



APIL briefing: Draft Fatal Accidents Act 1976 (Remedial) Order 2020 - June 2020

Introduction

The Fatal Accidents Act 1976 (Remedial) Order 2020 is a small step forward for bereaved people. APIL has long campaigned for reform of the law of bereavement damages, and we welcome this remedial order which will extend eligibility to cohabiting couples who have lived together for at least two years.

The Government has, however, failed to take this opportunity to address the wider unfairness of statutory bereavement damages in England and Wales. This failure is unacceptable. The Government's refusal even to consider further reform is a snub to bereaved families and flies in the face of consistent lobbying for modernisation of the law, and a clear recommendation from the Joint Committee on Human Rights, for a consultation on reform because the law "is discriminatory against certain close family members"¹.

Fitness for the 21st century

The amount of statutory bereavement damages in England and Wales is decided by the Government and, since May 2020, has been set at £15,120. Eligibility is restricted to the spouse or civil partner of the deceased and the parents of unmarried children under the age of 18, or if the child is illegitimate, the mother only. In Scotland, however, bereavement damages are decided by the courts on a case-by-case basis. 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 should offer the bereaved no less comfort than those in Scotland.

¹ Joint Committee on Human Rights, Proposal for a draft Fatal Accidents Act 1976 (Remedial) Order 2019, Twenty-First Report of Session 2017-2019, Page 16



The UK Government has attempted to defend its approach to bereavement damages, referring to the payment as a “token”. Of course, no life can be valued simply in monetary terms, but financial compensation is the only tool a court has at its disposal to acknowledge the relatives’ loss and try to reduce the burden of that loss.

After the needless death of her husband in a private hospital, Dawn Shespotal received statutory bereavement damages. For Mrs Shespotal, bereavement damages felt like someone had paid “for this terrible thing”, but she described it as a “humiliating” when she received the statutory amount.

The Government has said the restrictions which exist in the current law “are not intended in any way to imply that people outside those groups would not grieve at the death in question”². Yet that is the reality, despite the Government’s intention.

Amelia, who turned to one of our members for advice, is one of many bereaved people who feels let down by the current law. Amelia had lived with her partner, Jordan, for 18 months when he was killed in a car crash. She was 29 weeks pregnant with their first child. They had made the commitment to live together, to have a child together, yet she is not entitled to bereavement damages after Jordan’s death because they were not married. Amelia would not even have benefited from the change in this remedial order, because they had not yet lived together for two years. To Amelia it is not about the money. It is about the lack of recognition of her loving relationship with Jordan, and what she has lost as a result of his death.

We reject entirely the belief of the Government that an extension of eligibility for bereavement damages would lead “in some cases to intrusive and upsetting investigations of the claimant’s relationship with the deceased person”³. It is the experience of our members in Scotland, where bereavement damages are awarded on a case-by-case basis, that defendants rarely challenge the closeness of a relationship. Only where the relationship is challenged and has to be proven can an investigation become intrusive, and those occasions are rare.

² The Government Response to the twenty-first report from the Joint Committee on Human Rights, Session 2017-2019 (HC 2225, HL paper 405): Proposal for a draft Fatal Accidents Act 1976 (Remedial) Order 2019. Page 6

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The law on bereavement damages in England and Wales remains unfit for the 21st century. Bereaved people remain discriminated against, and their relationships with deceased loved ones remain unacknowledged.

Delayed action

In November 1999 the Law Commission reviewed the law on bereavement damages and 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”⁴. It has taken the Government 20 years, and a Court of Appeal decision, finally to effect the change in this remedial order. Bereaved families cannot afford to wait another 20 years for much-needed further reform.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,500 members who are committed to supporting the association’s aims. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

Sam Ellis
Public Affairs Officer, APIL
Email: sam.ellis@apil.org.uk
Tel: 07703 719 644

Lorraine Gwinnutt
Head of Public Affairs, APIL
Email: lorraine.gwinnutt@apil.org.uk
Tel: 0115 943 5404

⁴ The Law Commission (LAW COM No 263) Claims for Wrongful Death, November 1999, page 96



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