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Court of Appeal rules that cohabitating couples should have same right to bereavement damages as spouses and civil partners

A big step in the courts recognising the need for change of an outdated law

In today's society, there are many different types of relationships, not simply the traditional marriage and civil partnerships. Whilst society has advanced to accept that relationships come in all forms, unfortunately the law does not progress at the same speed and due to the complexities involved, changing the law is not a quick process.

Here at Ralli Ltd, in both the clinical negligence department and the personal injury department, we represent people who have lost loved ones due to the negligence of another party. In these cases, if your loved one dies as a result of negligence, in certain circumstances an award for bereavement would be claimed as part of the total compensation award. Unfortunately, the current law is restrictive as to who is eligible for the same.

Under the Fatal Accidents Act 1976, in the event of a death as a result of negligence, a claim for damages for bereavement is only prescribed for the wife, husband or civil partner of the deceased or in the case or in the event of the deceased being a child (under the age of 18), the parents. There are some additional criteria to be shown in addition to the above, and any solicitor dealing with a claim will advise in more detail. The bereavement award is a statutory award and is currently £12,980.00.

A recent case has challenged the restrictions on the basis that this legislation is discriminatory against an unmarried person and therefore is in contrast with Human Rights Legislation.

In *Smith v Lancashire Teaching Hospitals NHS Foundation Trust & Ors (Rev 2) [2017] EWCA Civ 1916*, the Claimant was bringing a claim following the death of her partner. They had never married but at the time of his death had lived together for over 11 years. For all intents and purposes they were living like a married couple and envisaged a future together the same as married couple; the only difference being they were unmarried.

The case was taken to the Court of Appeal, and after detailed consideration the Court of Appeal declared that the Fatal Accidents Act 1976 and Human Rights legislation were incompatible i.e. that cohabitants should be entitled to bereavement damages providing they fulfil the rest of the criteria.

Whilst the above decision has not changed the law, and therefore does not change the legal position yet, it does confirm the courts view and the need for the law to be updated. This decision has opened the door to parliamentary discussion and I, as someone who has faith in the law,

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believe that in the future the law will be amended in due course, to reflect a more modern approach to relationships. Nevertheless, this is a big development in case law and is reflective of the future.