industrial injuries: a new approach

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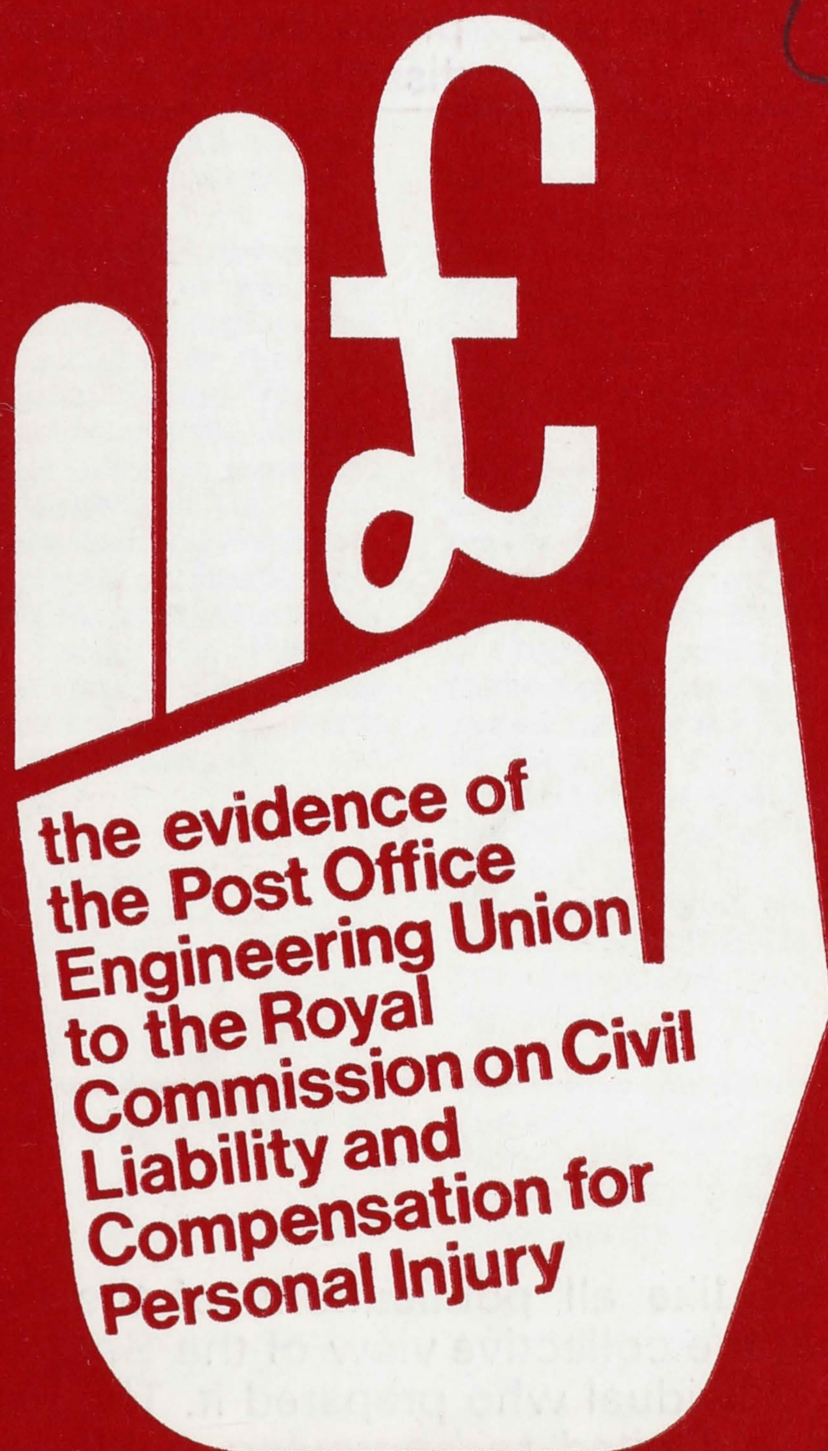

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1. existing legislation

The basis of the present industrial injuries legislation is the National Insurance (Industrial Injuries) Act of 1946 which came into effect in July 1948 and replaced the Workmen's Compensation Act. Under the Workmen's Compensation Act, the test was whether—and by how much—an injury to a person caused a loss of earning capacity. If no such loss could be proved—either wholly or partially—then, for so long as the person was earning or able to earn his pre-accident pay, no compensation was payable. The claims were made in every case against the employer, and disputes were settled in the County Court.

Under the 1946 Act the test is the extent of an individual's disability as the result of the physical or mental injury arising from an industrial accident or the contracting of an industrial disease. The individual's entitlement to, and the amount of, his basic benefit is based on a medical assessment of the disability. The claim is made not against the employer but against the Department of Health and Social Security which administers the Industrial Injuries Fund. The Fund is financed by weekly contributions of all employers and employed persons, plus a contribution from the Exchequer.

the right to benefit

The Industrial Injuries Act covers all persons employed in insurable employment, but benefits are not subject to contribution conditions as is the case with National Insurance benefits. In order to claim benefit, four conditions must be satisfied :

1. That the person suffered " personal injury."

2. That this resulted from an accident or incident or that he contracted an " industrial disease."

3. That the accident arose " in the course of employment."

4. That it arose " out of " that employment.

The term " personal injury " has a wider range of meaning than is normally associated with the words. It naturally includes all the physical damage that accidents can cause the human body but, in addition, includes some of the less obvious physiological and psychological consequences. One of the criteria used to judge personal injury is " loss of faculty " " faculty " meaning the capacity for any natural action, such as seeing, feeling, hearing or speaking.

Industrial disease. Certain diseases which are considered to be an occupational risk have been scheduled under the Act along with the processes normally causing them. Where a person contracts a prescribed disease and can prove that the process has caused the disease, he can claim benefit. At present 45 diseases are listed by the Department of Health and Social Security.

Injury benefit. Once the accident has been accepted as an industrial accident—either by the Insurance Officer or by a successful appeal—the claimant becomes entitled to injury benefit if sick leave is involved. No benefit is paid for the first three days following an accident. The injury benefit period extends for 156 days from the date of the accident, but it ceases to become payable if the claimant returns to duty before the end of that period. If the claimant is still off duty after the end of the benefit period, he may claim sickness benefit. Both benefits attract allowances for dependants and earnings related supplement.

Allowances for dependants. The weekly rate of injury and sickness benefit can be increased for a dependant adult or the first and only dependant child, and at a lower rate for each other dependant child.

Earnings related supplement. The earnings related supplement, which may be payable after 12 waiting days, will be at the rate of one-third of the average weekly earnings lying between £9 and £30 subject to a maximum total benefit of 85 per cent of the average weekly earnings. The maximum supplement will, therefore, be £7 (one-third of £21) for the claimant with average weekly earnings of £30 or above.

This provision was changed from 1 January 1974. The earnings related supplement is now based on one third of earnings between £10 and £30 plus 15 per cent of earnings between £30 and £42 (which will increase the maximum supplement to £8.46). From 1 January 1975 the upper limit will be raised to £48.

Disablement benefit. Disablement benefit is payable at the end of the injury benefit period or from the date of the return to work. If no sick leave has been taken but, nevertheless, some disablement has been suffered, disablement benefit can be claimed after the accident. The benefit is a payment depending on the degree of loss of faculty the injured person has suffered as a result of the accident or disease. The benefit can be either a weekly pension or a gratuity, and can be awarded for a period of time or for life. In the case of an assessment for life of 20 per cent or more, then a weekly pension will be payable for life. In the case of an assessment for life of 19 per cent or less, the "life" is calculated as seven years and a gratuity for this period is awarded. An assessment of 100 per cent provided a benefit of 12.80 a week, at the rates operative from October 1973 : lesser awards are a percentage of this amount.

