

Compensation where someone has died

Where a person's death has been due to negligence a claim for compensation can be made by the deceased's dependents. A claim for someone's death can be made by their dependents under the Fatal Accident Act 1976 (FAA) and/or a separate claim may be made on behalf of the deceased's estate under the The Law Reform (Miscellaneous Provisions) Act 1934.

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Compensation where someone has died

We look at both Acts in more detail below but you may find it helpful to look at the diagram at the end of this leaflet which aims to give an overview of the key parts of each Act.

Who are the personal representatives?

Where someone has died, and you wish to bring a claim you will come across the expression personal representatives. Both Acts refer to personal representatives of the estate.

If the deceased died having made a will the executor will be considered the personal representative and will have to take out a Grant of Probate. The Grant is required to show the personal representatives are entitled to make the claim on the deceased's behalf.

If the deceased died without making a will, they died intestate, and Letters of Administration will have to be obtained – Please see our leaflet on Grant of Probate for more information, available at www.avma.org.uk/wp-content/uploads/Applying-for-probate.pdf.

The Fatal Accidents Act 1976 (FAA): Dependency claims

Time limits for bringing a claim

Under the FAA, the personal representatives will be expected to bring a claim on behalf of the deceased's estate within six months of the deceased's death, if they do not, then the action may be brought by all or any of the dependents.

Limitation

Limitation must be carefully considered. The limitation period is the time within which the claim must be issued at court. The starting point is to check whether the deceased (had they survived) would have been within the appropriate time limits to bring a claim – this is usually, three years from the date when the negligence occurred or the date the deceased knew or ought to have known the negligence had occurred. You should seek legal advice as soon as possible if you are unsure of the position. You may also find it helpful to read our leaflet on time limits, available at www.avma.org.uk/wp-content/uploads/Legal-time-limits.pdf.

If the deceased, had they survived, would have been within the three year limitation period for bringing a claim, then any dependents wishing to bring a claim will have *three years from the date of the deceased's death* to bring their claim.

Any dependent of the deceased is entitled to bring a dependency claim under the FAA.

Who is a dependent?

The Act clearly defines who can be considered a dependent and these are identified below:

A wife, husband, or civil partner of the deceased

- The former wife or husband of the deceased. This includes a person whose marriage to the deceased has been annulled or declared void.
- A cohabiting partner. To be eligible cohabiting partners will have to be able to show that they were (i) living with the deceased in the same household immediately before their death AND (ii) had been living with the deceased for at least two years before the death AND (iii) was living during the whole of that period as the wife, husband, or civil partner of the deceased.
- Any parent or other ascendant (eg grandparent/s) of the deceased
- Any person who was treated by the deceased as his parent.
- Any child or other descendant of the deceased, eg a grandchild
- Any child who was not a child of the deceased but who was treated as a child of the deceased's family because of marriage or civil partnership.
- Any brother or sister of the deceased or their children
- Any uncle or aunt of the deceased or their children
- in the case of a person who has a female parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008, the legitimate child of his mother and that female parent.]

Important things to note about a dependency claim:

Although a large group of people are recognised under the Act as being potential dependents, the claim will only succeed if the person seeking to bring a dependency claim can show that the deceased contributed to their financial support. For example: If the deceased did not contribute to his/her parents' upkeep during their lifetime, those parents will not succeed in bringing a claim for dependency under the FAA. If the deceased did pay maintenance to an ex-spouse, then the ex-spouse will be able to make a dependency claim.

- Compensation for loss of dependency is assessed in two stages (i) damages from the date of death to the date of trial and (ii) the estimated future loss from the date of trial.
- Where the deceased was a mother who was not working or bringing in a wage, the husband/partner may be able to make a claim referable to the cost of employing a housekeeper providing he continues to work. The courts will also recognise a sum for "unreplaceable services".
- If the husband/partner gives up work to look after the child/children the claim may be made for loss of earnings.
- An award will also be made to the children in recognition of their loss of a parent.
- Claims for dependency tend to be assessed in a particular way depending on whether the claim is on behalf of a surviving partner or a surviving partner and dependent children.
- If the dependency claim is on behalf of a surviving partner then generally the claim is calculated as 66% of the joint family income, less the income of the surviving partner.
- If the dependency claim is on behalf of a surviving partner and dependent children generally the approach tends to be 75% of the joint family income, less the income of the surviving partner.
- Any money which may be received by the dependents by way of inheritance or life insurance policies shall be ignored for the purposes of a dependency calculation.

State benefits

If the deceased was in receipt of state benefits which are then lost to the family as a result of their death, a claim may be made based on the lost benefits.

The Fatal Accidents Act 1976 (FAA): Statutory bereavement award

The FAA allows a very modest award of damages to be paid because of someone's death due to negligence. The amount payable is fixed by law and is known as the statutory bereavement award. As of 1st May 2020, the amount you can receive in *England and Wales* is £15,120, prior to this date the award was £12,980.

As from the 1st May 2019, the amount you can receive in *Northern Ireland* is £15,100 (previously £14,200).

