

MONITORING PERSONAL INJURY COMPENSATION

Workshop chairman:

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1. Scope of Workshop.

Various lines of approach to assess trends in settlement awards are considered. These include available studies of what the courts are awarding, statistical information from insurance companies and insurance industry bodies especially the ABI and LIRMA, the impact of Ogden tables in the context of new legal developments likely to make Ogden tables more generally applied, the impact of the report by Lord Woolf, Master of the Rolls, titled Access to Justice and designed to make legal procedures in personal injury cases simpler, less expensive and shorter, information from hospitals and health authorities on trends of accidents and emergencies treated, assessment of inflation that applies to the amounts of settlements, questions of tax and the relative usefulness of commuting annuity settlements and lump sums, and the interface with social security. The aim of this workshop is bring together some assessment of all these influences to gain a perspective of the overall trend. The culture within which insurance claims are being made is changing and the more distinctively actuarial questions such as those of mortality and interest rates are being resolved against this background.

2. The Trend of Court Awards.

Publications such as Kemp & Kemp [1] contain much information on the amounts of settlements for injuries. The exact nature of the injury is not however made explicit. Rather the name, age and gender is listed together with an indication of either normal life expectancy as from the date of trial or a number of years life expectancy from the date of trial.

The interval between year of accident and year of trial varies from 1 year to 8 years with the average interval between 3 and 4 years.

Kemp & Kemp give details of the Total Settlement, Cost of Future Care per Annum, Cost of Future Care Multiplier, Future Loss of Earnings per annum and "Future Loss of Earnings Multiplier".

Whereas the emphasis in Kemp & Kemp and in actuarial discussion of damages seems to be on persons of working age, children and the elderly may be the subject of revised thinking on the part of the courts. It is said that court awards for children injured have been low in the past in the UK and this may change and may already be changing.

As regards the shape of the distribution of awards, data in Kemp & Kemp is said to be in accord with the analyses made of insurers' experience.

3. Pooling of Insurance Industry Data.

It is understood that LIRMA have commissioned substantial research that concentrates on Personal Injuries covered by Motor Insurance. It is anticipated that the report will be available around September - possibly before this convention.

In the USA the Insurance Services Office - ISO computes and publishes regularly Pareto parameters for certain Lines of Insurance. This work employs a one-Parameter version of the Pareto distribution and this requires a "Truncation Point" to be fixed for each class or "Line" of insurance that is investigated. It would be possible to carry out a similar exercise in the UK -given the necessary industry consent and co-operation. As a result more precise information on the shape of the distribution of awards covered by certain classes of insurance could be gained together with a better indication of trends year by year.

4. Ogden Tables.

It is thought that various legal developments are resulting in more widespread application of the Ogden Tables. One recent investigation [2] of this subject found that a 38.1% increase in awards could result. But much depends on how the tables are applied with the rate of interest used being a particularly important variable.

5. Data from the Health Service, Health Authorities/Agencies and Hospitals.

If there is a new social or cultural pattern emerging that gives rise to a substantial number of accidents and injuries it is likely that it is in hospital

Accident and Emergency or A & E departments that this is first apparent. Today concern of this kind tends to focus on the use of drugs and violent crimes some of which may also be drug related.

Whereas Regional Health Authorities RHAs are being abolished, certain regional data banks are continuing. District Health Authorities DHAs are also being reorganised as Health Agencies. Hospital A & E departments contribute data to Major Trauma Data banks. Major Traumas are defined as requiring a hospital stay of 36 hours or more or transfer to another hospital - or deaths. When the future of such information systems is being reviewed with the prospect of cost economies being implemented it is timely to consider if insurers should make use of the information provided. It is possible that records not essential to the management of the Health Service will be lost and insurers will be forced as a result to rely on information derived from other sources and from records that tend to be out-of-date and not indicate the more recent incidence of certain accidents. Records of past years data that might be useful to establish trends in insured benefits may also be destroyed in the current reorganisation of Health Authorities and Health Agencies.

The financial impact on insurers of how hospitals operate may also merit some research. It is the practice for some hospitals to claim from insurers on the basis of the length of time accident victims spend in the hospital.

6. Inflation that Affects Personal Injury Awards. Possible Convergence within the European Union.

Ideally one would like an index applicable to each class of injury and each class of insurance. In the UK it may be feasible to develop an index that is applicable to the broad range of compensation for injuries. A single market for insurance within the European Union may take on greater reality with the advent of a single currency. There may result some convergence in expectations for compensation as a result of injuries covered by insurance that is more international e.g. motor insurance.

7. Tax and Commutation.

It is thought that legal and tax changes may now favour commutations so that those whose injuries make settlements in the form of an annuity more useful than a lump sum can avail of this.

8. Interface with the Department of Social Security DSS.

A main reason why the British system of compensation has been regarded as unsatisfactory and sometimes unfair is the number of accident cases where claims from private insurers affect claims from national social security for sickness, disability, invalidity or incapacity benefits and also for a whole host of means-tested benefits. The tendency for the British government to make greater use of targeting by way of means testing may aggravate this problem. Generally the government is seeking ways to cut back on its expenditure on all universal and insured and discretionary benefits and one consequence may be for the number of private insurance claims and for claim amounts awarded from private insurers to rise.

REFERENCES

1. The Quantum of Damages. Kemp & Kemp. Sweet & Maxwell. London. A looseleaf publication revised regularly. 5th Release autumn 1995.
2. Presentation to London Market Actuaries Group. Craig Pettengell. 27 June 1996.