



Department of
Justice

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Building a fair, just and safer community

**REVIEW OF THE LEVEL OF STATUTORY
BEREAVEMENT DAMAGES IN
NORTHERN IRELAND**

SUMMARY OF RESPONSES

1. INTRODUCTION

1.1 This paper provides a summary of the responses received by the Department of Justice to the consultation paper 'Review of the Level of Statutory Bereavement Damages in Northern Ireland' which was open for responses from 5 October until 30 November 2015. The consultation paper sought views on the level of the fixed amount of the bereavement award available under the Fatal Accidents (Northern Ireland) Order 1977¹ ("the 1977 Order").

1.2 When a person dies as the result of another person's negligence, the 1977 Order allows the person's dependants to claim certain damages, for example, for the deceased person's loss of earnings. A limited category of people may also claim for a fixed sum known as a bereavement award or bereavement damages.

1.3 The Department of Justice is responsible for setting the amount of bereavement damages in Northern Ireland.² This has been fixed at £11,800 since 2008.³ The availability of bereavement awards in Northern Ireland under the 1977 Order is a matter for the Department of Finance and Personnel ("DFP") as it is responsible for the substantive law on damages. The consultation was only about the level of the fixed amount of the bereavement award.

2. RESPONSES TO THE CONSULTATION

2.1 Twelve responses were received, all from organisations. Consultees came from a range of stakeholders. These included those representing the interests of parties to proceedings involving a claim for a bereavement award – both plaintiffs and defendants. A full list of respondents is at Appendix A. The Department is very grateful to all respondents for their interest in this consultation.

2.2 Ten respondents answered all the questions contained in the consultation questionnaire. Comments received from the remaining respondents correlated to specific questions in the questionnaire.

¹ 1977 No.1251 (NI 18).

² Article 3A(5) of the 1977 Order.

³ S.I. 2007/3488.

2.3 All of the responses were collated in a data base and analysed carefully. Some comments required interpretation in order to ensure that as many as possible of the respondents' submissions were considered in the analysis.

2.4 This paper aims to summarise the points raised by respondents. It is not, however, possible to give details of all the specific points made by respondents in this summary.

3. KEY FINDINGS

3.1 All respondents thought that the level of bereavement damages should be increased in Northern Ireland. Respondents supported the Department's decision to review the level of the award.

3.2 The majority of respondents thought that the award should be increased to align it with England and Wales. This was on the basis that it would reinstate the previous symmetry in the awards in the two legal jurisdictions.

3.3 Some respondents expressed the need for regular, periodic reviews of the level.

3.4 The purpose of this consultation was only to seek views on the review of the level of bereavement damages and whether an increase is appropriate. The consultation did not look at the substantive law on damages, including whether an award should be fixed, as this is the responsibility of DFP. Several respondents expressed views which relate to the substantive law. These have been passed to officials in DFP and have not been discussed in this paper.

4. SUMMARY OF RESPONSES

Question 1

Do you think the level of bereavement damages should be increased in Northern Ireland?

4.1 All respondents thought that the level of bereavement damages should be increased. Respondents noted that the current award had applied for causes of action accruing since 2008 and that this meant that the award had been lower than the equivalent in England and Wales since 2013.

Question 2

Do you think the level of bereavement damages should increase to the same level as England and Wales?

4.2 Seven respondents considered that the level of award should increase to the same level as in England and Wales. One further respondent thought that the award should increase to at least that level but preferred an inflationary increase.

4.3 Reasons given in favour of alignment with England and Wales were:

- Ensure consistency of awards given the same statutory regimes applied and that case law from England and Wales was persuasive in Northern Ireland.
- Eliminate differences of awards based solely on location and potential disadvantages to claimants/payers either directly or through payment of insurance premiums.
- Re-instate previous alignment.
- Greater certainty, including for compensators who work in both jurisdictions.

4.4 Reasons given against alignment in England and Wales were:

- The reforms to civil litigation associated with the 10% increase in the award in England and Wales do not apply in Northern Ireland.
- Alignment would result in too modest an increase.