Supplements to disablement benefit. A number of supplements can, in particular circumstances, be claimed in addition to disablement benefit : these are as follows

Special hardship allowance. This allowance is given for loss of earnings which may include loss of overtime, shift allowance etc. It may also include money lost by downgrading or loss of promotion. In general, if the claimant is earning less money because of his accident than he would otherwise have done, he is entitled to make a claim. The maximum allowance is £5.12 a week, but the allowance together with the disablement pension cannot exceed the amount of the 100 per cent disablement pension for adults, at present £12.80 a week.

Constant attendance allowance. Where an individual is in receipt of a 100 per cent disablement benefit and, although not in hospital, is in need of constant personal attendance, there may be an entitlement to an additional allowance. This allowance is entirely within the discretion of the Department of Health and Social Security. There is no appeal from its refusal to grant an allowance or from its assessment of what is to be paid. The normal maximum is at present £5.15 a week but in exceptionally severe cases the maximum can be £10.30 a week. Some 2,600 allowances were in payment at 30 September 1971.

Approved hospital treatment allowance. This allowance brings disablement benefit up to the 100 per cent rate during treatment in hospital for an industrial injury or disease. The allowance may be increased for dependants.

Unemployability supplement. In cases where disablement pensions are incapable of work and likely to remain so permanently, they may be entitled to an unemployability supplement of £7.75 a week. Increases are payable for dependants and for "age of onset." The supplement cannot be paid with sickness of invalidity benefit or retirement pension. About 600 supplements were in payment at 30 September 1971.

Exceptionally severe disablement allowance. The allowance may be paid to those likely to be entitled permanently to a constant attendance allowance at a rate above the normal maximum. From October 1973, the allowance was increased to £5.15 a week. About 700 allowances were in payment at 30 September 1971.

Industrial injuries death benefit. The widow of a man who dies as a result of an industrial accident or disease receives an allowance which for the first 26 weeks (at the rates effective from October 1973) is £10.85 a week. This is the same rate as the National Insurance widows' allowance. Thereafter the widow receives a pension, depending on age and other circumstances, between £8.30 a week and £2.33 a week. Allowances are paid for each dependant child of the deceased's family. The payments continue during

the widow's life or until she remarries. In the latter case the payments cease, but the widow is entitled to a sum equal to one year's payment of her current pension.

criticisms of the state scheme

The National Insurance (Industrial Injuries) Act 1946 was a major step forward in British social history. In practice, it has proved to be a substantial improvement over the Workmen's Compensation Scheme which preceded it, and large numbers of working people have benefited from its provisions.

However, the present scheme has now been in operation for twenty five years and, clearly, the time has arrived for a major and critical review of its provisions. The need for a review is emphasised by the fact that the operation of the present scheme has revealed a number of serious limitations and weaknesses in the provisions for dealing with industrial accidents and diseases. The limitations have been widely recognised in recent years : and, from the POEU's point of view, have been underlined in a practical sense by its experience in dealing with cases in this field. The criticisms fall broadly under three headings : the coverage of the legislation is not wide enough, the appeals procedure is unsatisfactory in some respects and the benefits under the scheme are inadequate.

the coverage of the legislation

Under the 1946 Act, benefit is generally payable only where the accident occurs during the course of employment and out of that employment. In general, the " course of employment " has been interpreted to mean during working hours although this has sometimes been extended to include periods immediately before or after working hours when the individual is within his employer's premises.

It has been ruled, however, that the definition does not include periods when an individual is travelling from his home to his place of work or vice versa. In the POEU's view, this is a serious limitation in the coverage of the present scheme and one which ought to be rectified. The process of travelling to and from work is just as much a part of industrial and commercial activity as the work itself, and the individual ought to be safeguarded in the same way.

The POEU has also been involved in numerous cases where a member has been ineligible for injury benefit because an accident occurred during a period when he was travelling to or from a training school or a place of detached duty (that is, away from his normal place of work). It is quite common in these circumstances for members to travel direct from their homes to the training school or the detached duty, and this is done on the full authority of the employer who stands to gain from the saving in time and expense. Nevertheless, if an accident occurs in these circumstances it is unlikely that the individual will be able to prosecute successfully a claim for injury benefit.

Another aspect of the present system which is subject to criticism is that, within the meaning of the Act, an accident is an incident which is identifiable and has resulted in—or contributed to—loss of faculty. In one sense the definition of " incident " appears to have been liberal and has not been confined to a specific act at one point in time. The main problem appears to have been the requirement that the incident must be identifiable as resulting in loss of faculty. There appears to be widespread acceptance that certain industrial processes contribute markedly to varying degrees of disablement in those who operate them, but it is often very difficult to get them accepted as an industrial injury. For example, damage caused to a hand by the constant use of a pneumatic drill is not classified as an industrial injury. In the POEU's view, any new legislation should be framed so as to allow cases of this kind to be classified as industrial accidents and that benefits should be available to those who are unfortunate

enough to suffer some degree of disablement which on the balance of probability arises from the work in which they are employed.

The present system also deals unsatisfactorily with industrial diseases. To secure benefits a disease must be prescribed under Section 56 of the 1946 Act for the industry in which the claimant works. This has meant that many workers suffering from a disease caused by their employment have not received benefit, particularly where new industrial processes and material are developed rapidly. The list of prescribed industrial diseases also fails to take into account occupational health problems which gradually disable a victim with, for example, bronchitis, emphysema, arthritis, rheumatism or degeneration of the spine when prolonged lifting takes place.

unsatisfactory aspects of the appeals procedure

Under the present system the award of injury benefit is made initially by an Insurance Officer ; and the first point of criticism is that, in many cases, a lengthy period of time is required before the Insurance Officer has satisfied himself that a claim is justified. Some means must be found of speeding up the process at local level. If the Insurance Officer is not satisfied and benefit is refused, the claimant has the right of appeal which is heard before the Local Appeal Tribunal. Again, this can be a lengthy process : and bearing in mind the uncertainty with which the claimant is faced, it is clearly desirable that the delay at the various stages should be reduced. There is also a need to improve the methods of notification used by the Insurance Officer when rejecting a claim for injury benefit. At present the form of notification is too brief and the detailed grounds for the rejection are not given to the claimant until seven days before an appeal is to be heard. In our view a claimant should have the right to know immediately the grounds on which his claim is rejected, so that he can consider an appeal and have adequate opportunity to prepare his case. With the present methods this is not always possible and adjournments have to be sought so as to enable proper preparations to be made, thus introducing a further element of delay. Any appeal against a decision by a Local Appeal Tribunal can only be made following an application for the case to be heard before a Commissioner.

At the end of the period for which industrial injury benefit is paid—or from the date of the return to work, if that is earlier—the claimant may claim disablement benefit if he still suffers any loss of faculty. Disablement benefit is granted initially by a Medical Board, usually in terms of a percentage disability. Appeals against decisions of the Medical Board usually arise because of a disagreement over the assessed percentage incapacity on which the disability benefit is based, and these appeals are heard before a Medical Appeal Tribunal. Further appeal can be made to the Commissioner, but only on a point of law and not on medical grounds. The average time taken for a Medical Appeal Tribunal is only half an hour, and practitioners in this field feel that examinations are sometimes perfunctory.

