law in Scotland treats bereaved families with much greater fairness and understanding. For more than 40 years, the Damages (Scotland) Act 1976 and the subsequent consolidating Damages (Scotland) Act 2011) have provided meaningful compensation to a wide range of bereaved relatives. At the heart of the legislation is a recognition that each claim should be treated individually. The amounts awarded rely on legal precedent and a proper examination of the closeness to the deceased, to ensure that any payments are fair. According to research carried out for APIL in 2013⁷, 80 per cent of people believe the Scottish system to be fairer.
13. The law in Scotland has no difficulty in recognising the closeness between parents, children of all ages, grandparents, siblings and other people living with the deceased as part of the family. The law in England and Wales, and indeed in Northern Ireland, should offer the bereaved no less comfort than those in Scotland.
14. By taking action now, the Government can prevent future situations where bereaved people, who have already gone through the distress of losing a loved one, are forced to take the Government to court just to prove how close they were to that loved one.

About APIL

15. The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for almost 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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⁷ Bereavement damages research report, APIL, November 2013
<https://www.apil.org.uk/files/campaigns/bereavement-damages-research-report-2013.pdf>