

## FATAL ACCIDENTS

### IN WHAT CIRCUMSTANCES CAN A FATAL ACCIDENT CLAIM ARISE?

Claims can arise in any circumstances where a person has died as a result of the negligent actions of another person eg. because of a road traffic accident, an accident at work or as a result of medical negligence.

### WHAT TYPES OF CLAIM CAN BE MADE?

There are two types of claim that arise following a death. The first is on behalf of the estate of the deceased and arises under the Law Reform (Miscellaneous Provisions) Act 1934. This is known as the **LAW REFORM CLAIM**. The second is on behalf of the dependents of the deceased and is brought under the Fatal Accidents Act 1976. This is known as the **FATAL ACCIDENTS CLAIM**.

### WHAT CAN BE CLAIMED THROUGH A LAW REFORM CLAIM?

This claim is brought **ON BEHALF OF THE DECEASED'S ESTATE** by the personal representatives. Any compensation will be brought into the deceased's estate and divided between the beneficiaries. It will include:

- (1) Financial losses incurred by the deceased prior to death eg. loss of earnings.
- (2) Compensation for pain and suffering which the deceased suffered prior to death (if the death was instantaneous no compensation would be payable under this category).

- (3) Funeral expenses (if these were paid by the estate).

### WHAT CAN BE CLAIMED THROUGH A FATAL ACCIDENT CLAIM?

Under the Fatal Accidents Act relatives of the deceased can claim for losses they have sustained. There are three categories of compensation:-

- (i) **DAMAGES FOR BEREAVEMENT:** this is a fixed sum of **£10,000.00** and can only be claimed by the **SPOUSE** or **CIVIL PARTNER** of the deceased or the **PARENTS** of a child under the age of 18 who was not married at the time of death.
- (ii) **FUNERAL EXPENSES:** these can be claimed if paid by the dependents.
- (iii) **LOSS OF DEPENDENCY:** a dependency claim can be brought by certain categories of relatives, including parents, children, spouses, ex-spouses, grandparents and cohabitants (provided the claimant was living with the deceased for at least two years prior to the death). The claimant must have been actually dependent on the deceased prior to his/her death.

### HOW IS "DEPENDENCY" CALCULATED?

There are two sorts of dependency claim:

#### Financial (or Income) dependency

The calculation of dependency is purely financial and is a complicated process. The first stage is to work out the net annual loss suffered by the dependent and from that, future loss can be calculated. The calculation will need to be supported by evidence of the family's financial circumstances for the year prior to the death.

#### Services dependency

A dependency claim can also include an element

for the loss of "services" provided by the deceased eg. caring for a child, gardening, housework. This is often evaluated by reference to the commercial cost of bringing in those services eg. of a nanny, or gardener.

### **WHO WILL BRING THE CLAIM?**

Normally the claim will be brought by the **PERSONAL REPRESENTATIVE** (executor or administrator of the estate) of the deceased who will bring a Law Reform claim on behalf of the estate and a Fatal Accident claim on behalf of any dependents. However if the personal representative fails to commence proceedings within 6 months of the death, any one of the dependents can bring a fatal accidents claim.

The Court will allow only one set of proceedings.

### **ARE THERE TIME LIMITS WITHIN WHICH A CLAIM MUST BE BROUGHT?**

Yes. Proceedings usually must be commenced in Court within three years of the date of the death.

### **IS LEGAL AID AVAILABLE?**

Yes. Subject to financial eligibility Legal Aid is available in some types of cases. For further information please refer to the Fact Sheet on Legal Aid.

### **WHAT IF I DON'T QUALIFY FOR LEGAL AID?**

Some Solicitors are willing to take cases on a "no win - no fee" basis known as **CONDITIONAL FEE AGREEMENTS**. This will depend upon the strength and value of the claim. See our Fact Sheet on Conditional Fee Agreements.

### **WHEN SHOULD I SEE A SOLICITOR?**

It is better to consult a solicitor as soon as possible after the death. There are a number of considerations which come into play – should you be represented at the Inquest (if there is one)? Do you need a grant of representation to the deceased's estate? If it was a death due to clinical negligence, should you pursue the NHS Complaints procedure? What if there are possible criminal proceedings?

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Lees Solicitors LLP offer a free initial consultation and home visits in appropriate circumstances.