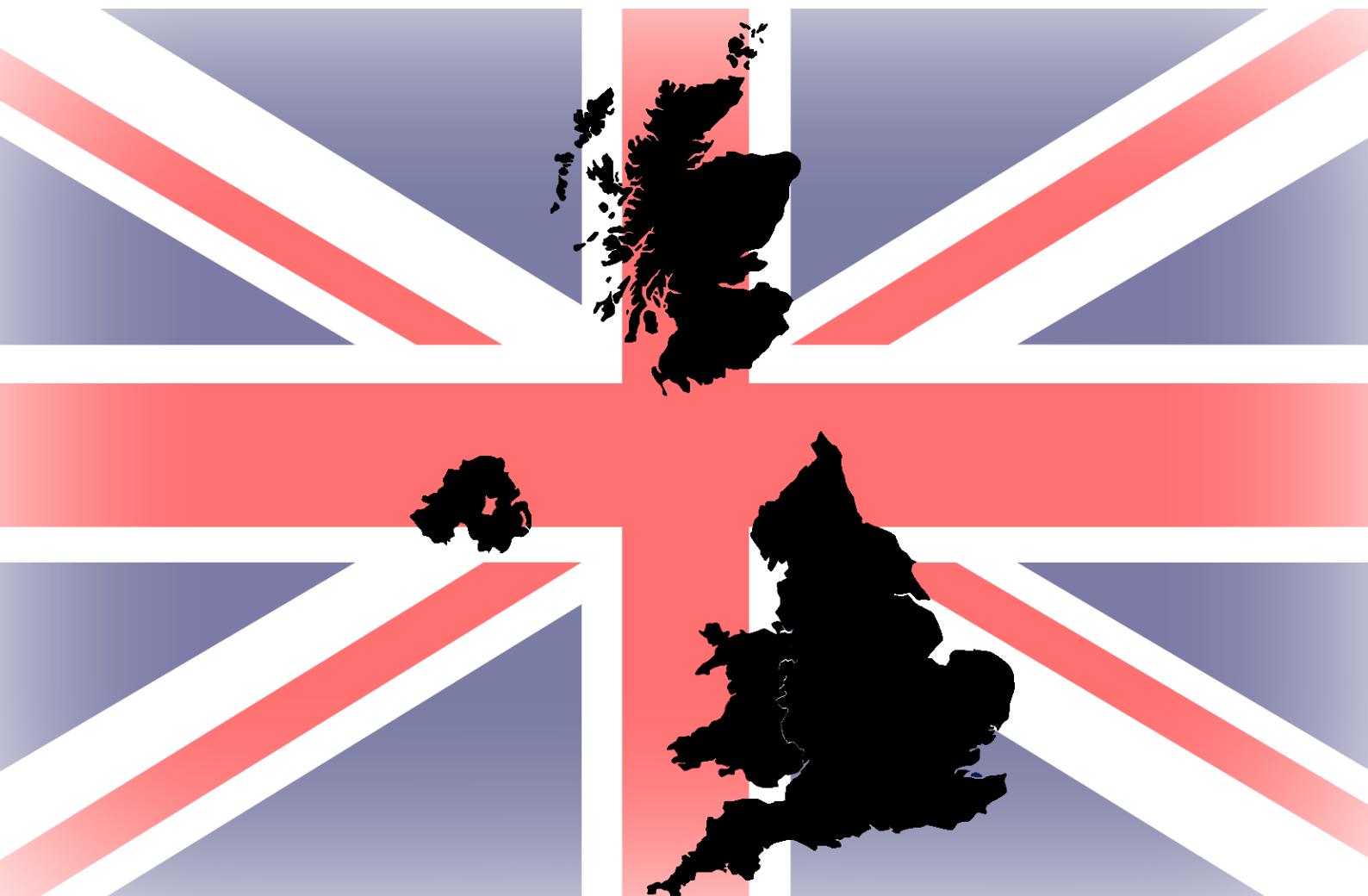


BEREAVEMENT DAMAGES: A DIS-UNITED KINGDOM



A REPORT BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS (APIL)

April 2021

Contents

| | |
|----------------------------------------------------------------------------------|-----------|
| Postcode lottery | - page 3 |
| Fairness for families | - page 4 |
| Recognition of relationships | - page 5 |
| The cost of loss | - page 7 |
| Public attitude to bereavement damages | - page 8 |
| A missed opportunity | - page 10 |
| Appendix one - comparison of eligibility for bereavement damages | - page 11 |
| Appendix two - timeline of bereavement damages legislation in the United Kingdom | - page 12 |

Postcode lottery

Losing a loved one is the worst thing that could ever happen to someone. It is even worse if the death could have been avoided. No one wants to imagine a loved one leaving home never to return because of the negligence of another person.