The present criticism of the operation of Medical Appeal Tribunals makes it essential that the work of the Tribunal should be subject to critical scrutiny and, in particular, that the time allotted for each appeal should be extended so that individuals do not have a sense of injustice because they feel their case was not considered adequately. In order to meet the criticisms consideration should be given to the introduction of a further level of appeal, matching the provisions on the non-medical side, for example an appeal against the decisions of a MAT to a Commissioner who could be assisted by medical experts.

There is also the need to look critically at the assessments made by Medical Boards. In some cases—that is, where the loss of limbs are involved—assessments are made according to a schedule. It is the non scheduled assessments made by Medical Boards that create the major criticism. For example, if a man loses an index finger he is entitled—according to the schedule—to an assessment of 14 per

cent, whereas it is not unusual for a man crippled with spinal injury to receive a 10 to 15 per cent assessment.

benefits under the scheme are inadequate

The benefits provided under the existing State scheme are, in the POEU's view too low over the whole range, (the long term benefits as well as those which apply in the short term). The flat rate benefits are especially inadequate for those who have incomes above the lowest levels since their standards of living are geared to incomes substantially above present social security levels. The additional provision in recent years of an earnings related supplement has, up to the present time, made only limited improvements in the situation. The criticisms can perhaps best be demonstrated by example. It is assumed that a man with a wife and two children dependent on him is absent from work following an industrial injury. Normally he will receive no benefit from the social insurance system for his first three days absence. For absence between three and twelve days he may be entitled to sickness or injury benefits, including in addition to the flat rate benefit the appropriate allowances for his wife and children with which at the level of benefits operative from 4 October 1973, were sickness benefit: £15.60 and injury benefit: £18.35. For absence between 13 and 156 days (26 calendar weeks), the earnings related supplement may be payable. For a man earning £20 a week this will be £3.33, the £30 a week man would get £6.66; £40: £8.16 and £50: £8.46.

If the claimant has been earning only £20 a week, he will be affected by the rule which prescribes a total " benefit ceiling " of 85 per cent of average weekly earnings and will not be able to receive more than £17 a week in benefits. In fact, in the example the man's entitlement, but for the limitation of the 85 per cent maximum, would be £18.93 sickness benefit or £21.68 injury benefit. If on the other hand the claimant in the example is not among the lowest paid, he suffers an abrupt fall in income as the result of his incapacity. After 26 weeks, entitlement to both injury benefit and the earnings-related supplement ends. Thereafter the claimant might receive sickness benefit without supplement, replaced after a further 24 weeks by invalidity benefit. Despite the relatively favourable dependants allowances and permitted earnings rule, invalidity benefit is considerably less favourable than injury benefit to all except the lower paid, because of the absence of an earnings-related supplement. In the example the maximum invalidity benefit would be £19.90 a week, although the man may have been earning £40 a week (or more) before his incapacity arose.

The same criticisms can be made, to a greater or lesser degree of the longer term benefits. It is true that in some circumstances (where for example 100 per cent disability is involved and an additional entitlement to an unemployability supplement and certain other allowances can be established), the benefits available to the individual may not be unreasonable in relation to the earnings he would have received from his employment. In general, however the criticisms already outlined can be made about these benefits. Moreover, experience in the field suggests that many individuals do not receive all the benefits to which they are entitled.

In our view there is an overriding need to improve the benefits available to those who become incapacitated as a result of an industrial accident or disease, but in order to resolve the problems discussed above, the aim could best be reached within a social insurance system which allied the main benefits closely with the average earnings of the individual.

APPROPRIATE TOTAL BENEFITS FOR A FAMILY OF HUSBAND, WIFE AND TWO CHILDREN.

weekly earnings	sickness benefit	total injury benefit
20	17.00	17.00
30	22.26	25.01
40	23.76	26.51
50	24.06	26.81

2. the common law system

An individual involved in an industrial accident may seek damages through action in the Courts in order to compensate for his injuries, loss of faculty, loss of earnings etc. Although such action could be directed against various parties (for example, a fellow worker), generally it will be against an employer. In order to be successful, such a claim must prove that the employer is in breach of his statutory duties or has been negligent in his common law duty towards his employees and that the negligence was, in some degree, responsible for the accident. As will be argued later in this chapter, proof of negligence is often difficult to sustain and in practice produces situations of apparent unfairness which are often incomprehensible to the layman.

In the 19th century, successful action in the Courts against employees on the grounds of negligence was even more difficult. A decision in a case in 1837 meant that although a master was "vicariously" liable to other persons negligently injured by his servant in the course of his employment, the employer did not have to pay damages if the person injured was another worker in common employment with the wrongdoer. This concept which has been described as a "judicial reflection of a management ideology" was abolished only in 1948 although an Act of 1880 permitted workers to sue an employer in a limited range of accidents despite "common employment" but with a maximum on the amount of damages allowed. The Courts imposed a strict interpretation on the doctrine of "volenti non fit injuria"— that is, agreement by the worker to accept certain risks. Also a worker who was partially to blame for his own accident was unable to make a successful claim.

By the early 20th century the Courts had become more enlightened in dealing with claims arising from industrial accidents. Moreover, with the passage of the Workmen's Compensation Act 1897 a statutory scheme of compensation for industrial injuries was also established. However, the worker had to choose which type of compensation he wished to seek: that is, through the statutory scheme or through the Courts, since he was not allowed to pursue both. In practice most choose the former because, although the potential financial benefits under the tort system were greater, the chance of success was uncertain and, in consequence, few opted to take common law claims. The Accident Offices Association and the Mutual Insurance Companies Association stated to the Beveridge Committee (1940-42) that, of the half million compensation applications made in the period 1935-37, fewer than 0.1 per cent gave rise to common law claims.

The period 1945-48 saw significant changes. The Law Reform Act 1945 gave recognition to the doctrine of "contributory negligence" so that a worker would not be disbarred from damages solely on the grounds that he was partly to blame for his accident. When claims were successful in these circumstances the Courts were empowered to reduce damages by an amount they considered to be justified. The Law Reform (Personal Injuries) Act 1948 abolished the doctrine of "common employment" and the implied acceptance of each worker to accept the risks of fellow workers' negligence. This legislation removed some of the more obvious limitations and disadvantages which the common law system imposed on those who sought compensation for injury by this means. It did not, however, deal with the basic problems and illogicalities of the common law system which have been the subject of repeated and varied criticism over many years.

A substantial number of books and articles on this subject have been published during the last twenty years, many of them critical of the methods of compensation in general and of the common law system in particular. Two of the best known are T. G. Ison's *The Forensic Lottery* and P. S. Atiyah's *Accidents Compensation and the Law*. Both were highly critical of the tort system and of certain aspects of the present State Scheme, and both concluded that the present methods should be abolished by

replacing injury benefit and claims for damages with a unified State insurance scheme which would provide one adequate benefit to all who were deprived of their earning capacity by reason of sickness or incapacity of any kind.

The Monckton Committee drew attention to a number of defects in the common law system. In particular, the delay in determining liability and the amount of damages; the high cost of the system; and the disadvantages of lump sum payments. The Committee also pointed out that the needs of the injured worker were the same whether or not negligence was involved in the accident. The Committee concluded however, that it could not recommend the abolition of common law action "without careful consideration of the amount of the benefits as combined with recoverable damages, and the extent to which the benefits will be available in cases in which a right to damages arises." The implication of the Committee's views appears to be that they might well have recommended the abolition of common law action if they had been convinced that the level of social insurance benefits would be high enough to compensate injury victims reasonably.

The Winn Committee was debarred by its terms of reference from studying the problems which might result from the abolition of the common law system; but one of its members, Master Jacob, in a note of reservation indicated that it was a matter which he thought required urgent consideration.

