

A little compensation

Workers lose billions each year as a result of occupational injuries and diseases. Some will never see work again. Simon Pickvance outlines what's available from a system that provides consolation for some, frustration for most and proper compensation to no-one suffering as a result of their job.

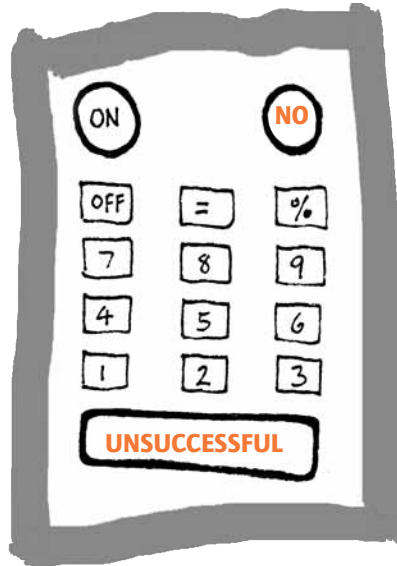
Britain has a compensation crisis. But it is not because of a runaway "compensation culture" – the government accepted the findings of a 2004 Better Regulation Taskforce investigation which concluded this was "a damaging myth"⁽¹⁾. Britain has a disposable worker culture, where tens of thousands suffer serious health damage each year, most getting nowhere near a compensation payout. Instead they face pain, hardship and uncertainty. This is not a small problem. Millions in the UK say they suffer work-related ill-health. Health and Safety Executive (HSE) figures suggest there could be 700,000 new cases each year⁽²⁾. HSE says in 2003/04 an estimated 2.2 million people in Great Britain were suffering from an illness which they believed was caused or made worse by their current or past work. An estimated 39 million working days were lost overall, 30 million

due to work-related ill health and 9 million due to workplace injury. Almost 160,000 suffered reported occupational accidents.

Workers pay for job hazards
The combined annual value of claims under the two major compensation schemes – common law compensation where you take a legal case and the industrial injuries benefit scheme run by the government – amounts to less than £1.5bn from around 80,000 successful claims.

It sounds a lot, but the figure is dwarfed by the cost borne by those suffering work-related accidents and ill-health. HSE estimates published in 2004 put the cost to individuals – the victims and their dependants – at between £10.1 and £14.7 billion in 2001/02⁽³⁾. Most do not get any compensation.

For example, HSE estimates that over half of all cases of work-related illness are musculoskeletal disorders (1.126m cases) or stress (over 0.5m). Most of the major successful stress damages cases have been taken by unions. A report from the TUC in 2003⁽⁴⁾ said only just over 2,500 new cases were opened by affiliated unions in 2001, less than 1-in-100 of the 265,000 people who HSE estimates first became aware of work stress-related health problems that year. Stress isn't on the DWP industrial injuries scheme list of approved diseases, so only a handful of atypical cases have received compensation through that route, where the stress related to an accident. TUC says there were just 3,000 successful strain injury cases in 2001, a year in which HSE



estimates 240,000 people developed work-related strain problems.

Over 260,000 people are currently in receipt of Industrial Injuries Disablement Benefit. In the year to March 2005, there were 45,000 thousand, only 40 per cent of which were accepted.

Common law compensation

Six figure common law compensation payouts make the headlines, but are exceedingly rare. Common law cases – also known as civil cases or damages – generate about 60,000 settlements a year, where a lot of people get a little. Most settlements are below £5,000. Relatively severe occupational deafness will typically result in a payout of a few thousand pounds.

The great advantage of civil compensation, or damages, is that any conditions caused by work are covered regardless of the level of disability. You

must prove your health has been damaged by your job and this was the result of your employer's negligence – the injury or illness was foreseeable and your employer could reasonably have done something to prevent it.

Unions take a disproportionately high number of the successful common law cases. However, the 70 per cent plus of the working population who are not in a union and don't have access to free union legal services must rely on the legal services market, claims farmers and assorted ambulance chasers and can end up out of pocket or at least short-changed, because of hidden charges or just bad, inexpert representation – despite the "no-win, no-fee" claims.

Insurers pay out over £600 million a year to settle common law damages cases for industrial injuries and diseases.

Industrial injuries benefit

The DWP industrial injuries benefit scheme's weekly payouts can add up to a significant amount over time. Another advantage is that the scheme is "no fault" – you don't have to show the injury or ill-health resulted from your employer's negligence.

