

# A Critical Review of Bereavement Damages in England and Wales

Darcey Hewett

## Introduction

### 1. What are Damages?

In the civil law of torts, when a wrong has occurred the general means by which people seek to rectify that wrong is by claiming money known as damages from the tortfeasor<sup>1</sup>. Damages are to put the claimant back in the position they would have been in, had this wrong not occurred. Damages are not paid to the claimant by way of punishing the wrongdoer; they are purely compensating the claimant for the loss caused by the actions of the defendant. In the words of Chief Justice McLachlin's, as approved in the case of *Fairchild v Glenhaven Funeral Services*,<sup>2</sup> 'tort law is about compensating those who are wrongfully injured... it is about recognising and righting wrongful conduct by one person or a group of persons that harms others'.<sup>3</sup>

Compensatory damages, otherwise known as *restitutio in integrum*<sup>4</sup>, have two main aims. The first is to compensate for any pecuniary loss, reimbursing financial loss of earnings. The second is non-pecuniary by definition and compensates for the loss of something non-tangible or easily defined, such as peace of mind, physical comfort and physical amenity. Non-pecuniary damages are the less calculable of the two and, therefore, the Judicial Studies Board<sup>5</sup> have produced guidelines that set out non-pecuniary damages based on awards given in previous cases. The 1994 Law Commission's

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<sup>1</sup> The person who has committed the tort.

<sup>2</sup> *Fairchild v Glenhaven Funeral Services* [2002] Lloyd's Rep Med 361, para. 11.

<sup>3</sup> McLaughlin J, "Negligence Law - Proving the Connection", in ed Mullany and Linden *Torts Tomorrow, A Tribute to John Fleming* (LBC Information Services, 1998), at 16.

<sup>4</sup> That is, restoration to the whole or uninjured condition.

<sup>5</sup> An institution that trains judges.

Report 'How Much is Enough?'<sup>6</sup> argued that compensation paid for such losses had fallen behind inflation, and that it should be substantially increased,<sup>7</sup> an argument that has endured for some years now. The aim of this paper is to explore the relevance of bereavement damages and will focus on the second non-pecuniary damages.

In tort law to claim for damages for either personal injury or unlawful death an action can be brought about in one of the following ways:

- (1) By the injured person, claiming "lost years" as a result of foreshortened life. Such an action is barred by the death of the claimant.
- (2) By the estate of the deceased, pursuant to Law Reform (Miscellaneous Provisions) Act 1934.
- (3) By a dependent of the deceased or person entitled to a "bereavement award" pursuant to Fatal Accidents Act 1976.<sup>8</sup>

## ***2. History of Bereavement Damages***

The main focus of this research is specifically bereavement damages, covered by Section 1A of the Fatal Accidents Act 1976 that was introduced by the Administration of Justice Act 1982. This section came about after a recommendation proposed by the Law Commission's report 1973 Personal Injury Litigation Assessment of Damages. Bereavement damages are an exception to the traditional way in which damages are awarded as there is an obvious loss of life that has amounted to a claim, therefore no proof of loss needs to be provided.

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<sup>6</sup> Law Commission Report, 'Personal Injury Compensation: How Much is Enough?' (1994) Law Com. No 225.

<sup>7</sup> Catherine Elliot and Frances Quinn, *Tort Law*, Ninth Edition, Pearson Education Limited, 2013.

<sup>8</sup> St John's Chambers, 'Claims for Dependency, for the Estate of the Deceased, and for those terminally ill or injured' (2011) <http://www.stjohnschambers.co.uk/wp-content/uploads/Fatal-accidents.pdf> accessed 11 October 2014.

The bereavement in itself can be sufficient enough proof for the money to be awarded. The damages are set to compensate for the grief and sorrow that follows after losing a spouse or child from the reckless or negligent act of another. It acknowledges that society places a strong emotional attachment to that heartache from losing a loved one caused by the negligent act of someone else. Bereavement damages acknowledge what has happened and tries to recompense somewhat.

Bereavement damages were not readily available to claimants. In fact, before 1982 when they were introduced; there was no statutory sum of money to be awarded whatsoever. The settlement of awards since 1982 has increased somewhat over thirty years. Though the maximum award settlement has increased, it is still debated owing to the widespread disagreement as to whether the current award is inappropriately low.

As seen below, the maximum award for bereavement damages has increased over a period of time.

1982 - £3,500

1991 - £7,500

2002 - £10,000

2008 - £11,800

2013 - £12,980

Currently the settlement is set at £12,980. This still receives criticism from claimant's and lawyers.

This issue will be one of the main focal points of this research.

# **Bereavement Damages in England and Wales**

## ***1. Suitable Name***

The name of the monetary ‘bereavement award’ is the source of some debate because it is believed that calling it an award is a misleading term. Claimants should not be awarded for losing a spouse; it is not an award which would be perceived as something positive, by benefiting those who are grieving. Therefore, terms such as ‘compensation’ or ‘damages’ are preferred as they do not portray a negative connotation. They are to help compensate for a wrongdoer’s action that is irretrievable.

Another issue is that when labelled an award, an action could be seen as a claim for those who are outwardly seeking compensation for mercenary reasons. That is, a claim brought for personal gain or frivolous, also termed ‘compensation culture’. This name has been coined by the media and politicians, claiming that people are too quick to sue in an attempt to get some form of damages. Although the compensation culture is seen as a bit of a myth it is worth remembering that it is an incredibly harsh thesis and in reality seems very unlikely in this context.<sup>9</sup> Those claimants who are grieving for a loved one would have many issues on their mind with financial gain most probably being one of the last. It seems outrageous to accuse someone of such mercenary measures at such a time.

## ***2. Who is Eligible to Bring a Claim?***

Following the death of someone through a negligent accident, the deceased’s estate can claim for the grief felt of losing that family member, although in England and Wales the claim is strictly limited

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<sup>9</sup> See: Centre for Effective Dispute Resolution, ‘Government releases response to Taskforce report, ‘Better Routes to Redress’ (CEDR, 23 November 2004) <http://www.cedr.com/news/?item=Government-releases-response-to-Taskforce-report-Better-Routes-to-Redress> accessed 2 November 2014.

to a specific category of people. Those eligible for bereavement damages are held under S.1(A)(2) of the Fatal Accidents Act 1976 to be a spouse or civil partner of the deceased, a parent of an unmarried minor if he was a legitimate child and, if the minor was illegitimate, the mother of the unmarried minor. These classes are far narrower than those who could claim for damages for loss of financial dependency under the 1976 Act.