Scotland operate their awards process differently and consider the amount paid on a case-by-case basis.

Who can claim a statutory bereavement award?

The statutory bereavement award may be made *in addition to* any claim for dependency but not everyone is entitled to a bereavement award. The class of people eligible to claim a bereavement award is much smaller than the list of people eligible to make a dependency claim. The group of people eligible to receive a bereavement award is set out below.

Only one award is payable, so if a wife and a co habiting partner of the deceased both make a claim for a statutory bereavement award, the award will be divided equally between them, after any deductions for costs. Similarly, if the parents of an unmarried minor both make a claim, the award shall be divided equally between them.

- A wife, husband, or civil partner of the deceased
- A cohabiting partner. To be eligible cohabiting partners will have to be able to show that they were:
 - i. living with the deceased in the same household immediately before their death

AND

- ii. had been living with the deceased for at least two years before the death.

AND

- iii. was living during the whole of that period as the wife, husband, or civil partner of the deceased.

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- Parents of an unmarried minor (under the age of 18 years) where the child was legitimate.
- The mother of an unmarried minor (under the age of 18 years) where the child was illegitimate.

The Fatal Accidents Act 1976 (FAA): Funeral expenses

The reasonable cost of funeral expenses can be recovered provided these were paid for by the dependents. If the funeral expenses were paid for by the deceased's estate, then these costs need to be recovered by the estate under the Law Reform Miscellaneous Provisions Act (see below).

Please note, compensation for the reasonable cost of funeral expenses will not be paid twice. You cannot recover under say, The Law Reform Miscellaneous Provisions Act 1934 and then claim again under the Fatal Accidents Act 1976.

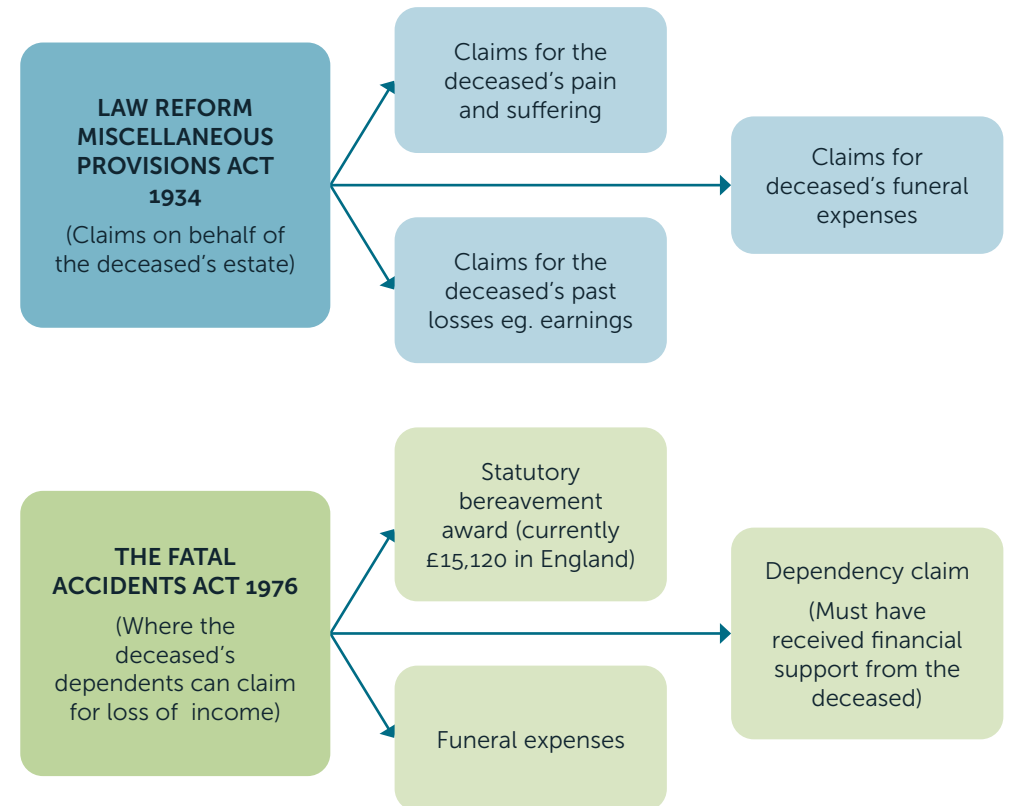
Claim on behalf of the deceased's estate under the Law Reform and Miscellaneous Provisions Act 1934

The estate will be able to bring a claim on behalf of the deceased for any losses the deceased would have been entitled to recover had they survived.

The main types of claims brought under this Act are:

- i. Claims for pain, suffering and loss of amenity calculated from the date of the injury to the date of death.
- ii. Any special damages eg loss of earnings, medical expenses, care costs etc. Again, this is calculated from the date of injury to the date of death.
- iii. Funeral expenses if the estate paid for these. If the dependents paid for these, then the dependents should recover the reasonable funeral costs under the Fatal Accidents Act (see above)

Claiming for someone's death - An overview:



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