



Civil Liabilities Bill second reading debate

Protecting injured parties over the long term

4 September 2018

When properly insured individuals are injured in an accident, it is right that they are compensated for any resulting reduction in their quality of life. The UK's insurance arrangements ensure that when someone is injured, they are covered for the most severe of eventualities. The Institute and Faculty of Actuaries (IFoA) believes that the needs of injured parties should be at the centre of any compensation paid in these situations.

In April this year Lord Keen, Lords Spokesperson for the Ministry of Justice, indicated that in personal injury cases, the government considers periodical payment orders (PPOs) to be, in principle, a better form of compensation than a lump sum, provided claimants are properly informed about their options. We have seen no further action from the government on this. In any case, the IFoA would see this as an inadequate step for the reasons set out below.

The people receiving compensation in these cases are often catastrophically injured, experiencing a range of serious impairments to their physical and mental wellbeing, as well as their ability to live and work as they did before. These individuals should not be expected to manage the investment, inflation and longevity risk associated with a lump sum compensation payment.

The IFoA would like to see a policy approach that considers a PPO as the preferred settlement option. A lump sum should only be considered when the claimant, or their advisers, can demonstrate they fully understand the risks of not accepting a PPO and that a lump sum is more appropriate for their needs.

What are periodical payment orders?

In most personal injury cases, a lump sum will be awarded based on the claimant's needs, including the loss of earnings associated with their condition, any adjustments to their home and the cost of their ongoing care. The sum also tries to reflect how long they are expected to live with their condition. In these cases, the responsibility for how that money is spent, or rather the responsibility for ensuring that it lasts a lifetime, is handed to the individual as they are handed their compensation cheque.

A PPO is a different type of compensation that pays the injured party a guaranteed income for life, again based on the specific needs resulting from their injury (a lump sum can also form a part of the initial award to cover immediate costs, such as household adaptations).

In the case of a lump sum award, the individual is essentially asked to take responsibility for investment, inflation and longevity risk, ensuring they properly invest and manage this often very large sum of money, whilst also budgeting appropriately so that the money does not run out before they die. Awarding a PPO is an effective way to stop the individual from having to shoulder these risks, and instead placing them with the insurer (or the NHS in the case of clinical negligence claims).

The IFoA believes that insurers and the government are far better placed to manage these risks than the injured party; they have greater scope to manage longevity risk by pooling it in a way that individual claimants cannot.

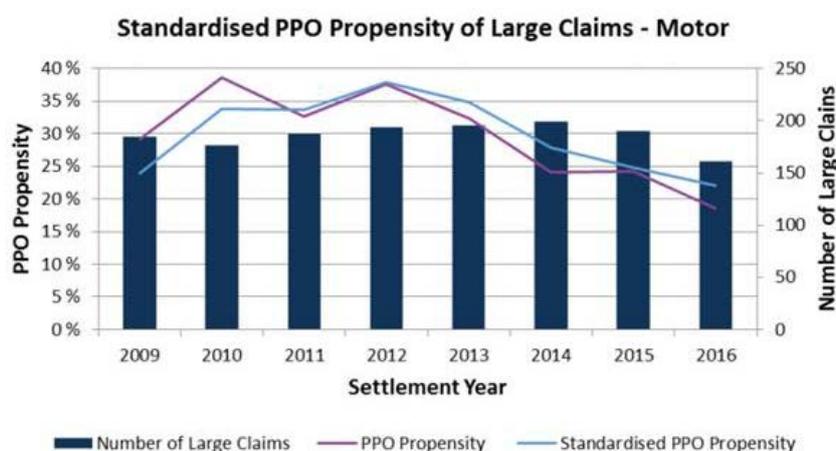
Current barriers

There are clearly some cases where a lump sum will be the correct settlement for a claimant, and where a PPO will not be appropriate. However there other reasons why claimants, their

representatives or the awarding insurer might favour a lump sum over a PPO, which should be cause for concern:

- The potentially large monetary value of a lump sum may appear more valuable than the PPO and claimants may not understand, or have properly explained to them, the risks and responsibilities associated with this.
- It is clearly difficult to predict one's future needs and 'present bias' suggests that individuals give greater weight to payoffs in the immediate term than in the future. A PPO protects against this to ensure that claimants are compensated for future as well as immediate needs.
- It is not in the awarding insurer's interest to award a PPO as it represents a long-term liability which must be managed for many years into the future.
- The current negative Ogden discount rate is further inflating the size of lump sums making them more attractive.

This chart shows the gradually declining tendency of insurers to settle claims as PPOs. The pale blue line shows a decline from 37% of large claims in 2012 to 22% in 2016.



Source: [IFoA PPO Working Party](#)

Policy aim

To ensure claimants are awarded appropriate protection against the risks associated with a lump sum, the aim should be to shift towards an acceptance of the government's stated position that a PPO is in many cases a better form of compensation than a lump sum.

The IFoA believes this would best be achieved by ensuring that there is a presumption in the courts that a PPO is the appropriate form of settlement unless a compelling case is made that a lump sum is more appropriate. A lump sum should only be considered when the claimant, or their advisers, can demonstrate they fully understand the risks of not accepting a PPO and that a lump sum is more appropriate for their circumstances.

For more information on the IFoA or the contents of this briefing please contact Michael Williams, Public Affairs Manager at Michael.Williams@actuaries.org.uk / 0207 632 1466.

About the IFoA

The Institute and Faculty of Actuaries is a royal chartered, not-for-profit, professional body. We represent and regulate over 30,000 actuaries worldwide, and oversee their education at all stages of qualification and development throughout their careers.

Actuaries provide commercial, financial and prudential advice on the management of assets and liabilities, particularly over the long term, and this long term view is reflected in our approach to analysing policy developments. The IFoA acts in the public interest by speaking out on issues where actuaries have the expertise to provide analysis and insight on public policy issues.