There has been an overwhelming amount of criticism for bereavement damages over the years. Many believe that it is unfair to have such a narrow category of people who can claim for bereavement damages. In reality many people who are of a wider relation than that of immediate family members would be upset and saddened, yet cannot claim the damages that are intended to benefit the bereaved. The restriction on compensation for bereavement is a political decision and is difficult to justify on moral or logical grounds.<sup>10</sup> The legislation on bereavement damages is set by the Government, and it links back to the argument that they do not fully comprehend the impact the bereavement awards have on family members, and how much disagreement there is with the current set maximum as well as the criteria as to whom can apply.

There are many issues surrounding s.1(A)(2) as to who can claim for bereavement damages. The first concerns claims brought by parents for deceased children over the age of eighteen. Is it unreasonable for a parent to claim for a bereavement award, when their child has been negligently killed after they have reached the age of eighteen? The age of the child at the time of death should not matter. The love and admiration parents have for their own child does not change throughout their lifetime. Thus, is it right to say to a parent, who loses a child due to a negligent act at the age of seventeen, that they can successfully claim up to £12,980, but a parent of a child who is negligently killed at the age of eighteen and upwards cannot?

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<sup>10</sup> Kemp and Kemp, *The Quantum of Damages* (Vol. 1, Sweet and Maxwell, 2009), chapter 29.

A very good theoretical case example, suggested by Kemp and Kemp, is the 'seventeen-year-old twins, who are injured in a car crash as a result of the negligence of a drunken driver. If one dies on the day before his eighteenth birthday and the other dies on the day after, the parents would recover bereavement damages in respect of the one, but not the other'.<sup>11</sup> When placed in this situation, it is incredibly harsh to tell the parents they can only claim a bereavement award for one of their children, when in fact both were involved in the same negligent accident. Should a few hours out of the range of eligible criteria, not to mention the whole age restriction in itself, matter?

A similar situation occurred in the case of *Doleman v Deakin*.<sup>12</sup> The case concerned an unmarried minor who had been hit by a car driven by an intoxicated driver. The accident put the minor into a coma due to his head injuries and, never having woken up, the minor passed away after his eighteenth birthday. The judge held that 'no cause of action occurred until death, the relevant date was the date of death and not the date of the tortious act'.<sup>13</sup> Stopping bereavement compensation claims for parents of a child over the age of eighteen, especially in those cases where the child has recently turned eighteen, seems an outrageously bold statement to make. It seems to almost suggest that parents suddenly do not love their children as much, or will not grieve as much over a child that is no longer a minor.

Most young adults between eighteen and up to roughly twenty-four years of age are still very much involved and dependent upon their parents. To take that emotional bond between a child and their parent, and then tell that parent that no matter how close they are, or how much they are suffering they cannot under any circumstances claim compensation for bereavement appears highly unjust. In the words of Matthew Stockwell, the president of the Association of Personal Injury Lawyers (APIL),<sup>14</sup>

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<sup>11</sup> Ibid, chapter 29.

<sup>12</sup> (1990) Times, 30 January.

<sup>13</sup> Ibid.

<sup>14</sup> A legal association that campaign for improvements of the law in relation to personal injury.

'it is particularly distressing to me that parents of a child under the age of 18 should be entitled to bereavement damages but once the child is 18, they are not. It is unnatural for a parent to suffer the loss of a child, and that loss is no less if the child happens to be over the age of 18'.<sup>15</sup>

S.1(A)(2)(ii) states that only the mother of an illegitimate child can claim for bereavement damages, not a father. This can be seen as discriminatory and unfair. However, the extent of this argument lies deeper within the very aggravated and contentious argument in family law about fathers' rights over children and their parental responsibility. Currently only mothers have automatic parental responsibility over their natural or adopted child.

Children are prohibited from claiming for any type of bereavement damages. They may only make a claim for loss of support or bring a dependency claim when they lose a parent within the 1976 Act. This raises the question of whether it is justified to not allow a child to pursue a claim for their loss when they will grieve and suffer sorrow just as any parent or spouse would. Conversely, it could be argued that children of a young age will not understand the true implications for pursuing a bereavement award, why they are entitled to compensation, and that it is being given to them from the tortfeasor that has negligently killed their parent(s). Would it be possible to explain to them 'because your mother/father was killed in a fatal accident, you are now entitled to £12,980'? It just does not seem comprehensible for a young child to understand.

On the other side of the coin, it is possible for a person to make a claim on the child's behalf and hold the money on trust for them until they reach an age of which they are able to understand and receive the money. Just because they are young, does not mean they should not be entitled to any

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<sup>15</sup> *Hartigan, T.* 'Bereavement Damages – A Geographical Injustice?' 26 September 2014, [http://www.trethowans.com/site/library/legalnews/bereavement\\_damages\\_a\\_geographical\\_injustice](http://www.trethowans.com/site/library/legalnews/bereavement_damages_a_geographical_injustice) accessed 11 October 2014.

compensation. This is another focal point where those eligible to bring a claim, currently are not able to do so. This is an issue undergoing a lot of criticism, and needs to be considered in the next law reform.

As mentioned above, a wife or husband of the deceased may bring a claim for damages for bereavement. It appears highly unfair that a spouse can claim for the grief of a husband or wife, but cannot claim for the loss of their own child if that child is over the age of eighteen. It is even more controversial as in the case of *Martin v Grey*<sup>16</sup> where a wife was successful in claiming bereavement damages for that of the husband, even though a petition for divorce was under way, and a decree nisi<sup>17</sup> had been granted. Bernard Livesey QC stated that 'if a claimant comes within the qualifying terms of the provision an award cannot be denied and if he falls outside those terms an award cannot be made... I presume that Parliament intended that the award should be given in full without judicial enquiry or evaluation into either the genuineness or depth of a claimant's feelings of loss... Thus, in the case of an analogous award under subsection (b) - which applies to cases where the deceased was a minor who was never married - if such a person dies merely one day before his eighteenth birthday, the parents will recover the full award but if he dies the following day, the parents will get nothing'. This highlights that the law has no regard to moral grounds, as parents cannot claim for children over the age of eighteen. However, a spouse can make a claim when they are filing for divorce and a decree nisi has been granted. Despite it not being about whether the partner is still in love and grieving they may very well be. It just seems incredibly unjust to allow such a claim when a parent cannot claim for their own children.