But there are severe restrictions on who can claim, for what conditions and in what circumstances. The scheme covers injuries and an inclusive list of over 80 diseases in 67 categories known to be caused by work. To qualify there are conditions to satisfy, including disability thresholds. You must be "14 per cent disabled" for most health problems, which is a significant level of incapacity.

There are time limits for occupational deafness and asthma, and rules about what job you have done for other diseases. Many common conditions – notably most RSIs and stress – are not compensated by the scheme. Around £700 million is paid out each year.

Other schemes

Almost all local authority employees should have access to a largely unpublicised, union-negotiated no-fault scheme run alongside their pension scheme. The NHS and the civil service run similar schemes. All can provide exceptionally good benefits – it is crucial workers in public sector jobs explore these options if they suffer work-related injury or ill-health.

Unions often assist members who have been victims of violence at work to claim compensation through the Criminal Injuries Compensation Scheme.

Other government schemes, like the massive miners' scheme picking up British Coal liabilities for compensation for white finger and lung disease, have paid out £2.5 billion since 1998, with half the claims still to settle. There have also been a series of single issue no-fault schemes set up by agreement between unions and insurers.

You can claim in more than one way for the same injury or illness, but payments received are likely to be offset against one another.

SAFETY REP CHECKLIST

The better the evidence, the better the chances a compensation claim will be successful.

- Ensure all union members know the union should be the first place they go if they have concerns about possible work-related ill-health or are considering a claim.
- Keep copies of risk assessments on file, so you know who was exposed to what hazards and where.
- Undertake risk and body mapping exercises – these can uncover hidden links between jobs and ill-health, which can aid prevention and claims. Keep dated copies, together with a summary of the key findings.
- Record in the accident book all symptoms linked to the job. Always report problems, regardless of how trivial they may at first appear.
- Inform management formally and at the first opportunity of concerns about actual or potential work-related health risks.
- Make sure workers know to tell their GP about hazardous exposures and that the GP records this in their medical notes.
- Ensure workplace occupational health records acknowledge workplace risks and suspected work-related ill-health – remember, your records are in most cases entirely confidential (*Hazards* 89).
- Remember, once a worker has been told there is a link between their job and their ill-health, the compensation clock is ticking. Delay too long and a compensation claim could be ruled out of time.

Resources

Common law claims: Association of Personal Injury Lawyers (APIL). 0115 958 0585. www.apil.com
DWP industrial injuries benefit: JobCentrePlus. Freephone 0800 279 2322. www.jobcentreplus.gov.uk
Criminal injuries: Criminal Injuries Compensation Authority. Freephone: 0800 358 3601. www.cica.gov.uk
Civil service injury benefits scheme: www.civilservice-pensions.gov.uk
Guide to the NHS injuries benefit scheme: www.nhsa.gov.uk

	Who is entitled to claim ?	Time limits	Proof of negligence	Coverage	Route to claim
Common law (or civil) damages	Employees or ex-employees where ill-health or injury has wholly or partly resulted from negligence	3 years	Yes	All work-related health problems are covered	Solicitor/union
DWP Industrial Injuries Scheme	Employed earners at the time of the injury or illness	Varies	No	Accidents and inclusive list of occupational diseases, with disability thresholds and some job restrictions	JobCentres. Ask for leaflet DB1
Industry/union no-fault schemes	Individual schemes have their own entry conditions, agreed with particular employers, insurers, etc	Varies	No	Schemes are set up for particular health problems	Examples include British Nuclear Fuels, ICI, MoD.
Discretionary schemes	Employees covered by the Local Government Pension Scheme. Civil servants and NHS staff are covered by similar schemes.	No	No	Better than the Industrial Injuries Scheme	Employer
Criminal Injuries Compensation	Victim of a crime of violence (includes criminal incidents at work)	Within 2 years	No	Physical or mental injury	Criminal Injuries Compensation Authority
Pneumoconiosis scheme	Employed earners unable to receive civil compensation because the employer or their insurer cannot be traced	No	No	Asbestos diseases and pneumoconiosis (ie. dust-related lung scarring caused by cotton, silica, clay)	JobCentres.
Analogous Industrial Injuries Scheme	Non-employees; trainees and others on work-based programmes, eg. New Deal	As DWP scheme	No	As DWP scheme	Department for Education and Science

References 1. *Better routes to redress*, Better Regulation Taskforce, 2004. www.brtf.gov.uk 2. *Occupational Health Statistics Bulletin* 2003/04, HSC, 2004. www.hse.gov.uk/statistics 3. *Interim update of The costs to Britain of workplace accidents and work-related ill-health in 1995/96*, HSE, 2004. 4. *Focus on legal services for injury victims*, TUC, 2003.