

PERSONAL INJURY COMPENSATION

Discussion paper for workshop at the General Insurance Convention
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1. Focus of Workshop.

Whereas actuarial valuations are now widely recognised in British Courts as being relevant in divorce cases and in cases of unfair and wrongful dismissal, there is still a marked reluctance on the part of British courts, in contrast to Irish courts, to accept actuarial evidence in cases of Personal Injury Compensation. However, the past two years have seen the publication of the Second Edition of the Ogden tables produced by the Government Actuary's Department, an increase in the amounts of compensation awarded by the courts in the UK and some developments in structured settlements. The workshop will focus on the prospects for securing the wider use of actuarial assessments in personal injury cases.

2. Fatalities.

Deaths might be viewed by non-actuaries as more amenable to actuarial assessment of damages. Court procedures on fatalities are more standardised. Where public sector settlements to widows of such as police and firemen are made, it may be a requirement that the courts approve settlements. Should there be actuarial monitoring of court awards of death liabilities? The appropriate committee of the Institute and Faculty might wish to consider how this could be done.

3. Second Edition of Actuarial Tables for use in Personal Injury and Fatal Accident cases (Ogden Tables).

These tables are designed for "those assessing the lump sum appropriate". The tables set out "multipliers". (Did the multipliers the British judges use originate as 19th century actuarial calculations? Some actuaries believe "the multipliers used by judges had no relationship whatsoever to actuarial calculations." Others note that the multipliers used by judges often reproduce approximately the same results as an actuarial assessment.) All tables are based on English Life Tables No 14. (Is this the right mortality basis to use currently?). The principal reason for the second edition "is that it is now possible to give assistance about contingencies other than mortality. Tables A, A(60) and A(F) together with explanatory notes, in which those tables are set out, show how these contingencies can be taken into account. In addition, four further tables have been added so that figures for men and women whose retirement ages are 60 and 65 are now available." Is there a General Insurance perspective on these tables? Where standard tables are in widespread use it could facilitate claims reserving and premium rating by stabilising claims costs.

4. Special Fatalities & Disabilities.

In Ireland experience has been gained on significant numbers of compensation cases for Police (Garda) Widows. There are occupation groups where special rules of compensation may apply. Should data be collected and actuarial tables constructed for such special groups? Paraplegics and dental cases are examples of specialist disabilities that may be considered sufficiently numerous and financially important to merit some actuarial research. Do General Insurance companies and actuaries view standardisation of awards by use of standard tables as desirable?

5. Legal Aid cases and Cases where no Fees are Appropriate.

Should the profession make a gesture such as listing actuaries that might take on deserving cases for which no fees are expected or where legal aid limits apply?

6. Legal Delays. Slow Paying Solicitors.

The settlement of Personal Injury cases tends to take years. Circumstances may make some delays justifiable as when the medical evidence may stabilise after treatment is completed. Other delays seem less acceptable. Delays and the impact of inflation on the amounts awarded while cases are being processed, make the estimation of ultimate costs more difficult. There are also abuses and negligence by solicitors. Should General Insurance actuaries take a stand in public about this? Can the General Insurance companies (often the ultimate clients that are paying) help to correct abuses by solicitors delaying payment of actuarial fees?

7. Actuarial Service to the Legal Professions

Solicitors and barristers that have found actuarial evidence useful on a number of occasions in Ireland then employ actuaries that have become familiar with the legal processes on fatalities and personal injuries. Actuaries that specialise in this kind of assessment for compensation purposes tend to be more familiar with the legal processes than a typical firm of solicitors that handles compensation cases from time to time. When barristers become judges they continue to treat actuarial evidence in the same way. Should the Institute and Faculty arrange some training for actuaries on service to the legal professions in this area?

8. Structured Settlements.

Different types of Structures available. The General Insurance (i.e. Defendant's) perspective.

9. International Influences.

Is American experience relevant ? Much of the initiatives on structured settlements seem to have been American inspired. Is harmonisation with the continent in prospect ? Will the single market in insurance become more of a reality after say 31 December 1998 with the advent of a single currency ? Will this lead to harmonisation of court awards and social security benefits for the disabled ?

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