### **3. The Award Settlement**

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<sup>16</sup> (1998) (13 May 1998, unreported).

<sup>17</sup> A court order granted when the court is satisfied that the petitioner is entitled to a divorce.



The purpose of an award of bereavement under the Fatal Accidents Act 1976 s.1(A)(1) is to relieve the family member with a compensatory payment in regards to grief and sorrow. In no way is it possible to put a price to match such grief but s. 1(A)(3) still attempts to do so. As previously mentioned, the Administration of Justice Act 1982 updated the section on bereavement damages, from £10,000 to £12,980 in 2013. So as it stands, the current maximum a bereaved family member can gain is set at £12,980.

It is concerning and much debated that the current set maximum of bereavement damages are inappropriately low to be seriously considered and beneficial to those who need it. A family member who seeks bereavement damages is going through a very distressing time and to be told that this grief only amounts to £12,980 seems derisory. Tom Hartigan, Associate in Trethowan's personal injury soliciting team stated:

*'I have dealt with many fatal accidents claims...it is extremely difficult to explain to a bereaved husband or wife that they are only entitled to £12,980 for the loss of their spouse'.<sup>18</sup>*

In any circumstance it is difficult to put a price on grief but it is a wide spread agreement that the current maximum in England and Wales needs to be increased. It can be argued that it is cheaper to kill someone than it is to permanently injure someone. As it stands paying bereavement damages would cost the tortfeasor £12,980, whereas if the tortfeasor was negligent and the act were to permanently blind someone, he/she would then have to pay around £30,000. In the words of Kemp and Kemp:

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<sup>18</sup> Hartigan, T. 'Bereavement Damages – A Geographical Injustice?' 26 September 2014, [http://www.trethowans.com/site/library/legalnews/bereavement\\_damages\\_a\\_geographical\\_injustice](http://www.trethowans.com/site/library/legalnews/bereavement_damages_a_geographical_injustice) accessed 11 October 2014.

'Damages for pain, suffering and loss of amenity for causing serious injury may be as high as £260,000. Damages for pain, suffering and loss of amenity for causing death zero'.<sup>19</sup>

Although the damages for death have now increased over the years, having it written in those terms, enlightens the seriousness of how barbaric it is to have such a low maximum payment in England and Wales. The APIL have raised concern about the current settlement being too low. They had managed to fight their way to increase the settlement from £10,000 to £11,800, but they are still urging for a much higher increase.

#### ***4. Juries in England and Wales***

Trial by jury in civil cases in England and Wales is almost obsolete. The eradication of juries for civil cases was a gradual process and happened over the nineteenth century. Currently, '*less than one per cent of civil cases are tried by jury*'.<sup>20</sup> The small minority of civil law cases that can still have a trial by jury were held under Senior Courts Act 1981. These cases include libel/slander, malicious prosecution, false imprisonment and fraud. Cases outside of the provided remit can have a jury at the discretion of the court. In the case of *Ward v James*<sup>21</sup> the Court of Appeal stated that '*personal injury cases... should be by judge alone unless there were special considerations*'.<sup>22</sup> It was later held that the technical issues of law arising from personal injury cases were unsuitable for a jury. This concludes that there are no trials by jury in cases of bereavement compensation, and it would almost seem absurd when the maximum award is set to £12,980. Hence, it is left to the discretion of the judge.

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<sup>19</sup> Kemp and Kemp, *The Quantum of Damages* (Vol.1, Sweet and Maxwell 2009), chapter 1.

<sup>20</sup> Elliot, C., Quinn, F. *English Legal System* (13<sup>th</sup> Ed, Pearson Education Ltd, 2012/13), p. 231.

<sup>21</sup> *Ward v. James*. [1962 W. No. 197.] - [1966] 1 Q.B. 273.

<sup>22</sup> Elliot, C., Quinn, F. *English Legal System* (13<sup>th</sup> Ed, Pearson Education Ltd, 2012/13), p. 231.

# Bereavement Damages in Scotland

## *1. Background of Bereavement Damages*

Before any of the debates take place, it is important to understand where the Act originated from. The Damages (Scotland) Act 2011 deals with damages in relation to personal injury and death and any other connected purposes. The 2011 Act sought to implement ‘the Scottish Law Commission’s Report on Damages for Wrongful Death, which was published on 30 September 2008’.<sup>23</sup> This consultation paper had explored recommendations made by the Scottish Law Commission, ‘in reports on psychiatric injury and limitation and prescribed claims’.<sup>24</sup> The section of bereavement damages otherwise known as compensation under Scottish law will be the main focus of comparison and the relevant section is s.14(1) and (2).

In Scotland a compensatory form of damages will be paid out where a negligent act or omission has occurred. However, it is not easy to pinpoint the amount of compensation the grieving family member will be entitled to. This is outlined under s.4(3)(b) of the 2011 Act:

Such sum, if any, as the court thinks just by way of compensation for all or any of the following –

- (i) distress and anxiety endured by the relative in contemplation of the suffering of A and before A’s death.
- (ii) grief and sorrow of the relative caused by A’s death,
- (iii) the loss of such non-patrimonial benefit as the relative might have been expected to derive from A’s society and guidance if A had not died’.

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<sup>23</sup> Damages (Scotland) Act 2011, ‘Explanatory Notes’, <http://uk.practicallaw.com/uklegislation/asp/2011/7/notes/division/2#> accessed 22 October 2014.

<sup>24</sup> The Scottish Government, ‘Personal Injury’, 2011, <http://www.scotland.gov.uk/Topics/Justice/law/damages/damagesetc> accessed 18 October 2014.

There is no set maximum award settlement for bereavement in Scotland. The decision is made on a case-by-case basis through either a judge or jury. As stated by APIL President Matthew Stockwell:

‘Cases are taken on their merits, damages are generally higher and the law is much more flexible about who can receive them.’<sup>25</sup>

## ***2. Who is Eligible to Bring a Claim?***

In Scotland the criteria for those who can claim is held under the Damages (Scotland) Act 2011 Section 14(1) and (2). Those eligible for bereavement damages in Scotland go beyond that of ‘immediate family.’ However, the 2011 Act has maintained a strict distinction between those of whom fall under the category of ‘immediate family’ members and those who are ‘other relatives’.

