



FAQs on Inquests in England and Wales

Part 4: Making a Civil Claim After an Inquest

This is Part 4 of 4 fact sheets on inquests in England and Wales.

It gives advice on making a civil claim after the conclusion of an inquest. The other fact sheets are:

Part 1: Overview

Part 2: Preparing for an Inquest

Part 3: What Happens at an Inquest?

I Civil claims following the loss of a loved one

We understand that you may experience many emotions following the death of a loved one – there is a lot to deal with at a time when you are grieving, and it can feel overwhelming. Distress can be heightened in circumstances where the death may have been caused by substandard care or negligence.

We are here to offer support, advice and guidance at this difficult time. We can explain the circumstances in which you may be able to bring a claim for damages and what you need to do to ensure that your rights are protected.

I What is a civil claim?

A civil claim following death is often referred to as a breach of 'Article 2' or 'fatal accidents claim'. A claim is a legal route to seek compensation and/or a declaration of accountability against a person or organisation who may have caused or contributed to the death, usually following wrongdoing or substandard care.

Although no amount of compensation can make up for the death of a loved one, it often provides peace of mind to take action and achieve accountability. A claim may also explore any negligence and liability and will allow consideration of additional documents and evidence outside of the scope set at the inquest.

We can advise you in respect of:

- Most common types of claims;
- Possible outcomes
- Level of compensation and/or declaration that a breach of Human Rights has occurred;
- Necessary action you may need to take to protect your right to claim;
- Timescales for pursuing a claim.

I Who can bring a claim?

You must have a legal right to bring a claim as the Administrator or Executor of the Deceased Estate (see 'Probate and grant of letters of administration' section below).

You may also be able to bring a claim in your own right in limited circumstances.

I What are the most common types of claims?

Breach of human rights

Section 6 of the Human Rights Act 1998 (HRA) makes it unlawful for a public authority (which includes health trusts) to act in a way that's incompatible with the European Convention on Human Rights (ECHR). A claim can be brought on behalf of the deceased's Estate if a breach of human rights has resulted in death. Most commonly this would be a breach of Article 2 (right to life – this is explained in fact sheet 2).

Possible outcomes

- A declaration that human rights have been breached.
- Compensation.

Necessary action

- Obtain probate and grant of letters of administration (see section below) and/or issue a claim.

Timescale

- The claim must be issued at court within 1 year (minus a day) from the date of death (or a time that the court considers fair in all the circumstances).

A claim can also be brought by family members as indirect victims of substantive ECHR breaches under s.7(1) HRA 1998. This can also include a breach of Article 3 (inhuman and degrading treatment) and/or Article 8 (right to private and family life).

Negligence - Law Reform (Miscellaneous Provisions) Act 1934

If death is caused by any wrongful act, neglect or default that would have entitled the deceased to claim damages for injury had they not died, a claim may be brought on behalf of their Estate under the Law Reform (Miscellaneous Provisions) Act 1934.

A claim arising out of Clinical negligence may be considered if the deceased died following substandard medical treatment/care.

Fatal accidents/incidents and dependency claims

There are two main types of fatal accident claim: (1) the Claim by the Dependents of the Deceased and (2) the Estate's Claim.

The Fatal Accidents Act 1976 (FAA 1976) enables dependants of the deceased to claim certain losses if they were dependant upon the deceased in life, and on behalf of the Estate, if the deceased would have had a cause of action had he or she survived. The claim can be defended in the same way a claim could be defended against a surviving claimant in an injury claim.

The law regarding fatal claims can be complex. There are strict rules to determine the type of loss that can be claimed for different causes of action. Each claim is fact specific and it is always best to seek legal advice promptly so that you can discuss your options at an early stage.

Possible outcomes

(depending on the specific claim)

This **could be** compensation in the form of:

- Damages for pain, suffering and loss of physical or mental capacity from the time of the injury to the time of death.
- Any other financial loss incurred between the date of the injury and time of death, e.g. loss of earnings until that date, private treatment costs, care costs, travel costs.
- Funeral costs together with reasonable expenses such as a headstone and cost of a wake.
- Loss of financial/care support can be claimed where there is a shortfall in the amount of money brought into the household as a result of the death. Past and Future losses can be calculated at the date of settlement.