When the worst does happen, all any bereaved family wants is to be able to turn back the clock. Bereaved people are at their most vulnerable, without any idea how they can move on with the empty space which has been left in their lives. These people deserve our compassion and support. The level of compassion or the amount of support should never depend on whether the bereaved family lives in England, Wales, Scotland or Northern Ireland. But it does. It is a sad reality that the way bereaved families are treated after the wrongful death of a loved one is a postcode lottery. When it comes to support for bereaved people, we live in a dis-United Kingdom.

Of course, no life can be “valued” in monetary terms, but if a death has been caused by the negligence of another person, an award of 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.

In Scotland, claims for compensation for bereavement are considered on a case-by-case basis, with personal circumstances and relationships taken into consideration. This is how it should be, but it is not how bereaved people are treated in England, Wales or Northern Ireland. Instead, bereaved people in those jurisdictions are dealt with in a way which is rigid, discriminatory, and woefully out of date.

The time for the law in England, Wales and Northern Ireland to be brought into the 21st century is long overdue. The law in Scotland has no difficulty recognising the closeness between parents, children of all ages, grandparents, siblings and other people who lived with the deceased as part of the family. In the rest of the UK it's as if many such relationships are not important, or do not even exist.

**Sam Elsby
APIL President**



Fairness for families

For more than 40 years the law in Scotland has provided meaningful compensation to a wide range of bereaved relatives. The amount of compensation paid after a wrongful death relies on legal precedent and a proper review of the bereaved person's closeness to the deceased person. Bereaved relatives are treated fairly and in a way which reflects families and relationships in a modern society.

The law in Scotland recognises that a parent's love for a child does not diminish just because the child is over the age of 18. The law also recognises, for example, the huge part a grandparent can play in the life of a grandchild, and the closeness of siblings. In Scotland there is fairness for families.

The law in Scotland supported the family of Peter McGee, who died in hospital after falling down the stairs in his Glasgow home. During the subsequent court case it was found that his fall happened because the handrail on the stairs had been fitted "in a wholly inadequate manner".

After Mr McGee's death, a judge in Edinburgh acknowledged the part he played in the lives of his family. Compensation was provided to Mr McGee's widow, his two daughters, his son, and his four grandchildren. The judge set the amounts at levels which he thought best reflected the closeness of their respective relationships with Mr McGee.

In particular, the judge recognised that, following the breakup of her parents' marriage, Mr McGee was the "principal male adult" in his granddaughter's life. She was awarded £20,000. The judge also recognised that Mr McGee looked after his grandson when his daughter was at work, providing him with encouragement, taking him to and from school, to church, and on excursions. His grandson was awarded £25,000.

If Mr McGee had died in England, Wales, or Northern Ireland, his children and grandchildren would not have received any compensation for their grief and trauma. It would be as if the relationship with their father and grandfather had never existed as far as the law is concerned.



Recognition of relationships



England and Wales, and Northern Ireland have separate laws on bereavement damages. What they have in common is that bereaved families are treated like second class citizens after the wrongful death of a loved one.

Compensation for the grief and trauma of losing a loved one is only available to a restricted category of relatives. Only the spouse or civil partner of the deceased, a cohabitee if they had lived with the deceased for at least two years (in England and Wales only) and the parents of unmarried children under the age of 18 (or, if the child is 'illegitimate', the mother only) are entitled to bereavement damages.

No parent ever wants to lose a child, and the heartache and trauma will not diminish just because the child is over 18. Karl Heaney was 27 years old when he was killed in a road traffic collision in May 2018. Karl was from a close

family, and was the only son of his parents. The law in Northern Ireland means his mother, Monica, and the rest of her family are denied bereavement damages because Karl was over 18. At the time of his death Karl and his partner Ciara were planning their whole life together but, because they were not married, Ciara is also not entitled to bereavement damages.