The immediate family members are defined under S.4(5)(a) 2011 Act to include all members of family that are defined in S.14(1) ss.(a) to (d). These family members are able to claim for damages under S.4(3)(b) as mentioned above, for non-pecuniary loss and loss of financial support. The ‘other relatives’ are those who fall under S.14(1)(b)(e)-(h). These relatives will only be eligible to claim for loss of financial support. The main area of focus will be immediate family members, as these will be eligible for compensation in relation to ‘bereavement damages’.

The award of compensation can go to a wide variety of family members, to relieve them of some of the misery caused by a negligent act of a tortfeasor. Conversely, can it be said that the current list of eligible claimants’ is too wide? Is it fair for brothers, sisters, grandparents and grandchildren to be

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<sup>25</sup> Hyde, J. ‘Personal Injury Lawyers call for £100,000 Bereavement Damages,’ the Law Society Gazette, 24 September 2013, <http://www.lawgazette.co.uk/practice/pi-lawyers-call-for-100000-bereavement-damages/5037834.article> accessed 18 October 2014.

able to claim bereavement compensation? It cannot be wholly unreasonable to expect that these family members will be grieving just as much as a parent, spouse or child would be for losing a relative. It must be stressed that this is immediate family, indicating the close relations between them and the likely love and admiration they have for each other. This should justify them having an bereavement award available to them. It is also important to remember that the deceased family member did not die of natural causes; they have had their life taken away from them at any given age in an unexpected and negligent accident. The family members of a close relation should be able to claim from the tortfeasor for their loss.

### ***3. Juries in Scotland***

The civil law cases held in the Court of Session<sup>26</sup> in Scotland and are tried by either judge or jury.

Juries tend to have a lot of the personal injury cases, perhaps because the claimants opt to have trial by jury on the chance of having a higher bereavement compensation payment. As mentioned previously, the cases in relation to personal injury and bereavement damages are decided on a case-by-case basis. S. 5 of the Jury Trials (Scotland) Act 1815 provides:

‘(F)or reparation by pecuniary damages, the jury, if they shall find a verdict for the pursuer, shall also assess the damages’.

Thus, it is a jury’s role to agree on an amount of damages to be awarded to the claimant. An issue with this is that juries may either over or under-compensate as they are allowed to decide on any set amount of bereavement damages to be awarded, unlike the set maximum given to claimants in England and Wales.

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<sup>26</sup> The Scottish equivalent to the High Court.

Over-compensation by jurors is a very contentious argument among academics and legal professionals. It was pointed out in a number of different cases that, where juries made the calculation of awards, there was an 'underlying disparity between the levels of damages a judge and a jury will award to relatives in fatal claims'.<sup>27</sup> It is seen to be that judges award damages for bereavement around the £30,000 region, whereas juries can award three times that number, sometimes reaching a staggering £100,000.

Where there is a trial by jury, one of the important factors to remember is that unlike a judge, who would know or can search previous case law decisions, juries are not told or made aware of the payments given to claimants in previous cases. They have little guidance, merely being given a piece of paper known as the 'Proposed Issue' that informs them of a maximum award that they cannot exceed.

There is quite a difference between the amounts of damages awarded to those in fatal claims under s.14 of the 2011 Act. Judges often will not exceed £50,000. In fact, the highest amount awarded in the past 10 years was £41,000, granted to a spouse who had lost her 34 year old husband. There seems to be a particular routine with the amount awarded by judges. This would in effect create a clear and precise precedent to follow for future reference, avoiding confusion and bitterness between societies with extremely different awards for the same situation. Bereavement compensation awarded by juries however, the opposite. In the past 10 years, compensation awards have been increasing rapidly and significantly. The highest award, being £120,000, was granted to a child who lost their mother at the age of 50 and was later appealed. Hence, juries are clearly much more willing to award damages, and at a much higher rate than those given by judges.

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<sup>27</sup> Lothian, A. 'Fatal Claims in Scotland, Putting a value on death,' 6 July 2011, <http://www.andersonstrathern.co.uk/legal-updates/fatal-claims-in-scotland-putting-a-value-on-death/#.VE-yQvmsWSp> accessed 6 October 2014.

The extent of the argument for the disparity of the bereavement damages awarded by a jury can be seen in the joint case of *Hamilton v Ferguson* and *Thomson v Dennis*<sup>28</sup> whereby both cases were appealed on the basis of the excessive amount of bereavement damages awarded. There was a five judge bench addressing the issue of this case, which sought to provide a solution to the difference in bereavement damages being awarded by the judge and the jury. It required a judge to give guidance to a jury about the amount that should be awarded, as well as expecting judges to increase their awards. For a case to come to this point demonstrates that there is a widespread concern about the increasing bereavement awards from juries in Scotland.

Another case where excessive damages have been awarded by a jury is that of *Catherin Foley v RJK*.<sup>29</sup> In this case the husband had died after falling down the stairs in the middle of the night as the hand rail that was fitted by the defendants had completely come away from the wall. The widow was awarded £80,000, the daughters aged 44 and 57 both got £35,000, the son aged 43 was awarded £27,500, and even the grandchildren and godchildren received some compensatory money. These awards were significantly higher than those awarded by judges.

Previously, a widow could expect no more than £50,000 and adult children no more than £18,000 from a judge.<sup>30</sup> It is no wonder that the system within Scotland is criticised due to this clear disparity between the awards from judges and juries which are in some cases considerably alarming.

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<sup>28</sup> *Hamilton v Ferguson Transport (Spean Bridge) Ltd; Thomson v Dennis Thomson Builders Ltd*, 2012 Scot (D) 10/6.

<sup>29</sup> *Catherine Foley McGee and Ors v RJK Building Services Limited*, 2013 CSOH 10.

<sup>30</sup> Digby Brown Solicitors, 'Legal Commentary: Increased judicial awards in fatal accident cases,' 21 January 2013, [http://www.digbybrown.co.uk/site/news\\_main/legal\\_commentary\\_judicial\\_awards\\_fatal\\_cases](http://www.digbybrown.co.uk/site/news_main/legal_commentary_judicial_awards_fatal_cases) accessed 23 October 2014.

In the case of *Young v Advocate General for Scotland*<sup>31</sup> a family member brought a claim for bereavement damages of a serviceman after he had died when a Nimrod aircraft caught fire, exploded and crashed over Afghanistan. The jury awarded the mother of her serviceman son £90,000 by way of bereavement award.<sup>32</sup> In this case the jury gave the claimant three times the amount of what a judge would be likely to give, highlighting the disparity of awards yet again.

