# the compensation myth

## The Compensation Myth

It is common to hear stories of the "Compensation Culture" or claims that Britain is becoming "Risk Averse" as a result of people claiming compensation. The truth is very different.

In this report the TUC examines 10 myths around compensation in the workplace – and suggests three simple ways of ensuring that the cost of paying compensation can be reduced.

### Myth 1

**Compensation claims are spiralling out of control.**

The number of civil claims for compensation against employers as a result of accidents have fallen ever year for the last five years[1]. In fact, according to a recent report by the Better regulation Task Force, despite the introduction of "no win – no fee" claims, the total cost of compensation cases in Britain has remained, in real terms, static since 1989[2].

Britain also pays out much less out on civil compensation, as a proportion of its GDP, than any other major European country apart from Denmark, and a third that of the USA[3].

### Myth 2

**Workers are too ready to claim compensation**

Each year over 850,000 people are injured or made ill as a result of their job[4]. The most common injuries are musculoskeletal disorders such as back injury or RSI, injuries from slips and falls, skin diseases, and deafness. Many people will get better, some will not. Over 25,000 people are forced to give up work every year as a result of work-related injuries or illness.

However the number who gain compensation from their employer is, according to the Association of British Insurers, around 60,000 a year[5]. A further 20,000 will make a successful claim for industrial injuries benefit, which is a government funded "no fault" scheme[6].

This means that 9 out of every 10 workers who are injured or made ill through work get no compensation.

### Myth 3

**Compensation payments are too high.**

Exact figures are difficult to come by because in excess of 95% of cases are settled out of court[7]. Figures from the leading solicitors companies give an average settlement of around £7,500[8]. However, because there are a small number of large payments, the vast majority of claimants receive less than £5,000. Payments are made based on decided cases and independent medical evidence compensating actual loss and even where there is a debilitating and life destroying disease the compensation is never more than those guidelines. An example is mesothelioma caused by asbestos exposure. This is invariably fatal. The guidelines for pain and suffering are £45,000 - £70,000, however if the case is

settled after death, the payment is often lower, with a standard tariff for bereavement damages of £10,000[9].

Very occasionally there are settlements of over £1,000,000, however these relate to people who have been so badly injured that they require permanent care and will never work again. Often they will have lost the use of their limbs and/or are significantly brain-damaged.

The press does report cases of workers getting £100,000 for "stress" or "asthma". These cases, which are very rare, are relatively young workers who, because of their employers admitted or proven negligence, will no longer be able to work again in their chosen profession as a result of their illness. This level simply reflects the loss in their income over their remaining working life. Is this really going to make up for someone's health being totally ruined because their employer failed to provide a safe workplace?

## Myth 4

**We are heading for a US style Compensation System.**

There is absolutely no evidence for this. For a start the legal systems of both countries are very different. Secondly our judges have not changed (if anything they have become more cynical of claims) and neither has the law.

In Britain awards are made by judges, not juries, and there are very strict regulations on what can be awarded. It is not enough to show merely that you have been injured or just that your employer was negligent. You have to prove that any injury or loss you claim was caused by your employer's negligence. You also have to prove what losses have been incurred, or will be incurred in the future, as a result of your injury. For example, a worker who loses two fingers in an accident but can still manage to wash the car and to feed themselves, albeit much more slowly than before the accident, would not be able to claim for the cost of a carer because they would not be able to show that they had lost the ability to carry out such tasks. The strict UK system can result in decisions such as the one where a woman who lost both legs in an accident got her damages reduced because she would no longer have to buy tights.

In the USA awards often include "punitive damages" which are effectively a fine. It is these that occasionally lead to very large payments, but even in the USA these are almost unheard of for workers claims against their employer. In fact many American workers are unable to claim damages against their employer because of laws which prevent them doing so, or because of legal restrictions on the amount that can be claimed. Most recently the US Congress agreed a law restricting the amount of compensation that could be claimed by asbestos victims who are dying from mesothelioma.

## Myth 5

**It is unfair that insurance companies should have to pay out for diseases such as asbestos-related diseases where they could not have known the risks.**

The insurance market is about assessing risk, pricing premiums accordingly, investing premiums collected, and hoping that the risks don't become a reality. To win compensation in a civil claim against an employer, the claimant has to show negligence.

This means that the employer knew or ought to have known that they were putting you at risk. If the employer can show that they could not have known that there was a risk then they will not be liable for damages. For example claims for hearing loss can only be brought for damage caused after the HSE produced guidance on this in 1963.

The dangers of asbestos have been documented since the 19th century, there have been health and safety controls on its use since 1931, and the risks were known across the industry since the 1940s. Despite the known dangers many employers continued to use it and to expose their workers right up to the 1970s. Even now too many fail to take any adequate care with asbestos present in their workplaces. As a result over 2,000 people die every year from exposure often 30 or 40 years ago.

All these deaths were avoidable if the industry had protected its workforce. The insurers insured these companies, and took their premiums, despite the knowledge that exposure was occurring and that many would die. There is no reason why these workers should be denied compensation just because the exposure took place many years ago. The insurers were happy to take the risk and should meet their obligations. There is no justification for the taxpayer having to pay the bill.