- In a FAA 1976 claim a Statutory bereavement award. This is awarded to a husband/wife or civil partner. Where the deceased is a child, or an adult who was not married or in a civil partnership, it may be awarded to one or both parents depending on circumstances. The amount is set down in statute, and is currently £15,120 if the death occurred after May 1, 2020 (correct as of December 2021).

Necessary action

- Obtain probate and grant of letters of administration (see 'Probate and grant of letters of administration' section below) and/or issue a dependency claim. A dependency claim can be brought by the executor and/or administrator of the deceased's estate or, if there is no such person, by anyone who would have had the benefit of being executor or administrator.

Timescale

- The claim must be issued within 3 years of the date of death.

I Why are timescales so important?

If a claim is not issued before the time specified in law, you may be prevented from bringing a claim at a later date.

We understand that it may be difficult to think about a claim at the moment. It could be very early in the grieving process and there may be a funeral or inquest to think about.

We want to help ease your mind and support you in making decisions to allow you time to process what has happened, talk to your family and make decisions when the time is right.

If you are not yet ready to think about whether to pursue a claim, it's important that you protect your position so that you can bring a claim later on behalf of your loved one's estate, should you wish.

It is important that you take action before the time limits (known as limitation dates) set out above and there are two options you can think about:

I Issue the claim at court before the limitation date

The straightforward approach is to issue court proceedings before the limitation date. This is the only way that we can guarantee your claim will be issued within time.

However, it is not always possible to issue a claim prior to the limitation date. Quite often we are unable to assess the merits of a civil claim until after an inquest. In addition, probate/letters of administration **must** be obtained before a claim can legally be issued on behalf of an estate (see below).

If your loved one left a will and you have already obtained probate then we can consider issuing proceedings to protect your position. However, if probate has not been obtained then you will have to apply to the probate registry – see below.

2 We could contact the intended opponent to seek a 'limitation amnesty'

Usually, if you do not issue your claim at court before the limitation date, your claim will be refused, resulting in you not being able to proceed without the court's permission to grant a 'limitation amnesty'. A limitation amnesty is basically an agreement between the interested parties where your opponent agrees to not raise limitation as a defence if the proceedings are issued within a revised time frame. While it is not guaranteed that an agreement between parties will be accepted by the court, recent decisions support the position that it would be extremely rare for the court to refuse an extension in such circumstances.

I Probate and grant of letters of administration

To enable you to bring a claim on behalf of your loved one's estate, you will have to apply for the legal right to deal with their estate. This can be done by obtaining probate or letters of administration (probate is issued to named executors on a will, while letters of administration are issued to entitled people if the deceased died without leaving a will). This step **must** be taken before we are able to issue the claim at court. If a claim is issued prior to this step, it will be rejected.

If the estate is valued above £5000 then a court fee is payable when the application for probate or a grant of letters of administration is made (a waiver can be requested if you are on a low income), and there will be a solicitor's fee if you wish to instruct a solicitor to help you with the application. If you would like further information about this, we can provide you with contact details for a solicitor at our sister company, Macks, who specialise in Wills and probate.

If you do wish to take this step then you should bear in mind that there are currently long delays with the probate office progressing applications. It is taking a number of months for letters of administration to be provided. **To ensure that you have the legal right to pursue a claim, it would be in your interest to start the process as soon as possible.**

Please note that you can apply for probate without a solicitor; however, this can delay things if the paperwork is not completed correctly. Alternatively, you may wish to instruct a different firm, which is no problem at all.

The cost of applying for probate can be provided on request. Depending on your personal circumstances we will be able to advise you on various payment options even if you cannot afford to make a payment upfront.

I Personal Injury Trusts (PIT)

If a compensation is received following a claim then you may wish to seek advice on placing the money in a PIT. This will essentially ring-fence the sum so that it is not taken into consideration when assessing any entitlement to State benefits. At present the capital limits for means-tested benefits are £6000 lower and £16,000. This means that benefits could be reduced or stopped all together if a compensation payment takes your personal capital over the limits. A PIT will prevent this from happening.

If you decide to make a civil claim and would like a free initial consultation, with no obligation to proceed, you can contact our solicitors at Watson Woodhouse using the details below.

Contact us for further advice

www.watsonwoodhouse.co.uk

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