



# The Compensation Myth

Seven myths about the "compensation culture"

Produced jointly by the Association of Personal Injury Lawyers and the Trades Union Congress.

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It is common to hear stories of the “compensation culture” or claims that Britain is becoming “risk averse” as a result of people claiming compensation.

In May 2013 the Justice Secretary, Chris Grayling said that recent changes to the way claims are dealt with “will not be the end of the Government’s work to tackle the growth of compensation culture”<sup>1</sup>. The DWP website also claims “a damaging compensation culture is stifling innovation and growth.”<sup>2</sup>

The truth is very different. In fact there is no compensation culture. Even people asked to look at it by the Government have concluded that it is a problem of perception – in other words a myth. Lord Young, in his report on health and safety said. *“The problem of the compensation culture prevalent in society today is ..... one of perception rather than reality.”*<sup>3</sup> While Professor Lofsted, who was also asked to review health and safety by the government said *“The ‘compensation culture’ (or the perception of it) in the UK has been the subject of several reviews over the last few years,, but no evidence has been presented for its existence”.*<sup>4</sup>

In this report the TUC and the Association of Personal Injury Lawyers examines 7 myths around compensation in the workplace – and suggests three simple ways of ensuring that the cost of paying compensation can be reduced.

### Myth 1

#### Compensation claims are spiralling out of control

The simple truth is that, despite what the press and politicians may claim, workplace claims have halved in the last ten years. Government figures show that there has been a fall from 183,342 claims in 2002/03 to 91,115 in 2012/13.<sup>5</sup>

Despite this the Government is making it even harder for workers to claim compensation after they are injured or made ill because of the negligence of their employer by changing the law in favour of the employer by changing the burden of proof.<sup>6</sup>

Even those who win a case will be affected by additional costs. In the past, the cost of bringing a

claim was met by the wrongdoer – now, a significant part of that cost will be borne by the victim. Even if they win, they face a cut in damages of up to 25% to cover legal fees which, in the past would have been paid by the guilty party. So, not only have workplace claims actually fallen, but the process of claiming compensation has become tougher.<sup>7</sup>

## **Myth 2**

### **Workers are too ready to claim compensation**

Six out of every seven workers who are injured or made ill through work get no compensation at all. Each year around half a million people are made ill as a result of their job and a further 110,000 are injured<sup>8</sup>. The most common injuries are musculoskeletal disorders such as back injury or repetitive strain injury (RSI), injuries from slips and falls, skin diseases, and deafness. Many people will get better, some will not. Over 25,000 people are forced to give up work every year as a result of work-related injuries or illness.

However the number who gain compensation from their employer is around 90,000 a year<sup>9</sup>. A further 20,000 will make a successful claim for industrial injuries benefit, which is a government funded “no fault” scheme<sup>10</sup>.

## **Myth 3**

### **Compensation payments are too high**

According to an analysis of nearly 64,000 claims in 2011, the majority of workplace damages paid to injured workers are for less than £5,000 and around 75 per cent of cases are for damages of less than £10,000.<sup>11</sup>

Unlike in some other countries, compensation is strictly based on what the claimant has lost. Payments are based on guidelines and evidence and are designed to compensate for actual loss, including pain and suffering, loss of earnings and future losses, all of which are very carefully calculated. Future losses can include future loss of earnings, pension loss, cost of care, medical treatment, and accommodation and vehicle adaptations. Where the victim has died, bereavement damages, funeral expenses and dependency claims would be considered.

Very occasionally there are settlements of over £250,000. These are, however, the minority of cases

and relate to people who have been very badly injured, people who may require permanent around-the-clock care for many years and will probably never work again. Often they will have lost the use of their limbs and/or be significantly brain-damaged.

These damages are not a gift or a windfall for the injured individual and his family: every case is calculated to the penny with the sole aim of putting claimants as far as it is ever possible back to the position they were in before being needlessly injured.

Litigation can be a difficult and stressful process for all concerned, and injured people often express the view that all they want to do is wind the clock back to a time before the injury and to put their lives back on track.

#### **Myth 4**

#### **Compensation is paid for any old accident**

In today's society, many people think it is possible to sue for compensation whenever there's an accidental mishap, and that damages are just dished out automatically by the courts. This is not the case.

For a claim to be successful the injured party has to prove that the other party has been negligent, and this can be incredibly difficult. For negligence to have taken place the incident must have been foreseeable and the actions or inactions of the defendant must have led to the injury.

Proving an employer has been negligent can be particularly difficult for an employee. Employers always have the upper hand as they are the ones who control the workplace and the work equipment, and who hold all the information about systems in place. This difficulty was recognised by the courts more than a century ago, and the legal process changed to reflect this so that, if an employer caused an injury by breaching health and safety regulations, the employee could rely on that breach as the basis of his case.