"To say we totally adored him would not do justice to how precious he was. It is very difficult to put into words how paralysed we now are."

"The laws in Scotland are much fairer than in England, Wales and Northern Ireland. It is effectively a postcode lottery."

"It feels like no one cares, and Karl's death isn't acknowledged."

"When I talk to people who have never been in this situation, they are surprised we are not entitled to bereavement damages."

- Monica, Karl's mother.

In October 2020 the law was changed in England and Wales to extend eligibility for bereavement damages to couples who have lived together for at least two years. This fails to recognise the anguish and heartache felt by bereaved partners who may not have lived together for longer than the arbitrary two-year minimum period. It will also do nothing to support cohabiting couples in Northern Ireland. The law in both England and Wales, and in Northern Ireland, fail to recognise that couples who live together, whether or not they were married, have made a loving commitment from day one.

Recently the Ministry of Justice said that “bereavement damages are and were only ever intended to be a token payment...” and that the current law is not intended to suggest that those ineligible for bereavement damages “would not grieve at the death in question”¹. This may be the intention of the Ministry of Justice, but for a bereaved person to be told their relationship with the deceased is not even worth a “token payment” will be hurtful and distressing. The current law fails these bereaved families.

The law in England and Wales failed Amelia Gladstone whose partner of two-and-a-half years, Jordan, was killed in a car crash. Amelia was 29 weeks pregnant when Jordan was killed. They had lived together for 18 months and were saving for a new home

Amelia is not entitled to bereavement damages because she and her partner were not married at the time of his death. Amelia would not even be entitled to bereavement damages under the changes to eligibility made by the Government because she and Jordon had not been living together for two years.

Since Jordan’s death, Amelia has been living with her parents while she works part-time as a beautician and raises her daughter, Maia.

“It is awful that they have to put a bracket on what is considered proper grief. We were in love. We had a future. We were saving for a house deposit. We have a baby.”

“If we’d been married it would be different. It annoys me that just because we weren’t married – or for the sake of six months living together - our relationship didn’t count. It’s just bizarre and it’s the 21st century. It really does need to be addressed. The people who could address this, the Government, how would they like it?”

“If you love someone you love them, it doesn’t matter. Getting married doesn’t make you a better couple, it doesn’t make you love them more.”

– Amelia, Jordan’s partner



¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865615/govt-response-21st-jchr-report.PDF

The cost of loss

As previously noted, in Scotland compensation is decided on a case-by-case basis in incidents of wrongful death. The amounts in England and Wales, and in Northern Ireland, are set by the UK Government and the Northern Ireland Department of Justice respectively. In England and Wales, after seven years without a review, the amount was raised to £15,120 in May 2020. The amount available in Northern Ireland is £15,100 and is increased every three years in line with inflation.

No amount of money can ever bring back a loved one but, when Dawn Shestopal received statutory bereavement damages after the death of her husband, she described the sum as “humiliating”. Neil Shespotal died in a private hospital after suffering an air embolism – a blood vessel blockage caused by bubbles of air or other gas in the circulatory system. The embolism was the result of the improper removal of a catheter.

