

The Following is an extract from the TUC document “Personal Injury Claims - Proposals for Change” dated 23 March 2006, which those at Amicus had considerable input in relation to and we support the proposals for change, as long as they are not developed in a way such that the practical impact harms access to justice. Many of these changes though should enhance access to justice.

The paper can be read in full at: <http://www.tuc.org.uk/extras/pi-process.pdf>

Proposals for Change:

Trade unions are not adverse to change. They are keen to work with other stakeholders such as insurers, the Department for Constitutional Affairs (DCA) and employers to reduce frictional costs and speed up the process if that provides better access to justice.

That means ensuring that standards, service delivery and lawyer access are either maintained or improved.

The TUC believes that change must be driven by desire to improve justice for all who have suffered injury through no fault of their own. Any changes must be based on the fundamental right to claim just compensation for loss and injury arising from fault or negligence. The TUC is keen to keep the costs to employers, the state and insurers to a minimum while increasing the ability of workers to claim their just entitlement simply and speedily and at no cost to them.

Many of the drivers for change have not reflected these ideals. Instead the impetus for revision to the current procedure has come as a result of difficulties within the insurance industry in setting appropriate premiums in the past, the high cost of asbestos-related claims, the failures in adhering to the timescales in the current personal injury protocols and thus reduce the need for investigative costs, and the inability of employers to reduce the level of absence caused by work-related injury or illness.

The TUC is however eager to ensure that the system does deliver effectively, and efficiently. As such we wish to make a number of proposals on how the current system can be either improved or made more effective.

1. Pre action protocols

There is a lot of frustration that the new procedures introduced following the Woolf reforms have not had the expected impact. There is major concern among both unions and lawyers that courts are not using their enforcement powers, in particular over timescales, and this has meant the expected reductions in costs and savings in time have not been seen.

The TUC recommends that the DCA should investigate the extent to which the existing protocols are not being adhered to, and the reasons for that. The TUC would recommend that sanctions be developed to ensure greater compliance. We

believe that failure by defendants to comply with the timescales should result in an automatic reversal of the burden of proof, or a deemed admission, after a certain time. In addition notification from the insurers of an intention to defend, followed by a failure to do so, should also be followed by a penalty.

2. Medical costs

One of the causes of high costs is often medical reports. The TUC wishes to see an end to regular examination of medical records, most of which are irrelevant in the great majority of cases. We would wish to see the claimants' lawyers obtaining evidence from a medical expert. Doctors are now well used to complying with their overriding obligation to the courts, which will continue.

Insurers could apply to court, explaining their grounds for wishing to seek an alternative opinion if they believe this to be appropriate.

3. Early admission of liability

The earlier the defendants, or insurers, admit liability, the lower the costs, and, hopefully, the quicker a settlement. Early admission is therefore in everyone's interests.

Although procedures are already there to help the insurers consider a claim and make a decision on liability before court proceedings can begin, these protocols front load cost and consideration could be given to whether or not a short period of time could be given to insurers to respond to a claim, giving an indication of whether they admit liability, prior to the pre action protocol being used and before any costs be incurred. This would benefit both insurer and the insured and lead to significant savings of costs of investigation and consideration of the issue which in many cases is not in dispute. It would however only be effective in reducing costs if the insurers and the employers were able to develop procedures which would allow such admissions of liability to be made quickly.

4. Rehabilitation

The TUC recognises that early access to rehabilitation is in the interest of both workers and employers and is a way of reducing costs, however only 12.5% of UK employers provide any access to rehabilitation services.

We are eager to work closely with insurers and the Department for Work and Pensions (DWP) in developing practical proposals for rehabilitation. An early return to work can greatly reduce damages.

The insurance industry has made some considerable progress in delivering rehabilitation following serious motor accident injuries. This needs to be extended to other injuries and illnesses. There is growing evidence that early interventions make a considerable difference to the amount of time that a person is absent from work, or even whether or not they ever return to work, where they have a musculoskeletal disorder or a stress related mental health condition.

The TUC hopes that much greater access to rehabilitation can be developed for occupational injuries and illnesses. This would have a major impact in reducing the level of damages payable following personal injury and illness, in particular in respect of claims for lost earnings. We support the call from the ABI for greater provision of rehabilitation, a transparent accreditation system and changes to the tax regime.

The TUC is also concerned that many personal injury claims include payments for compensation following dismissal by the employer. The insurance industry and government should ensure that better procedures are in place to protect workers from those employers who take precipitative action to dismiss those who are injured.

5. Prevention

The greatest gains in reducing the number of personal injury claims can be made through preventing such injuries happening.

The Health and Safety Commission (HSC) and the Government have jointly developed a revitalising strategy aimed at reducing the amount of absence caused by occupational injury and sickness by 30% over a 10-year period. This strategy has the support of all stakeholders.

The TUC believes that there is a case for much closer linkage between current accident and injury rates within a particular employer and insurance premiums.

At present very good employers, who do take prevention seriously, often have almost the same employers' liability compulsory insurance rates as those who flaunt health and safety rules and regulations.

Greater use of "no claims bonuses", health and safety audit tools such as CHAPSI and lower insurance rates for those who consult with their employees and recognise trade unions, will all provide much greater incentive for employers to prevent injuries happening.

At present the only incentive for employers, apart from the moral imperative, is the fear of prosecution. Given that the average employer gets a visit from the enforcing authorities once every eight to twenty years, the deterrent factor is minimal.

In addition to the role played by insurers, changes can also be made to the personal injury system to encourage prevention. The TUC recommends that the Government looks at developing systems to penalise employers who persistently injure their employees. This could include automatic increases in damages awarded by the courts where allegations of previous similar accidents and complaints can be proven.

Such a “penalty” on employers who repeatedly breach health and safety legislation, or who do not act to prevent accident or injuries reoccurring, would act as an incentive to prevent injury and reduce claims. It would compliment the work of the HSC without adding to its burden.

In addition those employers who do not comply with the statutory obligation to conduct a risk assessment could also be penalised to the same effect, thereby encouraging compliance with good health and safety practice and the law.