

AVIATION CLAIMS

(Frequently Asked Questions)

Fatal accidents are extremely difficult for any surviving family to cope with. Immediate practicalities, such as dealing with financial affairs, worrying about lost income of a breadwinner and dealing with funeral arrangements, all come at a time when survivors often feel emotionally drained. It is important for employers, legal advisers and professionals advising such families to assist in creating an effective support network to make the whole process easier.

Based on our experience in dealing with such claims, we set out below details of a number of common questions asked by families, together with information they seek in the early stages:

I keep hearing about an Inquest – what is it for and will I have to attend?

An Inquest must be held before a Coroner when a person suffers an unnatural or sudden death, of which the cause is unknown. The purpose of an Inquest is not to establish blame or liability, but it is a search for the truth. It is a very useful means of gathering evidence to determine why a death has occurred. For this reason it is important that families seek legal advice and an early dialogue with the Coroner so that they can become involved in the process.

Most Inquests, where circumstances surrounding the death are complicated, are held before a Jury. Families often attend and make representations via their legal advisers.

What is the AAIB and what is its role?

The UK Air Accidents Investigation Branch (AAIB) is part of the Department for Transport and is responsible for the investigation of civil aircraft accidents and serious incidents within the UK. Its fundamental purpose is to improve aviation safety by determining the causes of air accidents and making safety recommendations so as to prevent similar accidents recurring. Its role is not to apportion blame or liability.

It is important to establish early contact with the AAIB whose representatives, in our experience, are highly professional and competent, as well as extremely sensitive to bereaved families. They provide a very useful stream of information and keep families updated regarding their investigations.

AAIB investigators are usually called to give evidence at Inquests to assist the Coroner reach a verdict.

What is the Civil Aviation Authority?

The Civil Aviation Authority is the UK's aviation regulator. It is responsible for regulating all aspects of the industry, including safety and consumer protection. The CAA has the power to bring criminal proceedings against individuals or bodies who do not comply with its Regulations.

My partner was the main source of income. I am worried about my family's finances – am I entitled to make any claim?

Once an Inquest is over (and even, in most cases, before it begins) a view can be formed as to whether the family is entitled to bring a claim for loss of dependency and financial loss.

Usually claims in aviation cases arise because either there has been some mechanical failure of the aircraft, or one of its component parts, or there have been operational failings during the flight of the aircraft. Any such failings must give rise to negligence and a solicitor can advise whether this can be established. This may often require expert evidence from aeronautical engineers or operations/flight experts.

Your solicitor will advise you whether any of the above apply and whether negligence can be shown. This may often require expert evidence – eg. from aeronautical engineers or operations/flight experts.

How do I start a claim?

A claim for financial loss and loss of dependency can be brought by notifying the party at fault (the defendant) in a "Letter of Claim". The defendant must respond within 3 months (under the personal injury pre-action protocol) indicating whether it wishes to admit the claim and negotiate a settlement, or alternatively whether the claim will be defended.

What can I claim for?

A claim can be made on behalf of surviving family members, often a surviving spouse and dependant children for financial provision for loss of their dependency on the deceased's income. Claims are brought pursuant to two Statutes, the Law Reform (Miscellaneous Provisions) Act 1934 and the Fatal Accidents Act 1976.

The aim is to ensure that surviving family members obtain financial security and capital to replace the income and future dependency they have lost.

In addition, damages can be claimed for funeral expenses, pension loss, care and services. Often expert input is required from a forensic accountant to help calculate what is generally a substantial loss.

Will I have to go to Court?

Most cases settle without the need to go to Court, but occasionally, where liability (blame) for the accident is disputed, it is necessary to issue Court proceedings. An experienced solicitor will avoid, or at the very least minimise, Court involvement unless absolutely necessary. Cases involving children can, however, only be concluded once a Court has independently approved any award of damages.

How long will the whole process take?

This is difficult to say. In cases where liability is admitted a case can be settled, usually by negotiation, within one to two years, depending on the complexities of the deceased's financial situation. If the matter proceeds to trial, generally cases can take between two and four years to complete.

What will my actual involvement be?

We always say to families in these tragic situations that their involvement can be as little, or as much, as they wish. People deal with death in different ways and we have experience in handling these cases sensitively and involving the families as and when they require. As with all our clients, we like to encourage a “team ethos” with good communication, including making ourselves available for face-to-face meetings when required and travelling at our clients’ convenience.

How will my case be funded?

Our primary concern is to ensure that every family has access to justice. Since the abolition of legal aid and the introduction of the Access to Justice Act 1999, we have gained extensive experience in offering services to clients on a conditional fee basis. This is commonly referred to as “no win – no fee” agreements.

Our services are underpinned by after the event insurance provided by DAS Legal Expenses Insurance (the largest legal expenses insurer in Europe). This ensures that we can provide clients with legal services at absolutely no cost to them. In the event your claim is successful, your legal costs will be met entirely by the defendant. We guarantee there is no deduction in any award of damages made to you. In addition, we also employ specialist Barristers who offer the same service to clients. If your claim is unsuccessful, you will not have to pay anything.

I am worried about a number of financial practicalities. What should I do?

As well as coping with the stress of losing a loved one, you may need to make arrangements to claim on insurances, such as life insurance and mortgage protection insurance. It is important to do this early on, as it may be a means by which the family home is protected.

If there are no insurances or financial products in place to supplement the family’s income in the short term, it is important to notify your solicitor who may be able to obtain an early interim payment on account of damages from the defendant, provided of course, they have accepted responsibility for the accident.

I am finding it difficult to cope. Is there anyone I can talk to?

Speak to your solicitor who should have experience in dealing with a number of professionals who can form part of your support network. This can often include obtaining counselling from groups such as Disaster Action or Centre for Crisis Management and Education.

Christopher Felton is a Litigation Partner at Gardner Leader and is a specialist in claims arising out of aviation disasters, including representing families who have been bereaved as a result of crashes caused by mechanical failure, product liability and operational error.

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