The total cost of claims for occupational diseases is actually only a quarter of the total amount paid out in compensation to workers by insurance companies and the number of claims are falling.

## Myth 6

### Many of these cases would not be taken if unions did not encourage their members to claim.

One of the main aims of unions is to prevent members becoming ill or injured through their work. That is where most of their focus goes. However if a member is injured through the negligence of their employer, and suffers financial loss then their union should advise them of their rights if requested. Unions offer high quality legal services that are tailored for speedy resolutions of claims. At the same time, unlike a High Street law firm or a claims company, the lawyers will work with the union to try and ensure that the employer takes action so that the cause of the illness or injury is not repeated.

In some cases, such as some mining diseases, the government has imposed strict time limits for claims. When this happens the trade union will ensure that their members are aware of the time limits and try to ensure that claims are lodged in time.

## Myth 7

### Employers Liability Insurance is just another burden on business.

Civil compensation claims are usually paid out through Insurance companies. It is a legal requirement for employers who have staff working for them to have insurance cover in case they injure or kill someone through their negligence, or an employee develops an avoidable disease through work. The average cost of EL insurance is 0.25% of total payroll costs[10] and is the lowest in Europe. Average damages for an ELCI claim are £7,500[11].

Unfortunately the way the insurance market works there is little economic incentive for employers to take action to reduce the number of injuries and illnesses they cause, as premiums within each sector vary only marginally between the good and bad employers.

## Myth 8

**Because of the large number of claims the insurance premiums employers have to pay have gone up by a huge amount.**

Premiums have gone up considerably in the last few years, but this is nothing to do with the number of claims. The main reason is that insurance companies were using Employers Liability Insurance as a "loss leader".

In 1999 the cost of claims and insurance companies costs was 54% higher than the amount that the insurance companies were charging[12]. Following the stock market crash and the attack on the World Trade Centre, the companies decided they could no longer afford to subsidise Employers Liability Insurance so premiums have gone up. However this is not because of higher compensation or more claims.

Another factor is that legal and medical costs have been rising much faster than inflation. Between 1997 and 2002 medical and legal costs increased by 50%[13]. This is simply because insurance companies are failing to follow protocols which oblige them to respond to claims within certain time limits and to admit liability early on, if the employer is liable. All too often liability is not admitted until a claim is about to go to court, and unnecessary costs have been run up.

## Myth 9

**Employers often have trouble getting Employers Liability Insurance.**

A review by the Department of Work and Pensions into Employers Liability Insurance concluded that there was no general problem with any employer getting Employer Liability Insurance, although in some cases there were problems caused by late notice of renewal from the Insurance Companies. However, even though it is a legal requirement to have such insurance cover, an estimated 22,000 businesses with employees were operating without any Employer Liability Insurance, not because they could not get cover, but because they wanted to save money[14]. This means that over 112,000 employers have no insurance coverage if they are injured at work, or develop an occupational illness.

## Myth 10

**Lawyers often drag these cases on unnecessarily to keep their costs up.**

Solicitors are legally required to act in the interests of their client. That means they cannot drag out cases simply to increase their costs. Costs must be reasonable, necessary and proportionate. Costs would be reduced if employers, or their insurance companies admitted liability early, according to the protocols, rather than waiting until the last minute when the claimant's lawyer will already have had to get medical and other reports and spend, perhaps months, preparing a case.

The failure by employers and insurers to admit liability early has another effect as well. It means that often no attempt is made to provide access to early treatment and proper

rehabilitation for the victim. This means that the condition may become worse and their chance of a recovery is greatly reduced. This is particularly a problem in injuries that respond best to early treatment, such as back pain.

**Truth.....**

**The Compensation bill can be cut.**

- If employers stop acting negligently and stop killing and injuring workers. The insurance companies can help here by linking the premiums much more closely to the actual risk within that employer. Insurance companies should more readily offer risk based premiums that reflect an employer's health and safety history. Good health and safety should be rewarded.
- When someone is injured or made ill through work the employer ensured that they have early access to proper rehabilitation. This means the worker would be more likely to make a full or early recovery. Rehabilitation must not however be used as a stick to beat the claimant with, to force them to accept an offer or return to work early. It must only be used as a means of enabling an injured person to cope again either with work, or with family, domestic life and society.
- If insurance companies were more ready to admit liability where justified early and follow court rules so that costly medical and legal bills are not run up.

[1] Compensation Recovery Unit, 2005

[2] Better Routes to Redress, BRTF 2004

[3] Tillinghurst-Towers Perrin, US Tort Costs –2003

[4] Occupational Health Statistics Bulletin, 2003/04, HSC, 2004

[5] ABI, quoted in Hazards magazine, May 2005

[6] DWP Industrial Injuries Disablement Benefit statistics, September 2004

[7] APIL, July 2005

[8] TUC survey July 2005

[9] Judicial studies Board Guidelines

[10] Work place Compensation – Greenspan Bergman report for ABI, 2002

[11] DWP Review of ELCI, First Stage Report

[12] DWP Review of ELCI First Stage Report

[13] Workplace Compensation, Greenspan Bergman, 2002

[14] DWP review of ELCI, Second Stage Report