The Government has now turned the clock back, in favour of employers, by changing the law to require the claimant to prove the employer was negligent, which is much more difficult.<sup>12</sup>

So, not only is compensation not available for an

accident but, where there has been negligence, it is likely to be even harder to obtain than it was in Victorian times, because of this change in the law.

There's a strong likelihood that many injured workers will be put off from making claims for compensation for their injuries entirely, allowing many negligent employers to avoid making amends, and leaving the state to pick up the tab for medical care and any benefits arising from the injury.

### **Myth 5**

**It is unfair that insurance companies should have to pay out for diseases such as asbestos-related diseases where they could not have known the risks.**

The insurance market is about assessing risk, pricing premiums accordingly, investing premiums collected, and hoping that the risks don't become a reality. If the employer can show that he could not have known that there was a risk then he will not be liable for damages. For example, claims for hearing loss can only be brought for damage caused after the Health and Safety Executive (HSE) produced guidance on this in 1963.

There have been health and safety controls on the use of asbestos since 1931, and the risks have been known across the industry since the 1940s. Despite the known dangers many employers continued to use it, and even now too many fail to take adequate care where asbestos is present in their workplaces. Around 2,000 people are year are dying from the asbestos-related cancer mesothelioma, usually from exposure to asbestos many decades ago.

All these deaths would have been avoidable if the industry had protected its workforce. The insurers insured these companies, and took their premiums, despite the knowledge that exposure was occurring and that many would die. There is no reason why these workers should be denied compensation just because the exposure took place many years ago. The insurers were happy to take the risk and should meet their obligations. There is no justification for the taxpayer having to pay the bill.

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justification for the taxpayer having to pay the bill.

### **Myth 6**

#### **Many of these cases would not be taken if unions did not encourage their members to claim**

One of the main aims of unions is to prevent members becoming ill or injured through their work. That is where most of their focus goes. However, if a member is injured through the negligence of the employer and suffers financial loss, then the union should advise the employee about his rights if requested to do so. The prospect of compensation claims is a major factor in ensuring that employers protect the health and safety of workers.

Unions offer high quality legal services that are tailored for speedy resolutions of claims. At the same time, unlike a claims company, the lawyers will work with the union to try to ensure that the employer takes action so that the cause of the illness or injury is not repeated.

### **Myth 7**

#### **Lawyers often drag these cases on unnecessarily to keep their costs up.**

Solicitors have a professional duty to act in the best interests of their clients. This includes not dragging out cases simply to increase their costs without falling foul of their regulatory body. That duty notwithstanding, it is important to note that most personal injury cases now go through a new claims procedure, in which legal costs which can be incurred by the claimant are fixed. For workplace claims worth between £10,000 and £25,000 the maximum cost which can be incurred is £1,600. Lawyers have absolutely nothing to gain by dragging cases out.

Costs could be reduced still further if defendants, when liable, were to admit liability early. The failure of employers and insurers to do this also has other adverse effects. It means that early treatment and proper rehabilitation for the victim cannot always be offered when it is most needed. This means the condition may become worse and the chance of recovery greatly reduced.

### **Three truths.....**

#### **The compensation bill can be cut:**

- if employers stop acting negligently and stop killing and injuring workers. The insurance companies can help here by linking the premiums much more closely to the actual risk within specific workplaces. Insurance companies should more readily offer risk-based premiums that reflect an employer's health and safety history. Good health and safety should be rewarded.
- If, when someone is injured or made ill through work the employer ensures the employee has early access to proper rehabilitation. This means the worker will be more likely to make a full or early recovery. Rehabilitation must not, however, be used as a stick to beat the claimant with, to force the claimant to accept an offer or return to work early. It must only be used as a means of enabling an injured person to cope again either with work, or with family, domestic life and society.
- if insurance companies admit liability (where justified) early and follow court rules so that costly medical and legal bills are not run up.

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<sup>1</sup> <https://www.gov.uk/government/news/turning-the-tide-on-compensation-culture>

<sup>2</sup> <https://www.gov.uk/government/policies/improving-the-health-and-safety-system>

<sup>3</sup> Lord Young, 'Common Sense Common Safety' report 2010

<sup>4</sup> Reclaiming health and safety for all: An independent review of health and safety legislation. Professor Ragnar E Löfstedt, November 2011

<sup>5</sup> Compensation Recovery Unit statistics, May 2013

<sup>6</sup> Section 69 of the Enterprise and Regulatory Reform Act

<sup>7</sup> Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2013

<sup>8</sup> HSE annual statistics 2013

<sup>9</sup> Compensation Recovery Unit statistics, May 2013

<sup>10</sup> DWP Industrial Injuries Disablement Benefit statistics, September 2004

<sup>11</sup> Professor Paul Fenn, Nottingham University Business School

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<sup>12</sup> Section 69 of the Enterprise and Regulatory Reform Act