

Dependency claims: Defining a household

The recent introduction of the Civil Partnership Act has widened the categories of dependents. In light of this and recent case law, Lucy MacKinnon provides practical guidance.

One of the first issues which a practitioner needs to determine when acting in a potential claim for dependency under the Fatal Accidents Act 1976 (the “Act”) is whether the claimant meets the statutory definition of a “dependant”. This article examines the current approach of the courts to determining whether a person is a “dependant” within the meaning of the Act and the expansion of the definition of a dependant with the implementation of the Civil Partnership Act 2004 on 5th December 2005.

The statutory definition of a ‘dependant’

The statutory definition of a dependant is found in section 1(3) of the Fatal Accidents Act 1976. Following the implementation of the Civil Partnership Act 2004, section 1(3) now states:

“In this Act ‘dependant’ means –

- (a) the wife or husband or former wife or husband of the deceased;*
- (aa) the civil partner or former civil partner of the deceased;*
- (b) any person who –*
 - (i) was living with the deceased in the same household immediately before the date of the death; and*
 - (ii) had been living with the deceased in the same household for at least two years before that date; and*

- (iii) was living during the whole of that period as the husband or wife or civil partner of the deceased;*
- (c) any parent or other ascendant of the deceased;*
- (d) any person who was treated by the deceased as his parent;*
- (e) any child or other descendent of the deceased;*
- (f) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;*
- (fa) any person (not being a child of the deceased) who, in the case of any civil partnership in which the deceased was at any time a civil partner, was treated by the deceased as a child of the family in relation to that civil partnership;*
- (g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.*

Sections 1(4) and 1(5) of the Act provide further assistance as to the meaning of 'dependant'. The sections as amended by the Civil Partnership Act 2004 provide:

“(4) The reference to a former wife or husband of the deceased in subsection (3)(a) above includes a reference to a person whose marriage to the deceased has been annulled or declared void as well as a person whose marriage to the deceased has been dissolved.

(4a) The reference to the former civil partner of the deceased in subsection (3)(aa) above includes a reference to a person whose civil partnership with the deceased has been annulled as well as a person whose civil partnership with the deceased has been dissolved.

(5) In deducing any relationship for the purposes of subsection (3) above –

(a) any relationship by marriage or civil partnership shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child, and

(b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.”

The approach of the courts

It is for the claimant to prove on the balance of probabilities that he is a dependant within the meaning of the Act. The test under section 1(3)(b) has given rise to the most litigation and often requires the court to determine whether a claimant is a dependant as a preliminary issue. In two recent decisions, the court has analysed the factors which are relevant to a determination that the claimant and the deceased “lived together as husband and wife”.

Kotke v Saffarini

In this case the court was asked to consider whether the claimant was a dependant within section 1(3)(b) of the Act. There was no doubt that the claimant and the deceased were living together in the same household as husband and wife at the date of death. The issue was whether it could be established that they were so living for at least two years before that date.

The Court of Appeal approached the issue by analysing the claimant’s relationship with the deceased at the date two years before his death. This was because if the claimant and the deceased were living in the same household as husband and wife from that date onwards, the claimant had in this case satisfied the statutory test. In approaching the issue, the Court of Appeal approved the following propositions, which had been extracted from the authorities by the judge at first instance:

- Each case is fact-sensitive (i.e. dependant upon its particular facts);
- The relevant word for consideration is “household” and not “house”;
- “Living together” is the antithesis of living apart;
- Parties will be in the same household if they are tied together by their relationship;
- The tie of that relationship may be manifest by various elements, not simply living under the same roof, but the public and private acknowledgment of their mutual

society and the mutual protection and support which binds them together i.e. the whole of the consortium vitae;

- No one factor is necessarily more important than any other or determinative of the issue.

The Court of Appeal considered the meaning of the phrase “household”. Potter LJ held that ‘household’ combined the physical connotations of a place with the personal connotations of association. The Court of Appeal further held that it was right to draw a distinction between wanting and intending to live in the same household and actually doing so.

In analysing the facts, the Court of Appeal held that the threshold had not been crossed. In this case, the deceased retained a separate home which contained his wardrobe and possessions. The claimant acknowledged that it was only after she became pregnant that the couple began to plan a life together. The sharing of shopping expenses was held to be evidence of a sharing relationship but not of the establishment of a joint household.