The Robens Committee in addition to its controversial proposals detailed some of the system's adverse effects on safety and there is evidence of similar views amongst the Factory Inspectorate. The Society of Labour Lawyers has also expressed dissatisfaction with the present system.

The trade union movement has taken a close interest in these issues. In 1966 a proposal was tabled for discussion at the Trades Union Congress by the National Union of Railwaymen who were concerned that many employees were denied compensation because of the difficulty of proving negligence. The Post Office Engineering Union has been concerned with these issues increasingly over the last few years when it became clear that, although the costs associated with its legal services to members were rising rapidly, there were a substantial number of cases which either had to be rejected or were unsuccessful because liability could not be proved against the employer. An analysis for the year 1972 showed that 458 accidents were reported to the Union's Legal Department, and we estimate that this figure represents about 10 per cent of all accidents arising out of Post Office employment, for the members represented by the Union.

Of these cases 125 (27 per cent) had to be rejected immediately because it was clear that proof of negligence could not be sustained. Of the remaining 343 cases some will fail because, despite a prima facie case, proof of negligence cannot ultimately be sustained; others will be partially successful where contributory negligence is a factor, and yet others wholly successful.

After a careful review of its own experience and consultation with a number of other practitioners in this field, the Union tabled a proposition for discussion at the 1972 Trades Union Congress. The proposition called for an investigation into the present legislation in this field with a view to its replacement by a new Act which would provide adequate compensation for victims of industrial accidents and diseases irrespective of liability. This proposition was remitted to the General Council by the Congress; and since that time the Union has been developing its ideas and attempting to ensure that they have been available for discussion by as wide a cross section of the community as possible. Leaflets outlining the problems of compensation have been distributed to all Branches of the Union, to Members of Parliament, Government Departments, all Trade Unions, Trades Councils and Constituency Labour Parties. The response to the leaflets has been mainly in favour of a change from the existing methods of compensation although it is clear that there are varied ideas about

what direction the change should take. In the POEU's view, the interest shown in the subject matter of the leaflet is a reflection of the growing need in the field of legal aid generally. The more complex life becomes in an advanced industrial society, the more meaningful is the concept of " unmet legal needs." that is, where legal advice or action is required to resolve the individual's problem, but where the individual does not exercise his rights either because of ignorance of the law or through fear of becoming enmeshed in lengthy and expensive legal processes.

Practical experience in the field of legal services to members supports the conclusions of a recent study in London which suggested that many workers are unaware of their legal rights or afraid of the potential time and cost of legal claims.

Another factor which has stimulated debate about present methods of dealing with industrial injuries and diseases has been developments in other countries, some of which have set standards apparently higher and of greater uniformity than those prevailing in the United Kingdom. As long ago as 1964 the International Labour Organisation approved a convention (number 121) which laid down minimum conditions for employment injury benefits with cover which included injuries resulting from accidents occurring whilst travelling to and from work. Since that time many countries have given fresh consideration to the issue of compensation, and some have adopted schemes—as in New Zealand and the Canadian provinces—which provide for an injured person to receive 80 per cent of his normal earnings. In contrast, the earnings related element in the British scheme is still only of relatively minor importance. In New Zealand the earnings related payment mentioned above is one benefit in a new scheme for which legislation has now been approved and which provides a comprehensive social insurance system replacing the right to action for damages.

In our view it is clear that there is now a widespread recognition that a change is required in the methods of dealing with compensation for industrial injuries and diseases. We recognise, of course, that there are differing views about the form that change should take, and that there are likely to be many proposals put forward to the Royal Commission.

relatively few people get damages

Only a small percentage of those who suffer industrial injuries or industrial diseases receive damages under the common law system. A recent project carried out by the London School of Economics suggests that in about 10 per cent of accidents the victim receives some damages, a figure which agrees closely with the estimates made by Professor Atiyah and Dr. Ison. In about one-tenth of the cases, therefore, the victim receives compensation from two sources : social insurance and damages. The other 90 per cent receive only social insurance payments which, in our view, are grossly inadequate as a form of compensation. The system can be seen to produce a situation of social inequity for which it is difficult to see any justification. The reasons for the apparently inequitable treatment are complex but a major factor is the obligation to prove liability against another party. It is also due in part to ignorance of the system on the part of accident victims and importantly, to the general fear among ordinary people of the possible implications of launching legal action. There is also the very real fear of damaging workmates by such action.

the need to prove negligence

To prosecute a successful claim at common law, the claimant must prove that his employer has been negligent in his duty towards the safety of his employees. The definition of an employer's duty in this respect has varied over the years and has been affected by both legislation and by judgments in the Courts, but can be stated as the duty " to take reasonable care for the safety of his workmen." This is usually taken to mean that an employer should provide against

reasonably foreseeable hazards to safety and that he is negligent if he fails to do so. However, this definition is essentially subjective in its terms and capable of widely differing interpretation. To some extent, therefore, the question of whether negligence is held to exist is a matter of chance and can result in a situation where victims of not greatly dissimilar accidents may be treated in markedly different ways.

Even where negligence has existed it is often extremely difficult for the injured person to provide adequate proof. In a real sense he is in a position of great disadvantage. In extreme circumstances the employer (or his supervisory staff) could remove evidence which might otherwise be available to the claimant, but where extreme measures of that kind are not taken—and this is probably true of the majority of cases—the employer not only has sole access to certain records but is also in a position of authority over witnesses. The employer may act properly and not exert his authority in a positive sense but it nonetheless exists and may be a real factor in determining the attitude of potential witnesses.

In practical terms, therefore, action for damages involves a strong element of chance and often results in situations which the layman finds it difficult to understand because they appear to have little relevance to his need in a time of great difficulty and distress.

the system is costly

Because of the need to prove liability and negotiate quantum, claims for damages usually involve substantial costs. Often both parties to a case obtain their own medical reports, engineers' reports and employ solicitors—and sometimes Counsel. In considering costs, account must also be taken of the time and salaries of trade union officials and insurance company staff who are involved in negotiating and investigating cases. The potential cost is clearly an important factor which discourages individuals from taking up cases, and even where a trade union offers this facility as part of its services to members, there are clearly financial limits which mean that doubtful cases are refused or abandoned at a subsequent stage. In practice, therefore, many people who might well have been awarded damages and judgment either do not take action or see their cases dropped before that stage is reached. The cost factor acts in particular to discourage claims where damages are likely to be small and where costs will represent a large proportion of—or even exceed—the damages awarded. This may in part account for the situation in which only a small proportion of industrial accidents lead to common law claims.

On the cost of the system as a whole it has been estimated by Professor Atiyah that almost the same amount of money goes into the " administration " of the tort system as is awarded in damages. In this connection " administration " covers expenditure on legal fees, insurance premia, medical and technical reports. Experience in New Zealand seems to have been broadly similar. A Royal Commission which investigated the problem concluded that administrative costs represented an amount equal to about two-thirds of the compensation awarded under the common law system.

In comparison with the State industrial injuries scheme the tort system appears to be very costly. It is true that the two schemes are based upon separate concepts and that the composition of administrative costs varies as a result. However, it does not seem unreasonable to make a broad comparison between the costs of administration for the common law system—which we have seen is estimated to be approaching 100 per cent—and that of the State industrial injuries scheme where the cost which the Minister is able to estimate is about 11 per cent.

long delays

Delays appear to be inherent in the system and it is not unusual for the victim of an industrial accident to wait for several years before final settlement of his case.