This case had also sought damages for 'the first reported bereavement award made to a sibling - the deceased's sister was awarded £60,000 by the jury'.<sup>33</sup> The dispute over the sibling being allowed to claim will be discussed below but for the time being it needs to be noted that yet again there are extremely high awards granted from a jury. Family members achieving such high levels of damages through a trial by jury are only going to encourage further claims being pursued down the jury route in the future. This reinforces the argument of 'compensation culture' and that the contemporary society is one of a compensation seeking culture. People will opt for a trial by jury in Scotland on the off chance of being awarded a more substantial amount of money for the grief and sorrow felt for losing a loved one. If they were not seeking more money, surely trial by judge would be sufficient? Although it would be unkind to attack a claimant with this allegation when they are already going through a heartbreakingly hard time, it appears that this debate will continue for the foreseeable future as there is no true way of proving that people are in fact acting on selfish grounds or not.

## **Critical Comparison between the Two Jurisdictions**

### ***1. Should Bereavement Damages Exist?***

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<sup>31</sup> *Young v Advocate General for Scotland* 2009 Scot (D) 5/8.

<sup>32</sup> Brodies Solicitors, 'Record bereavement award made by Scottish Jury in third Nimrod crash case,' 1 January 2011, <http://www.brodies.com/node/1570> accessed 3 December 2014.

<sup>33</sup> Ibid.



The harsh reality is that no matter how much money is awarded to the claimant they will never be fully compensated for their loss or satisfied with the award. The award cannot fully help the situation or bring their loved one back. It could be argued that paying a claimant for the loss of their spouse on the grounds of bereavement is profiting from loss and that it has had no actual beneficial impact on the claimant's life. It is incredibly harsh to expect a bereaved claimant not to gain any form of compensation for bereavement from the tortfeasor whose negligence in some way caused the death of the family member.

It is important to remember that the purpose of this award is not to punish the wrongdoer, but to compensate for the loss. Lord Hailsham stated when the bereavement damages were introduced that 'they can only ever be a token payment as it is clearly impossible to quantify or provide adequate financial compensation'.<sup>34</sup> Albeit a token payment of acknowledgment of the sorrow caused, is it not somewhat better to have something rather than nothing? It allows the bereaved to feel that some form of justice has been granted for the unexpected, sometimes unexplained negligent act that caused the death of another. It would be socially and morally unacceptable for bereavement damages not to exist, even if the nature of the award is sometimes misconstrued.

The 2007 Ministry of Justice's consultation paper 'the Law on Damages' had an overwhelming response from lawyers in regards to retaining bereavement damages. Those that are against abolishing bereavement damages far outweigh those who are in favour. Some of the reasons as to why there was such an overwhelming agreement as to why the bereavement award should be retained include reasons such as that it reflects the wishes of society, showing that the justice system

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<sup>34</sup> Draft Civil Law Reform Bill, 'Pre-Legislative Scrutiny Justice Committee Contents,' 31 March 2010, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/300/30005.htm> accessed 7 October 2014.

is listening to people and taking note, and understanding that such an awful occurrence deserves some acknowledgment. Many noted that the law was in fact flawed but nonetheless entrenched in English and Welsh law. However even though flawed, the awards give an 'important contribution towards the estate of the person killed'.<sup>35</sup> No law can come into force that affects everyone and not being subject to criticism, and this is true of bereavement damages.

Those against the abolition have a stronger argument. There are critics who are in favour of abolishing Section 1(A). Those in favour argue that 'the award should be replaced with an apology'.<sup>36</sup> In many respects, those who feel they have been wronged, especially in relation to medical negligence would prefer an explanation from their doctor and an apology, so it would make sense to have an apology for negligence in respect to personal injury and loss of a loved one. Conversely, the claimants would be grieving and be extremely angry and hurt. Would an apology be enough to rectify the situation? Then again, neither can £12,980. It is a very quarrelsome argument, and no true explanation or meaning would come of it. Everyone handles situations differently and it is not fair, just or reasonable to have one rule that applies to all when everyone is so diverse. However, one cannot have a different approach for each and every person as that would lead to public outcry and inconsistencies.

## ***2. The Claimants***

Those who are eligible to claim for bereavement damages in Scotland are a lot broader and there is a more considered approach unlike that of England and Wales. Under both jurisdictions a spouse or civil partner is eligible to claim but Scotland also allows a cohabitee to do so. In England and Wales

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

on the other hand 'a cohabitee is excluded from the definition, despite the fact that a cohabitee can pursue a dependency claim'.<sup>37</sup>

In England and Wales, a parent could only claim for the loss of their child who is under the age of eighteen, and the child cannot claim for the loss of either parent. This is extremely narrow in comparison to Scotland, as under the Scottish jurisdiction a parent can claim for the bereavement of their child, no matter the age. It also allows both parents to claim for an illegitimate child, whereas under English and Welsh law only a mother can make a claim for bereavement compensation for the loss of an illegitimate child. One of the most outstanding comparisons that need to be made is in fact that children can claim for the loss of a parent under the Scottish statutory law. This has caused great debate amongst those who are affected directly from such a claim and legal professionals. It is no wonder that there is a persistent urge to update the law in England and Wales to be similar to that of Scotland.

Under S.14 Damages (Scotland) Act 2011 brothers, sisters, grandparents and also grandchildren are eligible to claim for bereavement damages. It has been previously discussed whether this is worthwhile and justifiable, however, should England and Wales adopt the same approach? Should a claim for further relatives under English and Welsh law be permissible? This has been the centre of the arguments for quite some time. APIL have urged to widen the eligibility to allow children to claim for their parents, illegitimate fathers to be allowed to claim and also cohabitees. As can be seen those eligible to claim is a lot broader for patrimonial and non-patrimonial losses. In contrast with England and Wales, not only is the pool of relatives a lot wider, but the approach is also much different.

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<sup>37</sup> Mardell, J., Serfozo, K. *Personal Injury and Clinical Negligence Litigation*, College of Law Publishing, 2014), p. 287.