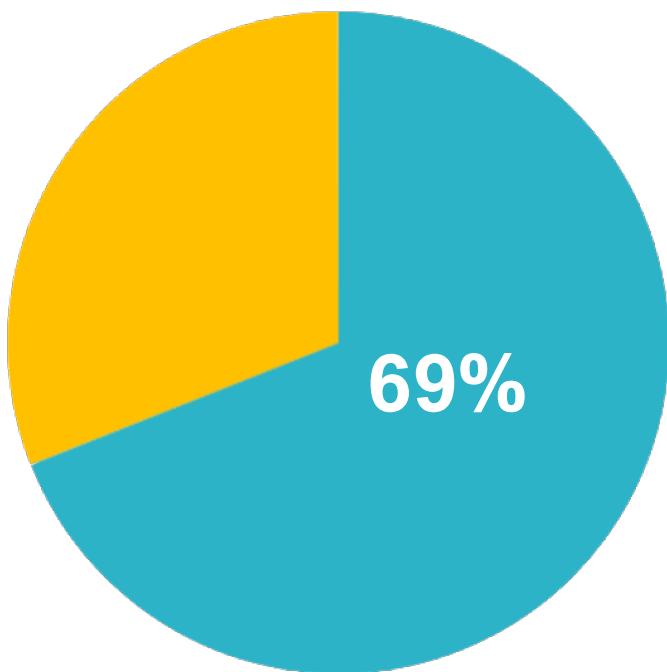


“Loss is a life-changing, life-shattering experience. And anyone who experiences it lives with knowing that they will never be happy again. You can still enjoy things of course and find some pleasure in life but you'll never be happy, because of this loss which should not have happened. Money can't compensate for that but at least you feel like someone has paid for this terrible thing.”

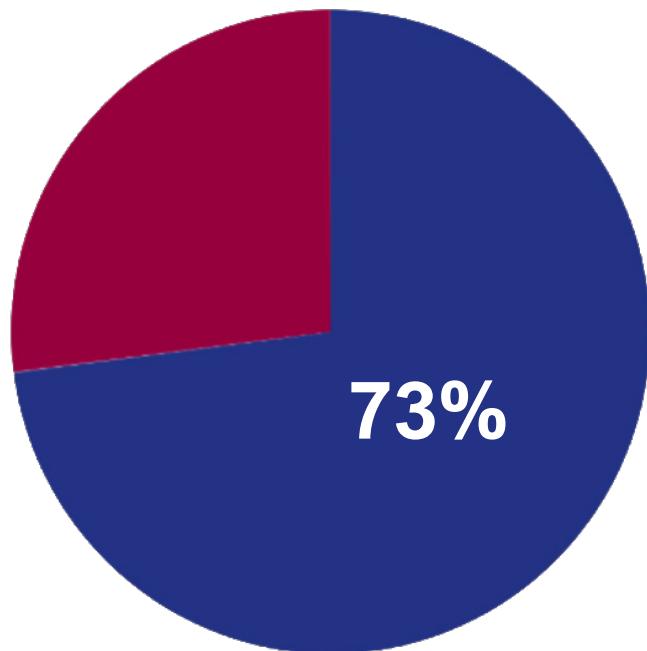
– Dawn, Neil's wife

Public attitude to bereavement damages

In June 2019, APIL commissioned YouGov to conduct polling on the public's attitude to bereavement damages². A separate question on the public's attitude to the statutory amount of bereavement damages of £15,120 was asked in June 2020 after the UK Government increased the amount in England and Wales in May 2020³.



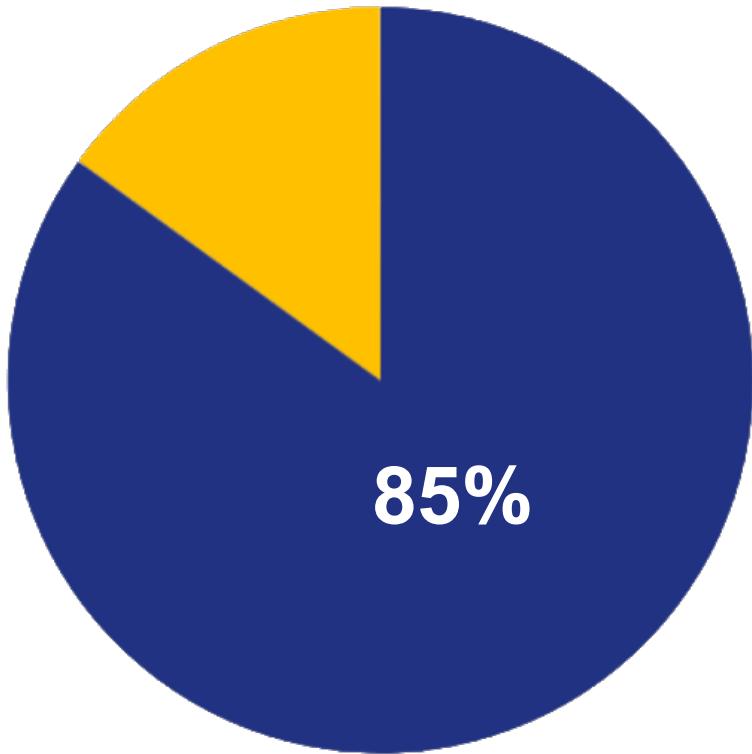
69 per cent of British adults think £15,120 is too little compensation