TIME ELAPSED BETWEEN NOTIFICATION TO UNION AND SETTLEMENT OF CASE

1970	under 6 months	6—12 months	12—18 months	18—24 months	2—3 years	over 3 years	total
successful	21	85	59	30	40	13	248
unsuccessful	23	24	6	3	2	3	61
total	44	109	65	33	42	16	309
1971							
successful	39	62	38	29	23	14	205
unsuccessful	20	20	11	3	8	3	65
total	59	82	49	32	31	17	270

The table above indicates the delay involved in cases which the Union's Legal Department completed in 1971 and in 1972.

The delay appears to derive from two factors. First, it is often in the interests of insurance companies to delay settlement and, therefore, postpone payment and even "good" employers may sometimes operate in this way. Second, the Courts are already overloaded and there may be substantial delay before a case can be scheduled. It was estimated by the Winn Committee that a one per cent increase in the number of cases coming before the Courts would create an intolerable burden with which the present system would be completely unable to cope.

The POEU's experience tends to support this view. The total number of cases settled through the Legal Department during 1972 was 292; of these 82 per cent were settled by the Legal Department in direct negotiation, 16.5 per cent were settled by solicitors in direct negotiation, and the remaining 1.5 per cent were set down for hearing in the already overloaded courts.

The long delays have harmful psychological and physiological effects on the injured person in that they hinder rehabilitation. Whilst major considerations about his future economic condition remain unresolved, it is unreasonable to expect from an individual the singular application which physical/psychological rehabilitation may require. "Compensation neurosis" is, therefore, an accepted medical condition, and it is often the case that a victim does not completely recover until his case has been settled.

lump sum payments

Compensation paid as a result of claims for damages takes the form of lump sum payments; and, in our view, this form of compensation can have serious disadvantages to the individual. First, it adds to delays in settlement because lawyers are reluctant to advise clients to settle until their medical condition is sufficiently stable to allow a reasonably accurate prognosis. In some cases this will result in individuals who are urgently in need of money accepting an inadequate offer.

Second, the payment is final, and if the injured person's condition deteriorates there is no possibility of reassessment. Third, the lump sum represents in part an estimate of the amounts which would have been paid to the individuals at regular intervals in the future in the form of income and which could never have been obtained in the form of a lump sum. The estimate itself is difficult to make and, in the event, may not be an accurate reflection of future losses caused by an injury. Moreover, the lump sum is to some extent an invitation to mortgage the future in the sense that present use of future income may result in hardship at a later time.

Fourth, the value of lump sum payments can be quickly eroded by periods of rapid inflation. Whilst it may be argued that proper investment of such a sum would protect it against the worst effects of inflation—or, indeed, that the sum

might offer the opportunity to the individual to establish himself in business—the fact remains that the majority of people who may receive such lump sums are inexperienced in both these activities and, on balance, are likely to suffer deterioration of their assets.

accident prevention

One of the main arguments often used in defence of the common law system is that it acts as a spur to safety consciousness and has, therefore, an important role to play in the prevention of industrial accidents. The basis of this claim appears to be that the threat of damages creates a financial incentive to employers to ensure the provision of adequate safety precautions and that the stigma which may be attached to negligent defendants may also exert influence in the same direction. In the POEU's view it is doubtful if these assertions were, even historically, ever valid ; certainly they appear to have little foundation today.

As the New Zealand Royal Commission Report pointed out the economic consequences of negligent conduct in industry have through the medium of insurance, been spread over the community as a whole. In these circumstances it is difficult to see any financial incentive to employers to be safety conscious.

It has also been argued in support of the present system that an incentive still exists because insurance companies can weight insurance premia against employers with bad accident records. It is doubtful whether such weighting would have the effect claimed for it, even if widely used. In the general economic conditions of the last 25 years it is more likely that extra insurance premia would also be met by the community at large, but in fact it seems unlikely that insurance companies actively pursue a policy of differential weighting. The crucial factor in determining the number of accidents appears to be the nature of the industry rather than the safety record of the individual employer, and it is this factor which seems to determine the insurance companies' policy on premia rather than individual employer's safety records. The Robens Committee was aware of this, and pointed out that the principle of " spreading the risk " leaves negligent employers little or no worse off financially than the generality of employers.

The views above are not intended to imply that the attitude of individual employers towards accident prevention are not a significant factor. The POEU's practical experience in this field and its knowledge of problems arising in other industries leads clearly to the conclusion that it could be a significant factor in reducing the number of accidents. The problems of safety in employment could, in our view, best be dealt with by the introduction of statutory safety committees with adequate powers. If, however, it was thought that a differential financial weighting against employers with bad records could be instrumental in achieving this aim, it could probably be carried out more effectively under a social insurance system as is the case in some other countries—for example, Germany. Where employers are negligent in their duty towards the safety of employees it should not be left to the insurance companies to penalise them (or not, according to whatever policy individual insurance companies may be pursuing) because this tends to undermine the whole concept of safety legislation and lead towards the State abdicating its responsibilities in this field.

In our view, one of the most serious indictments of the common law system is that it hinders accident prevention. At work place level both sides will often not discuss openly a particular accident with a view to future prevention, neither will the employer take remedial action, because any information or any action might prejudice a common law claim on the accident in question. Such attitudes make the job of safety committees doubly difficult and even, in some circumstances, impossible. The Robens Committee drew attention to the fact that the common law system often diverts attention from accident prevention to questions of compensation. This made it more difficult to frame sensible and effective statutory pro-

visions for accident prevention because those who were consulted tended to concentrate upon the possible implications which the provisions might have in the field of compensation. The conclusion of the Robens Committee was that, apart from some relatively minor issues. ". . . it is very difficult to find evidence that the system contributes much of direct value to accident prevention whereas there is much evidence in the other direction."

conclusions

The criticisms detailed above may be summarised as follows:

1. The present State industrial injuries scheme is unsatisfactory in its coverage ; in particular, it does not cover accidents arising on journeys between home and the work place and, in some cases, journeys to or from detached duty ; it does not cover incapacities arising from some industrial processes ; it deals unsatisfactorily with a range of industrial diseases. Moreover, the benefits available under the scheme are inadequate and often result in an abrupt and marked fall in income at a time when the individual concerned may be in a situation of acute discomfort and distress.

2. The common law system is concerned primarily with the cause of an accident rather than its social and economic effect upon the individual. Whether negligence is held to exist is subject to a degree of chance, and since the burden of proof is on the plaintiff he often starts from a position of disadvantage. Only a small proportion of accident victims ever receive damages ; and in most of these cases the settlement is reached outside the Courts. The procedure is costly, often subject to long delay and tends to hinder the important work of accident prevention.

Despite the criticisms of the common law system, the situation might be more tolerable if the social insurance system provided adequately for injured and incapacitated persons. In those circumstances, the tort system might be regarded as a kind of lottery through which some accident victims were lucky enough to get extra compensation. This would, no doubt, still appear unfair to the majority who did not receive extra money but if they were reasonably provided for anyway, the edge of criticism might well be blunted. That situation does not, however, exist. Benefits under the State social insurance scheme are inadequate and do not provide the victims of industrial accidents and diseases with an income compatible with a reasonable standard of living. The present flat rate payments bear particularly severely on those who, like many members of the POEU who have incomes well above the lowest levels in industry and whose standard of living, therefore, tends to be geared to levels well above that provided by social security benefits.

The problem of improving benefits to more acceptable levels is basically a question of the use of resources. In our view, the problem cannot be resolved by retaining the present methods and attempting to improve the benefits of the State scheme by the usual method of increasing contributions, even if such increases were concentrated largely in the earnings related sector of the scheme. The payments at present made by work-people constitute a substantial poll tax which has already become an intolerable burden to the lower paid worker.