### ***3. Should the Award Be Increased in England and Wales?***

The Fatal Accidents Act 1976 S.1A(3) has defined within the statute how much a bereaved claimant can claim. The section provides that a claim of £10,000 can be made. This provision was updated in 2013, allowing a claimant to be able to receive up to £12,980. In regards to the Scottish Justice System, there is no maximum settlement as to what a claimant can be awarded. The damages are decided on a case-by-case basis by either a judge or jury, as previously discussed. The Ambassador of APIL Matthew Stockwell said that 'damages in Scotland are generally higher, and the law is much more flexible'.<sup>38</sup> When awarding damages to the bereaved parties, the amount of compensation is determined by the judge or by a jury if the defendant has chosen a trial by jury. This can be anything from £30,000 up to £120,000 in some cases involving juries. There is no set minimum or maximum as to how much a party can receive. There is a great difference in bereavement award maximum settlements between the two legal justice systems. It is therefore no surprise that many feel that the current award for England and Wales needs to undergo serious consideration for a reform in the law.

The question is therefore whether bereavement damages within England and Wales should be increased. In 2007 researchers at the University of Warwick undertook a study on bereavement damages within England and Wales. Their research suggested that the current maximum award is unequivocally insufficient, and does not come close to compensating claimants for their loss suffered and their unhappiness.

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<sup>38</sup> Hyde, J. 'Personal Injury Lawyers call for £100,000 Bereavement Damages,' the Law Society Gazette, 24 September 2013, <http://www.lawgazette.co.uk/practice/pi-lawyers-call-for-100000-bereavement-damages/5037834.article> accessed 18 October 2014.

The public surveys APIL had undertaken came to the resounding result that the bereavement damages were based on economic value of the loss of a loved one and they proposed a new approach of examining 'the effect on mental well-being of particular life events, including bereavement'.<sup>39</sup> It would be problematic to measure the mental well-being of a person who is grieving and use that as a guide as to how much in bereavement awards they are entitled to. It is practically impossible to decide what may be sufficient for one person, and whether that is adequate for another. Each and every individual deals with grief in their own way, and some people may be more seriously affected than others.

It is hard to justify bereavement damages as a whole, and as to how much (if at all) the current maximum should be increased. It is still a matter of debate amongst those who are, or have been affected and legal professionals, that the current settlement in England and Wales should be increased to match that of Scotland. A survey by APIL shows that '80% of those surveyed perceived the Scottish system for bereavement damages as being fairer, prompting calls for the law in the rest of the UK to be reviewed; 57% felt a figure of more than £100,000 would be appropriate'.<sup>40</sup> There is a large amount of criticism and urgency for a reform in the law, and having many suggestions from public surveys instigated by APIL shows how out of touch the justice system is with the feelings of those who are affected. It seems highly unfair to have such a low amount for someone to claim as a bereavement award when, in cases of personal injury, claimants would have received a much higher award. The bereavement damages in England and Wales having once been at a zero balance before 1982 later becoming £3,500 that is only a fraction of the current settlement. It is still argued to be too low.

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<sup>39</sup> Elliot, C., Quinn, F. *Tort Law* (9<sup>th</sup> Ed., Pearson Education Ltd, 2013), p. 408.

<sup>40</sup> Hartigan, T. 'Bereavement Damages – A Geographical Injustice?' 26 September 2014, [http://www.trethowans.com/site/library/legalnews/bereavement\\_damages\\_a\\_geographical\\_injustice](http://www.trethowans.com/site/library/legalnews/bereavement_damages_a_geographical_injustice) accessed 11 October 2014.

There is also great aggravation towards the fact that when a couple have lost their child, the bereavement damages that both the mother and father would be entitled to actually only get one proportion of the damages (the set £12,980) split between them in the one household. The same applies to parents who are not actually living together but have lost a child. This surely cannot be fair. Both the mother and father will be seriously distressed and grieving in their own way, but can only claim for bereavement damages to be shared between them. This is especially harsh when the parents are no longer together but lose a child due to a fatal accident.

There is grave concern over the parent who is the tortfeasor being allowed to claim or stopping the other parent from claiming their half of the bereavement damages. This was the situation in the case of *Navaei v Navaei*.<sup>41</sup> The case involved a car accident by which the mother's negligent driving caused the death of the daughter. The father tried claiming for himself and demanded that he should receive the whole statutory sum and that the mother should not be awarded as it would be contrary to public policy. The father was claiming bereavement damages on his own behalf for his own benefit and self-gratification. The court held that 'in bringing a claim under the 1976 Act, a claimant is under a duty to bring act on behalf of all dependents and the father was allowed only half the damages'.<sup>42</sup> Can this really be seen as fair? The mother would not be in a position for claiming bereavement damages as she is the tortfeasor, however, the father that is now grieving because of the negligent acts of the mother can only claim for his half of the damages? It seems incredibly unreasonable for such a ruling to stand.

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<sup>41</sup>*Navaei v Navaei* (1995) (6 January 1995, unreported).

<sup>42</sup> Mardell, J., Serfozo, K. *Personal Injury and Clinical Negligence Litigation* (College of Law Publishing, 2014), p. 287.

#### ***4. Use of a Jury***

The use of juries between the two jurisdictions for awarding bereavement damages is very different, as has been discussed. The question is whether a jury should have statutory allowance to dictate how much a claimant can receive in bereavement awards in England and Wales on a case-by-case basis as in Scotland. Knowing the extent of what the juries are willing to award, and knowing that it is not without its critics, would it be wise to introduce a jury? Is it not fair to have a set maximum award for a judge to allow rather than a jury? Juries in Scotland have been known for over-compensating and being overly generous. If this were to happen in England and Wales, it could lead to even more problems and it could encourage even more claimants to seek an action against the tortfeasor in hope of receiving monetary compensation. It is a very open ended argument and many people will disagree. However, as can be seen from previous case law, having a jury to decide the amount to be compensated to the claimant is the wrong way forward.

Having so many arguments surrounding this area of the law reflects what society and legal professionals' think of the situation and will continue to encourage an update in the English and Welsh law. The awards in Scotland are a lot higher than that of England and Wales, and there is therefore no wonder there are so many complaints about the set maximum for bereavement damages.

An increase in the set maximum is needed, but to have a jury who are only given an amount as to which they are not to exceed so they can award what they feel is right seems to be leading to very eccentric outcomes causing problems as the awards are so far and beyond what is given by a jury to that of a judge. In Scotland, it has led to most claimants asking to have a trial by jury in hope of obtaining more money. If this were to happen in England and Wales, the suggested law reforms for

bereavement damages would surely continue to arise, only this time with the view that juries are in fact overcompensating.