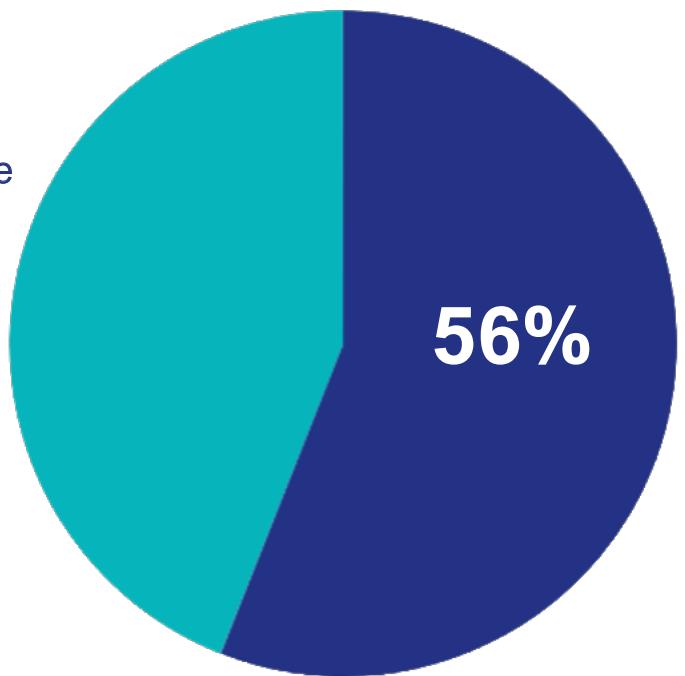
73 per cent of British adults think the amount of compensation for grief and trauma should vary according to the circumstances of each case

² All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2197 adults. Fieldwork was undertaken between 4 and 5 June 2019. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+). APIL's analysis of YouGov's polling does not include British adults who responded "don't know" or "prefer not to say".

³ All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2065 adults. Fieldwork was undertaken between 15th - 16th June 2020. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+). APIL's analysis of YouGov's polling does not include British adults who responded "don't know" or "prefer not to say".



85 per cent of British adults think a father should still receive compensation, even if he was not married to the mother of his child



56 per cent of British adults think each relative's claim for compensation should be individually assessed

Missed opportunity

In 2017, the Court of Appeal ruled that the exclusion of cohabitants from the list of those eligible for bereavement damages in England and Wales was incompatible with the European Convention on Human Rights. The exclusion had been challenged by Jakki Smith, who discovered she was not eligible for bereavement damages after the death of her partner of 16 years. Her partner, John Bulloch, died in 2011 after an infection was missed by medical staff⁴. In response to this ruling, the UK Government amended the law to allow couples who have cohabited for at least two years to be eligible for bereavement damages.

The extension of eligibility to cohabiting couples in England and Wales provided an ideal opportunity to look more widely at the law of bereavement damages. This was echoed by the Joint Committee on Human Rights which scrutinised the proposals to extend eligibility to cohabiting couples. The joint committee recommended the Government conducts a wider consultation on the law on bereavement damages, after it concluded the law “risks further legal challenge”⁵.

“The current list of eligible claimants is unprincipled, discriminates against other family members in analogous positions to existing eligible claimants and stigmatises children.”

– Joint Committee on Human Rights, July 2019

The Government continues to resist any further review of the law. This 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. Without reform, the law on bereavement damages in England and Wales, and in Northern Ireland, remains unfit for the 21st century. Bereaved people will remain discriminated against, and their relationships with deceased loved ones will remain unacknowledged. Bereaved people will continue to be subject to a postcode lottery.

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

5 <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/2225/2225.pdf>

Appendix one - Comparison of eligibility for bereavement damages

After the death of Mr McGee, a court in Scotland decided that eight of his relatives were entitled to bereavement damages. Those relatives, whose stories are told on page 4, were his wife, his son, his two daughters, his three granddaughters, and his grandson.