The proposals which we wish to put forward and which are detailed in the next chapter envisage the ending of both the present State industrial injuries scheme and the common law system, and their replacement by legislation providing a single comprehensive and unified compensation system for the victims of industrial injuries and diseases. The ending of the common law system would allow a substantial transfer of resources which at present—and particularly from the point of view of the majority of accident victims—are wastefully employed. These resources would help to raise to an acceptable level the benefits which should be available under the new unified scheme.

It would of course, follow from the pro-

posals that industrial accident victims would no longer be able to seek compensation in the Courts, because no action for damages would lie in respect of injuries where the new legislation gave cover to the accident in which the injury was sustained. It is recognised that this would represent a fundamental change in the law but, in our view, it is a change which is overdue, because the present law is demonstrably unsatisfactory, extremely expensive to operate and yet benefitting relatively few and taking little account of need. Such a change can help to ensure the switch of resources that is necessary to enable a more reasonable and rational treatment of injuries and incapacities arising from industrial accidents.

The POEU's proposals also envisage the end of shared responsibility for financing industrial injury benefits. The new unified scheme should be financed by employers, a concept which has been adopted in a number of other countries. It is recognised that in practice a scheme financed by employers will ultimately be paid for by the community generally (in the same way as insurance premia tend to be met under the present system). In our view, it is right that this should be so. All who work help to create wealth from which society in general benefits, and it is right that society should provide adequately for those who are unfortunate enough to be injured or incapacitated in the course of employment.

3. proposals

As indicated in the last chapter the POEU proposals envisage the abolition of the two existing methods of compensation, and their replacement by legislation providing a single comprehensive and unified scheme. The new legislation should cover all industrial accidents including disabilities arising from industrial processes and accidents occurring during travel to and from work and to places of detached duty. It would also cover all diseases and incapacities which, on the balance of probabilities, had arisen from employment. All employed persons will be covered by the scheme and benefits under it will not be dependent upon liability. " Cause " will be relevant only so far as it can help to prevent similar future accidents.

In formulating these proposals we have taken into account developments in other countries, and have adopted ideas where they seem appropriate. In particular we have drawn from experience in New Zealand where a scheme broadly similar to that which we are suggesting resulted from the Woodhouse Report into compensation for personal injury in New Zealand.

The main advantages of the proposed scheme would be:

1. It would give improved cover to all industrial injury victims on an equal basis.

2. Awards of benefit could be made more quickly since no disputes over liability would be involved.

3. The benefits would provide the injured person with an income nearer to that to which he is accustomed and would be socially more equitable than the present situation in which most accident victims suffer a fall in their living standards.

4. Since disputes over " cause " would not affect payment, both sides at the work place would be more willing to share information about particular accidents—an attitude essential for future accident prevention.

5. The payment of weekly benefits would allow proper account to be taken of changes in the medical condition of the injured and of improved living standards in the community.

6. The administrative costs of the scheme as a proportion of the compensation paid will certainly be lower than those of the present common law system.

the coverage

The POEU's proposals relate only to industrial accidents and diseases. We are, of course, aware that policy proposals in this field may have ramifications for compensation in other accidents—for example, motor accidents—but our main preoccupation is industrial, and our proposals are based on the assumption that a new and separate industrial injury scheme would be established.

All employed persons should be covered by the scheme and provision should be made for self employed persons to participate on payment of an agreed contribution. Part time workers could also be covered by the scheme if the hours worked were above a defined minimum each week.

It appears likely that there will be an increasing international mobility of labour in the future and, in the context of our proposals, there will be problems of the treatment of British workers employed overseas and of foreign workers employed in the United Kingdom. In our view, the best way to deal with the problems is to develop adequate reciprocal arrangements with other countries, but we recognise that for a variety of reasons this may not always be possible. Where reciprocal arrangements cannot be developed, British workers should be entitled to benefits under the scheme if they are employed overseas by a British employer subject possibly to a maximum period. There should, however, be a clear requirement that should circumstances arise in which benefit was paid, the individual concerned would seek compensation according to the system which applied in the country of employment

and that any amount so recovered would be repayable to the British scheme. In similar circumstances—and subject to similar conditions—benefits might be made available during their periods of residence in the United Kingdom to foreign workers employed by a United Kingdom registered company.

the benefits payable

In our view a compensation system for the victims of industrial incapacities should provide for a number of different circumstances. The main aims should be

1. To allow the victim to enjoy as closely as possible his previous standard of living whilst he is unable to work. Our proposal for an absence from work benefit is designed to meet this situation.

2. To compensate the widow (or other adult dependants) and the children of any victim of an industrial fatality.

3. To compensate any victim of an industrial accident or disease who, as a result of his incapacity, suffers a reduction of earnings potential after returning to employment.

4. To provide compensation for the non economic losses of pain, suffering, disfigurement and so on.

5. To provide allowances to meet special commitments arising from the incapacity such as the existing constant attendance allowance under the State scheme and special expenses under the present common law system.

There should be provision built into the scheme for regular reassessment of all periodic payments in order to take account of changes in the level of earnings in the industry in which the injury victim was employed. In our view, there can be no justification for any system which condemns the victim of industrial incapacity to a standard of living which falls progressively behind that which he would have enjoyed had the incapacity not occurred. The way to ensure that these circumstances do not arise is for payments to be upgraded regularly—preferably each year—according to changes which have taken place since the last review in the index of average earnings for the industry in question.

absence from work benefit

Absence from work for a period of longer than two weeks which resulted from any industrial incapacity should be paid for at the rate of 90 per cent of the injured person's average earnings after tax. The employer should be liable to pay the first two weeks' absence at a level of at least 90 per cent of post-tax earnings although all industrial incapacities would need to be registered immediately. Many occupational sickness schemes will already provide payments at this level, but others will need to be brought up to the required standard. The gradual spread of voluntary occupational sickness schemes means that our requirements cannot be regarded as a revolutionary proposal nor an unduly expensive one.

A scheme based on loss of earnings benefits rather than flat rate payments is needed so as to allow the injured person to enjoy as closely as possible his previous standard of living, and to take account of his economic commitments. A maximum weekly limit could be set (for example £60 at present rates of pay) and, in our view, consideration should be given to establishing a minimum level. The present system for determining wage related benefits could be used to work out a victim's entitlement, but there are problems with groups such as juveniles recently employed and women newly back at work for whom special provisions would have to be made.

widows' and dependants' benefits

The widow (or other adult dependant) of a man who dies as a result of an industrial accident or disease should receive a weekly pension equal to half the absence from work benefit which the man would have received had he not died. In addi-

tion, a further one-sixth of the man's benefit would be payable in respect of each dependent child subject to a maximum of what the deceased would have received in absence from work benefit. The widow should also receive a lump sum payment equal in amount to three times the annual absence from work benefit appropriate to the deceased. Payments in respect of dependent children would cease when the children became self supporting, and where a widow remarried, payment of benefit would cease, but she would receive a lump sum payment equal to the amount she would have received in benefits during a period of 1 year at the rate of benefit applicable at the date of remarriage.

loss of economic prospects

This benefit, which will be payable only after the injured person has been classified as totally disabled or has re-entered employment, will provide compensation where a permanent disability has affected adversely the individual's future earnings capacity. Thus, if he is unable to follow his normal occupation or has lost promotion opportunities, allowances etc, these should be assessed and periodically reassessed. An individual should receive 90 per cent of his lost earnings capacity subject to a reasonable maximum which would have to be determined in relation to the detailed scheme and the circumstances at the time of its introduction. The concept of loss of economic prospects is, in our view, an important aspect of any compensation system and attention should be concentrated on devising a means for the more accurate measurement of long term losses and their periodic reassessment.

non economic losses

In addition to the benefits which are based upon loss of earnings, present or future, there should be payments to the victims of industrial accidents and diseases to compensate for (a) loss or impairment of any bodily or mental faculty; (b) pain and suffering and the loss of amenities or the capacity to enjoy life including loss from disfigurement.