In reaching its decision, the Court of Appeal confirmed the relevance of the six factors listed in the Supplementary Benefits handbook. These factors are used to determine whether a man and woman were ‘living together as husband and wife’ for the purposes of the Supplementary Benefits Act 1976. The factors are:

1. The man and woman must be members of the same household;
2. The relationship must be a stable one;
3. Financial arrangements – financial support and the manner, frequency, method and arrangement of such payments;
4. The sexual relationship between the parties;
5. The existence of children and arrangements for their care;
6. Public repute.

The Court of Appeal held that where it falls to be decided whether two people are living together as husband and wife in the same household, factors 2-5 equally fall to be considered in relation to the question whether a household itself exists.

The case demonstrates the difficulties which can arise where the seriousness and nature of a relationship develops incrementally. There are often factors which tend to support the claimant's case and factors which tend to negate such a claim. In such circumstances, the court has to balance the relevant evidence in order to determine whether the claimant has satisfied his burden. In this case, the issue was phrased as being a question of when the deceased's "centre of gravity" shifted to the same household as the claimant.

Pitt v Industrial Roofing Ltd

In this case the High Court was also required to determine whether the claimant was living together with the deceased as husband and wife for the requisite period. HHJ Kirkham referred to the decision in *Kotke v Saffarini* and outlined the propositions which had been approved by the Court of Appeal. The judge then applied the propositions to the evidence which had been given at the hearing.

The judge was influenced by the fact that the claimant had lied in her applications for state benefits by claiming that she was living alone with her son when, in fact, her evidence at trial was that she was living with the deceased. It was also found that when the deceased gave his address to third parties, he generally gave the address of his mother's house. Neither the deceased's mother nor sister knew the claimant's precise address. The deceased kept possessions at both his mother's house and the claimant's house and contributed to purchases for the claimant's property.

HHJ Kirkham was also presented with anniversary and Valentine's cards sent to the claimant by the deceased. In determining the weight of such evidence, however, the judge concluded that whilst she had no doubt that a close and loving relationship existed between the claimant and the deceased, the cards were not necessarily evidence of the required cohabitation.

The judge concluded that although the claimant and the deceased had cohabited at some point, the claimant could not prove that the deceased was living in the same household with

her immediately before the date of death, nor had she proved that they had been living together in the same household for at least two years.

It is clear from this decision that in approaching the question of whether a claimant was living with the deceased in the same household at the date of death and for at least two years prior to the death, courts are likely to first have reference to the propositions outlined by the Court of Appeal in *Kotke*. The second stage in the determination involves analysing the evidence before the court and balancing the factors that tend to indicate that the deceased was living in the same household as the claimant for the requisite period and the factors that tend to negate such a conclusion. However, where factors appear to be fairly evenly balanced, the court will be conscious of the fact that the burden is on the claimant to establish such dependency.

Civil Partnership Act 2004

Section 83 of the Civil Partnership Act 2004 amended the Fatal Accidents Act to include civil partners in the definition of a dependant. The section provides same sex couples with the same rights of dependency as mixed sex couples. As can be seen above, the new definition extends the “living together as husband and wife” category of dependency to include same sex couples. It also provides for the children of civil partnerships by virtue of the new section 1(3)(fa) of the Act. Section 83 amends section 1A of the Fatal Accidents Act 1976 to enable civil partners to claim the statutory bereavement award.

Conclusion

The recent decision of the Court of Appeal in *Kotke v Saffarini* provides useful guidance for determining whether a claimant was living together with the deceased as husband and wife (or as civil partners) at the date of death and for at least two years prior to the date of death. However, practitioners should bear in mind that in adducing such evidence, the burden is on

the claimant to establish such dependency. The categories of 'dependants' has recently been extended to provide same sex couples with the same rights as mixed sex couples, by virtue of section 83 of the Civil Partnership Act 2004 which came into force on 5th December 2005.

Cases

Kotke v Saffarini [2005] EWCA Civ 221

Pitt v Industrial Roofing Ltd [2005] EWHC 1194

Bibliographical details

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