It could be suggested that juries are given a maximum award settlement as to what they can award, but cannot exceed. For instance, a £50,000 maximum, this would allow a jury to have discretion on what is a suitable award for the claimant. It is quite clear the current award settlement of £12,980 needs to be increased but to what extent is yet to be agreed upon in a future law reform. It is clear however that having a maximum amount would allow a jury to appropriately compensate a claimant without overcompensating and causing outrage amongst legal professionals.

## **Reforming the law**

### ***1. England and Wales***

There have been a few attempts at reforming the law in England and Wales and most, if not all the time, a comparison has been drawn between the jurisdictions in England, Wales and Scotland. One of the first major law reports to recommend a change was the Law Commission's Claims for Wrongful Death Report in 1999. The aim of this report was to recommend an update in the legislation for Government and Parliament to consider enacting. The report focuses on bringing the area of the law more in line with modern day society and to make the law fairer.

The report recommended extending the eligibility criteria as to who can claim to include 'the deceased's children, siblings and long term partners' and also proposed 'the quantum of the award should be uplifted to £10,000, with an overall maximum award for any one death of



£30,000...subsequently be adjusted to keep pace with changing economic conditions'.<sup>43</sup> Nonetheless, too this day, 15 years later, the suggested extension of claimants from the report has not been implemented. The law not having been changed in any way, not even partly, led to more questions and arguments in future reports. However, the extension of the award settlement was implemented- increasing it to £10,000 in 2002, but the maximum of £30,000 was not enforced. This report has suggested that the award is to subsequently increase to keep up with changing economic conditions in England and Wales. Since this report, the set maximum has increased on a further two occasions. Albeit a small difference in some ways has been made, the report has not gone to waste. The arguments proposed in the report were greatly supported by all consultants who worked on the report and the arguments have carried through to further reform recommendations.

Another law reform report came in 2009 was scrutinised by the House of Commons. The report suggested extending the list of those eligible to make a claim. However, this report suggested abolishing the list and replacing it with a general category. The House of Commons rejected this idea on the basis that 'the claimant [would have] to prove his or her bereavement in court which is likely to be a distressing and potentially protracted proceeding at a difficult time'.<sup>44</sup> This was later retracted and the Law Commission suggested an extension on the current list of those allowed to claim, to include cohabitees, long term partners who plan to marry and for children under and over the age of eighteen to claim for the loss of their parents. The children extension for under the age of eighteen was rejected but the extension for cohabitees of more than two years was proposed. In fact the House of Commons had stated 'this is a long overdue reform...while any qualifying period is

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<sup>43</sup> The Law Commission, Claims for Wrongful Death: Item 1 of the Seventh Programme of Law Reform, Damages (1999) Law COM No.263.

<sup>44</sup> House of Commons Justice Committee, Draft Civil Law Reform Bill: pre-legislative scrutiny (6<sup>th</sup> Report of Session 2009-10), <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/300/300i.pdf> accessed 9 December 2014.

necessarily arbitrary, we believe the two year period, which is common in statute, is the most appropriate solution'.<sup>45</sup> Yet, there is still no statutory allowance for a cohabitee of two years or more to claim bereavement damages today.

It was noted by the House of Commons in relation to children that 'close ties of love and affection do not cease or weaken when a child reaches 18...we therefore recommend that Parliament should recognise the on-going importance of that relationship by extending eligibility for bereavement damages to all children who lose a parent'.<sup>46</sup> This argument has been proposed many times and the House of Commons have in fact acknowledged the importance of this. Yet, there is still no statutory legislation to allow children to pursue a claim. This should and most certainly will, go towards any future arguments for bereavement damages, and maybe then Parliament will realise how strongly society feel towards this and endorse it in a future law reform.

In relation to the award settlement, the 2009 report suggested having a 'ceiling' approach, whereby there is a set maximum of three times the current settlement that is outlined in the Fatal Accidents Act 1976, to be divided equally between the three parties rather than having one portion of bereavement damages split between the three claimants. It was suggested that a set maximum of three would be appropriate as it seems that three is the typical extension of family members who would be looking to claim. However, it has been noted that any more than three claimants would lead to discrepancies. The House of Commons agreed that a cap on the bereavement award was needed, for it to be shared equally between the claimants.

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

The two reports have both suggested a reform of the Fatal Accident Act 1976. S.1A over the same issues, the expansion of those who can claim for an award and an increase of the amount a claimant can receive. Yet, the law has still not updated the law in respect of who can claim for bereavement damages. There have been many arguments and proposals and the House of Commons have even agreed, but still nothing. The award settlement has increased since, from £11,800 in 2008 to £12,980 in 2013. This has increased and arguably, keeping up to the social economic standard. Although, an urge for an increase to three times the amount similar to that of Scotland's has been continuously pointed out and debated.

## ***2. Scotland***

The Damages (Scotland) Act 2011 in relation to bereavement damages has not gone without its critics and suggested law reforms, although far less frequent than that of England and Wales.

The most recent major law reform proposals came about in 2008 in the Scottish Law Commissions report 'Damages for Wrongful Death'. It is interesting to note that this report did not say much about the current award settlements being given by a judge or jury. Rather, the main focus of the law reform was based around the list of claimants eligible to claim and the intention behind the award. Concerns about the definition and intentions of such awards were raised, having said 'the awards are problematic in that they are an attempt to provide compensation for something that cannot be quantified'.<sup>47</sup>

However, there was an overwhelming majority of respondents from the consultation that had said the claims for non-patrimonial loss should continue to compensate for the loss of a loved one from a

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<sup>47</sup> Scottish Law Commission, Promoting Law Reform: Report on Damages for Wrongful Death (2008) Scot Law COM No.213, <http://www.scotlawcom.gov.uk/publications/reports/2000-2009>.accessed 23 October 2014.

negligent accident. It was held that 'in general the current system worked well'.<sup>48</sup> This report had only raised minor concerns, and even so they were later dismissed. It is clear from this report that many people are generally very happy with the current legal system and how it works in regards to bereavement awards. Nonetheless, two years later the very same concerns were raised.

The Scottish Government released a consultation paper in 2010.<sup>49</sup> The main aim for this consultation was suggesting a reform of the 2011 Act in order to modernise and simplify the law, seeking views on how the Government plan to approach the provisions proposed. Similarly to the 2008 report, the main suggestion for reform was related to those eligible to claim a bereavement award. The Scottish Law Commission had commented saying 'the current list of relatives entitled to sue...is too wide and anachronistic and that there was no compelling reason for allowing such a comparatively wide range of relatives'.<sup>50</sup> They had suggested that anyone who was to apply for bereavement damages through S.14 ss.(e) to (h) of the Damages (Scotland) Act 2011 were to be disregarded, as the criteria was too wide and becoming too complicated. The Scottish Law Commission proposed that the right to sue for patrimonial and non-patrimonial loss should be restricted to those who are categorised as 'immediate family' members. In later discussions from the Scottish Government it was held that this recommendation had very little support due to the complex family structures. It would be unfair to reject a family member that may very well qualify for patrimonial and non-patrimonial loss.