This benefit would be similar in principle to the present disablement benefit. Within a prescribed maximum, the payment appropriate to an individual would be assessed by an expert tribunal, so far as possible on the basis of prepared schedules. The maximum benefit should, however, be substantially higher than at present—at least double the present maximum—and should be adjusted from time to time by reference to movements in a national index of average earnings.

For the reasons advanced earlier we believe that these benefits—in common with other benefits in the proposed scheme—should take the form of periodic payments. It is recognised, however, that in some cases there may be good reasons for individuals to prefer a lump sum payment. We, therefore, suggest that in the case of this benefit only an individual should have the right after proper consideration of the relevant merits of the two forms of payment, to exercise an option to take a lump sum payment by commutation of benefits over a period of fifteen years. Those who exercise this option would have, depending on the Tribunal's assessment, the advantage of an immediate (and perhaps sizeable) sum of money. On the other hand, they would lose the advantages of having periodic payments revised from time to time as suggested above. This would be a disadvantage that must be accepted by those exercising the option; but, apart from this, they should not be penalised in any other way. In every case—whether compensation is by periodic payment or by lump sum—the assessment should be open to review if it is established that the individual's medical condition had deteriorated.

other benefits

Whilst the benefits discussed cover the main forms of compensation, there will clearly be circumstances which require some provision over and above those already described. The present methods of

compensation recognise special needs, and there appears to be good reason for the continuance of some benefits payable at present.

In particular, certain allowances payable under the present State scheme—that is, the constant attendance allowance and the hospital treatment allowance—should continue. Both allowances provide against special difficulties, often in the most acute cases.

There should also be provision akin to the special expenses obtainable under the common law system. This would provide for the reimbursement of certain allowable expenses which arise out of the disability of the accident victim. For example, the need to acquire special equipment in the home in order to allow a severely disabled person some degree of mobility.

administration

The present social insurance system for industrial injuries appears to provide a reasonable model for the proposed system particularly if changes could be made which overcome the points of criticism outlined in previous chapters.

At national level there should be a separate funding of the scheme on similar lines to the present Industrial Injuries Fund. The scheme and its funds should be administered by a separate authority which would operate under the general auspices of the Department of Health and Social Security in much the same way as the present Supplementary Benefits Commission and which would be required to present an annual report to Parliament. Membership of the authority should be drawn from representative bodies.

At local level the present mixture of Insurance Officers' decisions on non medical matters and Medical Board decisions on medical questions appears to be broadly satisfactory, and the present system could easily be adapted to the new scheme. The present appeal procedure also could be adapted to the new scheme with provision for appeals to Tribunals, equivalent to the present Local Appeals Tribunals, Medical Appeal Tribunals, Commissioners and with appeal to the Courts on points of law.

On this basis questions of the registration of industrial accidents, absence from work benefits, payments for loss of economic prospects, widows and dependants' benefits and any special allowances should be decided by the Insurance Officer with appeals to the equivalent of a Local Appeal Tribunal and, where, necessary, to a Commissioner. Questions concerning payments for non economic losses should be decided by a Medical Board with appeals, in the first instance, to the equivalent of a Medical Appeal Tribunal. Because of criticisms of MAT's as outlined above, it would, in our view, be an advantage to have a further stage in this procedure ; and that, where necessary, an appeal from the decision of a MAT should be made to a Commissioner who would be assisted by medical experts.

4. the financing of the proposed system

This chapter deals with the question of finance which it is recognised is of great importance to our proposals. Unfortunately, we are unable to provide detailed estimates covering the whole of the proposed scheme because the information on which such estimates could be made is not available. An attempt has been made however, to estimate costs whereever adequate information is available and these are detailed in the following paragraphs.

the cost of the present methods

It is impossible to provide a precise estimate of the costs but so far as is known, they are:

1. The State Industrial Injuries Scheme. The published figures include payment of injury, disablement and related benefits provided by the Scheme. In the year ending 31 March 1972 the total cost to the Industrial Injuries Fund was £129.1 million including benefit payments of £114.6 million and administrative costs of £14.4 million.

2. To the total under (1) must be added the payment of sickness benefit to victims of industrial injuries who are absent from work for over six months, and for the whole period of absence from work in those cases where claims for injury benefit are not allowed. It has proved impossible to secure any separate costing for these benefits.

3. The cost of the common law system. Exact figures are not available since so many cases are settled out of Court. The London School of Economics' inquiry suggested that in 1971 trade unions won some £20 million in compensation for members who had been involved in industrial accidents. It is impossible to say exactly what percentage of industrial accident cases are handled by unions: but a generous assumption would be that they were involved in about two-thirds of such cases. On that basis the total industrial accident compensation in 1971 would have been around £30 million; and if Professor Atiyah's estimate of administrative costs is correct, then the total cost of the tort system for industrial accidents was about £60 million.

4. Occupational sickness schemes. We are unable to estimate the exact extent and nature of the schemes, but especially in the public sector many employers already meet part of the cost of accidents by maintaining payment of wages and salaries during medically certificated periods of absence from work.

absence from work benefit

With the information available there are two ways of estimating the costs of this benefit. First, in the year ended June 1972 there were 18.2 million days of certified incapacity resulting from accidents at work and industrial diseases. This figure consists of 15.8 million days certified incapacity for men and 2.4 million days for women.

If the same number of days incapacity occured in the first year of the proposed scheme, a rough estimate of costs can be made by applying these figures to the suitably adjusted average earnings of manual workers published by the Department of Employment. In the present context it seems reasonable to use manual workers earnings only, since it is to this group that the majority of industrial accidents occur. In April 1973 the average weekly earnings of manual workers were £38.1 for males and £19.7 for females. However, these figures constitute gross earnings, whereas the proposed scheme is for an absence from work benefit of 90 per cent of post-tax earnings. It is difficult to produce figures of post-tax income since numerous variables are involved, e.g. the individual marital status, number of children, whether or not he has a mortgage. We have therefore adopted the expedient of an " average man "; in this case a married man with two children, but without a mortgage.

The table below shows the calculation of the absence from work benefit for the

"average man", assuming he receives the married man's personal allowance, plus allowances for two children. No account is taken of other possible tax allowances such as life insurance.

For men, at the rate of benefit shown, the anuual cost would therefore be £29.64 × 2.63 million weeks (converting benefit days to weeks on the DHSS basis of a six day week), which amounts to £77.95 million. For women the calculations are for a single woman or a working wife whose husband is in full time employment. Thus the cost of this benefit for women would be £15.50 × £0.40 million weeks=£6.20 million, and the combined cost £84.15 million.

Second, another basis of estimate is available from figures published by the DHSS showing the numbers of persons incapacitated on the first Tuesday of each month. The figures suggest an annual average of 61,000 injury benefits a week and, on the assumption that the proportionate number of days incapacity attributed to women, that is 13.2 per cent can be applied to the number of benefits being paid ; the annual cost would be £88 million.

Broadly similar results are produced by both estimates and a total cost of around £86 million per annum appears to be of the right order.

However, this cost covers both the amount which would be paid out of the State scheme and the amount which would be met by the employers, who under the proposed scheme, would be responsible for the first two weeks absence from work following an industrial accident. There were 709,000 new claims, for injury benefit in 1972, and on the assumption that 13.2 per cent of these were from women, the cost of the first two weeks would be £39 million.

