

## OUR SERVICES

## Loss of Society Claims



## Our expert team of lawyers assist those who have lost a relative with claims for loss of society

A claim for loss of society claim can be made when a close relative such as a spouse or a child dies in an accident. Although the loss is non-financial, the claim is for financial compensation for the loss of the relative's present and future company and guidance.

### Who can make a claim?

Only relatives defined in the Damages (Scotland) Act 2011 as 'immediate family' and are entitled to claim for loss of society, and they are:

- spouses or civil partners
- cohabitants
- parents, step-parents, children and step-children
- grandparents, step-grandparents, grandchildren and step-grandchildren
- a person accepted by the deceased as a parent, step-parent, child or grandchild
- siblings, half siblings or a person brought up in the same household as the deceased and accepted as a child of the family in which the deceased was a child.

### How does a claim work?

The award for loss of society in Scotland contrasts with awards made in England and Wales. In England and Wales, awards are capped at a fixed sum of £12,980 for the English equivalent "statutory bereavement award".

In Scotland damages for fatal accidents can exceed this figure as the courts decide how much compensation to award on a case-by-case basis. This discretion can bring uncertainty as to what compensation a relative could expect to receive, so the approach adopted in Scotland requires an examination of case law.



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### The current legislation and case law

The legislation governing loss of society is defined in the Damages (Scotland) Act 2011 under Section 4(3) (b). As the Scottish system allows the court to decide the sum to award a relative, decisions are often influenced by previous jury Court of Session cases. The use of juries usually reflects what the public would believe to be a fair level of compensation and thus tend to be higher than judicial awards.

The case of *Hamilton v Ferguson Transport* sought to reconcile the damages awarded by juries compared to that awarded by judges. As a result, judges are to provide juries with guidance to assist them with the level of damages they should award. Judges must also consider previous jury awards when they are awarding damages in cases without a jury. Therefore, judges cannot base their awards solely on prior judicial figures.

### Typical value of awards

As the awards are discretionary, it is difficult to give a specific figure for each class of relative.

The case of *Anderson and others v Brig Brae Garage Ltd* saw the highest award ever made by a Scottish Jury for distress, grief and loss of society. The partner was awarded £140,000, a child £80,000 and a father £80,000.

In the case of *Hamish Stanger and Ors v Flaws and Anr* the judge's parameters to the jury were £80,000-£120,000 for a spouse, £30,000-£70,000 for a son and £12,000-£28,000 for grandchildren.

Furthermore, in the unreported case of *Scott v Parkes* a jury awarded £86,000 to a mother for loss of society. Finally, in *John Kelly and Ors v UCS*, a widow was awarded £40,000, children £25,000 each, a brother £8,000 and grandchildren between £1500 and £8000.

The case law in this area is vast and diverse so each case must be taken on its own merits.

Loss of society awards in Scotland do remain high due to the emphasis on discretion, however the provision of

guidance to juries should make for informed decisions and reasonable, more consistent awards.

Contact us for loss of society claims legal advice today.

### Personal Injury Claims

We provide clear, quality and trusted advice from the start of a claim to the award outcome and beyond to aftercare.

Our Personal Injury team deal with a wide variety of claims including road traffic accidents, slips and trips and injuries at work. With offices in Edinburgh, Glasgow and Dundee our teams work with clients across Scotland.

We are experienced and committed personal injury specialists who strive to build relationships based on trust and mutual understanding.

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### About Us

Lindsays is an award winning law firm that combines a high quality service with legal expertise to deliver the best possible outcomes and results for individuals, families and businesses.

We work with a wide range of organisations, from high-growth start-ups, to family businesses and blue-chips. Whatever the sector and scale of the business, we provide tailored, specialist advice, coupled with a commitment to getting results.

We also work with individuals and families, helping them plan more effectively for the future and advising on specific issues as they arise.