The table below compares the eligibility of Mr McGee's family compared to the eligibility of similar families in England and Wales, and Northern Ireland.

| Mr McGee's relative | Eligible for bereavement damages in Scotland? | Eligible for bereavement damages in England and Wales? | Eligible for bereavement damages in Northern Ireland? |
|---------------------|-----------------------------------------------|--------------------------------------------------------|-------------------------------------------------------|
| Wife | ✓ | ✓ | ✓ |
| Daughter | ✓ | X | X |
| Daughter | ✓ | X | X |
| Son | ✓ | X | X |
| Granddaughter | ✓ | X | X |
| Granddaughter | ✓ | X | X |
| Granddaughter | ✓ | X | X |
| Grandson | ✓ | X | X |

Appendix two

Timeline of bereavement damages legislation in the dis-United Kingdom

| Date | Scotland | England and Wales | Northern Ireland |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1976 | Damages (Scotland) Act 1976 – allows bereaved relatives to claim for distress and grief, as well as for loss of dependency | Fatal Accidents Act 1976 – allows relatives to claim compensation for loss of dependency | |
| 1977 | | | Fatal Accidents (Northern Ireland) Order – allows relatives to claim compensation for loss of dependency |
| 1982 | | Administration of Justice Act 1982 amends the Fatal Accidents Act to allow claims for statutory bereavement damages. Statutory amount set at £3,500 | Administration of Justice Act amends the Fatal Accidents (Northern Ireland) Order to allow claims for statutory bereavement damages. Statutory amount set at £3,500 |
| 1990 | | Statutory amount increased to £7,500 | Statutory amount increased to £7,500 |
| 1993 | Damages (Scotland) Act 1993 – Allows executor of the deceased to claim compensation for the period of suffering by the deceased between the incident which caused the death and the date of death. Also allows claims made by relatives of the deceased to be passed to their own estate in the event they die before the claim is completed | | |

| | | | |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 1999 | | Law Commission of England and Wales recommends reform of bereavement damages | |
| 2002 | | Statutory amount increased to £10,000 | Statutory amount increased to £10,000 |
| 2006 | Family Law (Scotland) Act 2006 – Amends the categories of those eligible to claim compensation for distress and grief after the death of a loved one. This amendment allows claims to be made by siblings | | |
| 2007 | | Consultation on reform of bereavement damages launched by UK Government UK Government makes a commitment to increase the statutory amount in England and Wales every three years in line with RPI (rounded to the nearest £100) – this commitment was not kept by future governments Statutory amount increased to £11,800 | Statutory amount increased to £11,800 |
| 2009 | | Reform of bereavement damages included in Draft Civil Law Reform Bill | |

| | | | |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2010 | | | Devolution of responsibility for bereavement damages to the Department of Justice |
| 2011 | Damages (Scotland) Act 2011 – repeals and re-enacts the provisions within the Damages (Scotland) Act 1976 with updates to the law, including an expanded list of relatives eligible for compensation | Draft Civil Law Reform Bill dropped by UK Government | |
| 2012 | | | Consultation on eligibility for bereavement damages launched by Department of Finance and Personnel (DFP) |
| 2013 | | Statutory amount increased to £12,980 | DFP confirms work on bereavement damages reform paused due to lack of responses to consultation |
| 2015 | | | Consultation on the amount of bereavement damages launched by Department of Justice |
| 2016 | | | Policy decision taken by Department of Justice to increase amount every three years in line with inflation. Statutory amount increased to £14,200 |

| | | | |
|------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 2017 | | Court of Appeal rules that denial of bereavement damages to cohabiting couples is in breach of the European Convention on Human Rights | |
| 2019 | | <p>Publication of draft remedial order to extend bereavement damages eligibility to the cohabiting partner of the deceased, provided they had lived with the deceased for at least two years</p> <p>UK Parliament Joint Committee on Human Rights recommends wider review of bereavement damages</p> | Statutory amount increased to £15,100 |
| 2020 | | <p>UK Government rejects call for a wider review of bereavement damages, but increases statutory amount to £15,120.</p> <p>Fatal Accidents Act amended to extend eligibility to couples who have cohabited for at least two years</p> | |

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit campaign group which has been committed to injured people for more than 30 years. Our vision is of a society without needless injury but, when people are injured, they receive the justice they need to rebuild their lives. We have more than 3,200 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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