Overall, there have been very minor changes to the current Scottish legal system in regards to bereavement damages. There seems to be widespread agreement and satisfaction with the current

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<sup>48</sup> Ibid.

<sup>49</sup> The Scottish Government, Civil Law of Damages: Damages for Wrongful Death: A Consultation Paper, (2010) <http://www.scotland.gov.uk/Publications/2010/07/06142911/0> accessed 23 October 2014.

<sup>50</sup> Ibid.

statute law in relation to who can claim and as to how much should be awarded by the discretion of a judge or jury. The only criticism that seems to arise repeatedly is that of the immediate family members, and other family members. Often it has been noted in previous law reform reports that the current law is complicated and unclear. Perhaps this is because they have both categories of those of who can claim in the same section of the statute, but overall there seems to be no major concerns.

### ***3. The Association of Personal Injury Lawyers (APIL)***

Should the English and Welsh statute law extend the list of relatives that can claim for bereavement damages, similar to that of Scotland? The amount of contentious arguments surrounding the 1976 Act has not gone unnoticed. There has been great urgency and many reports suggesting ways the Government should implement changes to the current statute law, not just on the extension as to who can claim but also the maximum award that can be received.

One of the leading commentators and the force behind the increase of the bereavement award in 2008 was APIL. The association was formed by personal injury lawyers who share a view of representing the interests of victims who have suffered personal injuries. APIL are 'dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice'.<sup>51</sup> The association has greatly influenced Parliament and the Government as to the increase of the award thus far, and continue to produce surveys and reports for a further change in the law. APIL regularly undertakes surveys for research among the general public and stakeholders to complete authoritative research reports to represent the needs of personal injury claimants, to influence

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<sup>51</sup> Association of Personal Injury Lawyers, Bereavement Damages: A research project (2013), <http://www.apil.org.uk/files/campaigns/bereavement-damages-research-report-2013.pdf> accessed 12 October 2014.

internal and external sectors towards a change in the law. In 2013 APIL had undertaken a survey of personal injury claimants in relation to bereavement damages. The response was overwhelming, and it is clear just how much people wish for the current legal system to be reformed. Some of the survey results were as follows '57% of people think the level should be over £100,000...37% of people feel a parent should receive bereavement damages for the loss of a child regardless of the child's age...a third agreed that a child regardless of age, should receive bereavement damages for a parent'<sup>52</sup> and finally 'nearly 74% of people thought bereavement damages should be awarded on a case by case basis'.<sup>53</sup>

Whether a reform of s.1.A of the Fatal Accidents Act 1976 will be enacted, extending the list of eligible claimants remains to be seen. It is quite clear that the arguments and urge for a reform of the law will not be going away until action has been taken. It is particularly clear from the surveys that many people agree that an update of the law is needed, which is very much similar to the jurisdiction in Scotland. However, whether judging bereavement claims on a case-by-case basis is wise remains unknown until at least trialled, even though, in light of the outcomes of cases arising in Scotland showing a disparity of awards given, it would seem unwise. The disparity of awards from judges and juries seems to be causing even more problems.

## **Concluding Thoughts**

Having researched extensively into this area, and analysed all the pros and cons of increasing the bereavement damages award and redefining the family members that are able to claim, I have concluded that the law should be reformed and the following views are my own.

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

### ***1. Value of the Damages Award***

I am in agreement with many others, that the current award needs to be increased. I am unsure of what the actual increase should be (and neither experienced enough or qualified to define it).

However, I do believe that £12,980 is far too low, but feel that £100,000 is also excessively high, not needed and may encourage the compensation culture. It must be remembered that claimants will most likely seek compensation in other areas of the law as well in relation to a negligent accident.

Bereavement awards are purely compensating for the grief and sorrow felt. No award can fully compensate for the loss felt but it needs to be realistic.

### ***2. Splitting of the Damages Award***

I also propose that when bereavement damages are to be awarded to a family, the set amount is not to be split between the claimants. For instance, if a mother and father both claim for the loss of their child, they should both in turn receive the full statutory amount. Everyone has their own way of grieving and have been affected in different ways. It would be unfair and unkind to acknowledge this as a joint grievance.

### ***3. Scope of Claimants***

I propose the extension on the family members that should be allowed to claim is as follows.

- Fathers of an illegitimate child should have just as much right as the mother to claim for damages, if they are actively taking a role in that child's life. To be denied this I think is incredibly unjust.
- Parents should be able to claim for the loss of their child, no matter their age. The love and admiration for their own children will not disappear as soon as they hit the age of eighteen.

- Cohabitants should be able to claim for their cohabiting partner if they have been living together for two years or more. There does not need to be any sign of future marriage, just an active relationship (will need to have been consummated). Nowadays many couples are choosing not to marry and are deciding to become cohabiting couples for long term purposes instead of marriage. Thus, it would be unfair to treat them any differently to a married couple.
- Children over the age of eighteen should be able to claim for the loss of either parent. They will also be suffering and grieving for their loss, it appears unfair to deny them of this claim. Children under the age of eighteen however are a little more difficult. I would like to have the option open for them to pursue a claim for bereavement damages; although I do believe that it should only be allowed to a child who can reasonably understand the nature of what has happened and as to why they are allowed a bereavement award. I can appreciate this is a very tricky area to try and regulate as it seems difficult to prove that the young child fully understands. If not, I would also propose that the child be allowed to claim for bereavement damages in general, no matter their age.
- Brothers, sisters and grandparents should also be able to claim. As in Scotland they should come under the category of 'immediate family' members, and would suffer with a level of sorrow that cannot be ignored. I would propose in relation to these family members, that the award settlement they receive is not as high as any immediate family members above would have been awarded. This would be left to the discretion of the judge on a case-by-case basis.

#### ***4. Judge or Jury***

The amount of damages that can be claimed should be left to the discretion of the judge, not a jury.

This would prevent serious discrepancies and over-compensating like that of juries in Scotland which can in turn fuel the compensation culture of modern times.