Question 3

Do you think the level of bereavement damages should increase in line with inflation as measured by the Consumer Price Index (“CPI”)?

4.5 Four respondents preferred this option.

4.6 Reasons given in favour of an increase in line with inflation were:

- Preventing stagnation in the figure.
- Inflation-proofing the figure.
- Providing a less modest increase than alignment.
- Clear and transparent basis.
- More rational basis for any increase rather than aligning with the figure in England and Wales which was amended in consequence of changes to civil litigation which do not apply in Northern Ireland.

4.7 Reasons given against increasing in line with inflation were:

- Uncertainty and fluctuation.
- Maintaining differences of awards based solely on location and potential disadvantages to claimants/payers either directly or through payment of increased insurance premiums or through increased legal costs.
- No obvious link with CPI.
- Damages are not generally based on CPI, and, in any event, bereavement damages are a statutory award, distinct from common law awards of damages.
- No precedent for adopting such an approach.
- CPI fell between September 2014 and September 2015.

Question 4

If you consider Options 1 and 2 to be inappropriate, do you think the level of bereavement damages should be increased by another method?

4.8 Respondents who answered this question made points which relate to the substantive law. As noted in Section 3, these have been passed to officials in DFP.

Other Comments

4.9 Some respondents expressed the view that the level of the bereavement award in Northern Ireland should be subject to regular, periodic review. These respondents, who included those in favour of alignment with England and Wales and those in favour of an inflationary increase, thought that regular reviews would help to

ensure that the bereavement award was aligned with any increases in general damages and/or inflation and would be a less arbitrary way of assessing the figure.

4.10 The consultation paper noted that, in Northern Ireland, awards of bereavement damages are not specifically recorded and, therefore, there are no statistics available for them. Looking at the total number of orders made under the 1977 Order, it was found that the numbers are relatively small and surmised that the total number of bereavement awards was likely to be lower. The Department is grateful to those respondents who pointed out that this did not take into account bereavement damages paid when claims are settled either pre-proceedings or pre-trial. The Department is also grateful to those who provided information on fatal accidents in Northern Ireland.

5. NEXT STEPS

5.1 Having carefully analysed the responses, the Department proposes to increase the award of bereavement damages in Northern Ireland in line with inflation, as measured by CPI, rounded to the nearest £100, with adjustments to be made every three years thereafter. Based on the CPI for November 2015, this would bring the award to £14,400⁴. This is a more rational, transparent approach than aligning with the figure in England and Wales, which was increased using a method associated with changes to civil litigation which do not apply in Northern Ireland. Moreover, prior to these civil litigation changes in England and Wales, the policy had been to increase the award of bereavement damages on a regular basis in line with inflation with subsequent adjustments to be made every three years.⁵

5.2 This approach will help to ensure that the award is fixed at an appropriate level on a regular and consistent basis.

5.3 As soon as Assembly time allows, the Department will bring forward legislation, subject to the Assembly's negative resolution procedure, to revise the level of damages in line with inflation, as measured by CPI, rounded to the nearest £100.

⁴ ONS formula Later Date Index divided by Earlier Date Index i.e.
£11,800 x (128.3[Nov 2015]/105.5[Jan 2008])=£14,350, rounded to £14,400.

⁵ See Explanatory Memorandum to SI 2007/3489.

Additional copies and alternative formats

5.4 An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (<http://www.dojni.gov.uk>).

5.5 You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.

5.6 Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

Complaints

5.7 Any comments, queries or concerns about the way this exercise has been conducted should be sent to the following address:

Standards Unit
Department of Justice
Block 5
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL

or e-mail to Standardsunit@dojni.x.gsi.gov.uk

Appendix 1 – List of Respondents

Consultation responses were received from the following organisations:

Association of British Insurers

Association of Personal Injury Lawyers

Aviva Insurance

AXA Insurance

FOIL Forum of Insurance Lawyers

General Council of the Bar of Northern Ireland

Law Society of Northern Ireland

Medical Protection Society

National Farmers Union Mutual Insurance

Sinn Féin

Superintendents' Association of Northern Ireland

Zurich Insurance