On this calculation the direct cost to the State scheme would therefore be about £47 million and the employers cost about £39 million. The latter figure is however likely to overestimate the employers liability, because not all the new claims would lead to an absence from work of as long as two weeks. Indeed such figures as are available suggest that in about 35 per cent of cases where injury benefit has been paid in recent years, the period of absence was two weeks or less. The calculation may provide guide to costs. There are two factors which would increase this cost but which we cannot estimate. First, the figures used in the above estimate do not include persons receiving sickness benefit after their entitlement to injury benefit has lapsed or has not been granted. It may be assumed that these represent a relatively small number of cases although the number of days benefit paid would be substantial and would be a charge on the funds of the new scheme. Second, the estimate takes no account of the effect of widening the scope of the scheme to cover accidents occurring during travel to and from work, process cases and diseases not at present prescribed. No information is available which would provide the basis for an estimate of this additional cost.

widows benefits

At 31 December 1971 there were 29,858 widows or other dependants' pensions being paid to those whose husbands had been killed in industrial accidents. These

PROPOSED BENEFITS

weekly earnings	annual earnings	tax allowance	annual tax paid	90% of annual post-tax earnings	weekly absence from work benefit
average family man					
£38.10	£1981.20	£1085	£268.86	£1541.11	£29.64
single woman					
£19.70	£1024.40	£595	£128.82	£806.02	£15.50

pensions were supplemented by allowances which were being paid in respect of 12,599 children. Under the POEU's proposals the widow would receive half of the absence from work benefit which, on the calculation set out above would be £14.82 a week. Over a year this would cost £23 million. The one-sixth allowance for a dependant child would provide £4.94 a week, and the annual cost would be £3 million.

A lump sum payment of three times the annual absence from work benefit it proposed for all widows and, on the rates of benefit already calculated this would amount to about £4,624 per widow. A total of 1,561 deaths qualified for benefit under the existing scheme in 1971 and assuming that the numbers remained broadly the same the cost of this benefit under the proposed scheme would be £7.22 million. The total cost is shown in the table below.

WIDOWS AND DEPENDANTS BENEFITS	£ million
widows pensions	23.01
lump sums	7.22
children's allowances	3.24
total	33.47

loss of economic prospects

No reasonable estimate of the cost of this benefit can be made until it has been determined exactly what would be paid for. Although the benefit will be similar in principle to the Special Hardship Allowance available under the present State scheme, the cost is likely to be higher because the benefit will be related directly to the loss of economic prospects and not subject to the same restrictions as the present allowance (that is any maximum would not necessarily be related to the non economic loss benefit in the way that the Special Hardship Allowance is related to the disablement pension).

Such information as is available about the cost of the existing Special Hardship Allowance is not, therefore, particularly helpful as a basis of judgment about the cost of the proposed benefit. We do know, however that 142,000 Allowances were in payment at 30 September 1972, and information obtained from the Department of Health and Social Security indicates that expenditure on the Allowance amounted to £26.5 million in 1971-72. The provisional figure for 1972-73 is £30.4 million.

the non economic losses

No accurate estimate of the cost of this benefit can be made primarily because cost will depend on the level at which the payments are set, but also because the range of items to be covered by the benefit can be defined only in general terms at this stage. Some general comparisons with disablement benefit under the present State scheme may give a broad guide on questions of cost.

In 1971 there were about 135,400 new disablement examinations to determine loss of faculty, and at the end of September 1971 there were 204,000 disablement pensions currently being paid and 215,000 gratuities which had been paid in the year ending on the same date. The total cost of disablement benefit during the year ending 31 March 1972 was about £70.7 million. Since the POEU's proposals in respect of this benefit envisage levels at least double the existing disablement benefit, the cost in 1971-72 terms might be expected to reach £140 million if it is assumed that other factors remained equal. In the event, it is doubtful that this would be the case, and the total cost of the benefit might therefore be in excess of that figure.

It is a matter of regret that better and more detailed estimates of the cost of the proposals cannot be made, but the information available is inadequate for this purpose. The order of cost indicated by our rough estimates is around £220 million a year, but this is clearly an understatement because no estimate was possible for loss of economic prospects' benefit and, as noted, the estimates do

not take account of the extended coverage envisaged in our proposals.

financing the proposed scheme

As already indicated, our proposals envisage that a separate Fund would be established on broadly similar lines to the present Industrial Injuries Fund. The surplus of the present Fund, which is currently in excess of £360 million should be transferred to the new Fund. Thereafter, the scheme would be financed from employer's contributions plus income from investment. Because the proposed scheme is geared closely to average earnings it seems that the employers' contribution could best be expressed as a percentage of his total wage and salary bill. In this way the total contribution of each employer would be directly related to both the number of employees and their earnings. In all probability a contribution of between one half per cent and 1 per cent of the total wage bill of an employer would cover adequately the contribution which would be necessary to finance the scheme we have proposed. At present wage levels the total annual wage bill is about £38,000 million, and a half per cent (190 million) would probably fall below what would be required to meet the cost of the proposed scheme (even if investment income is taken into account). Then if the contribution was fixed at a rate of 0.75 per cent the total income to the Fund would be of the order of £285 million at current rates of pay. To an individual employer with, say, 1000 employees and a total wage bill of £1.5 million, the cost of the proposals would be £11,250 a year, which is equal to about 22p per employee per week. This would not be a net increase however since the firm would no longer have to pay employers liability insurance premium.

summary

Whilst recognising fully the immense step forward which the present State industrial injuries scheme represented when it was introduced in 1948 it is necessary, after twenty five years of operation, to look critically at the scheme. There are three major criticisms of the current State scheme: its coverage is not wide enough and its treatment of industrial diseases is unsatisfactory; the appeals machinery needs amendment; and the level of benefits available under the scheme is inadequate. The POEU, there fore, suggests that the existing State industrial injuries scheme be ended.

The common law system is more concerned with the cause of accidents than the needs of the individuals who have been involved in them. Only a small number of persons who suffer accidents at work ever get damages under this system which, because of the need to prove negligence or breach of statutory duty seems weighted against the claimant.

It is also costly, subject to long delays and has, in the POEU's view, an adverse effect upon accident prevention. We therefore, suggest that the existing rights in common law to take action in the Courts for compensation for injuries or incapacities arising from industrial accidents and diseases should be ended.

A new comprehensive State scheme should be established which would provide adequate compensation to all victims of industrial accidents and diseases on an equitable basis and without regard to liability.

The coverage of the new scheme should be wider than that provided by the existing State scheme, and take account of incapacities arising from accidents occurring during travel to and from work, or detached duty, from industrial processes, and from all diseases which—on the balance of probability—have arisen from employment.

The new scheme should provide benefits more closely related to the average earnings of the individual, and should be reviewed annually to take account of improvements in earnings. There would be four main groups of benefit.

1. *Absence from work benefit.* Absence

from work for a period of longer than two weeks should be paid for at the rate of 90 per cent of the injured person's average earnings after tax. The employer would be liable to pay for the first two weeks' absence at a rate at least equal to the absence from work benefit.

2. *Widows and dependants' benefit.* A widow would receive a weekly pension equal to half the absence from work benefit her husband would have received. In addition, a further one-sixth of the man's absence from work benefit would be paid in respect of each dependent child up to the limit of what the deceased would have received. The widow would also receive a lump sum payment of three times the anuual absence from work benefit appropriate to the deceased.

3. *Loss of economic prospects.* This benefit will compensate an injured person who suffers a permanent disability which affects adversely his future earnings capacity.

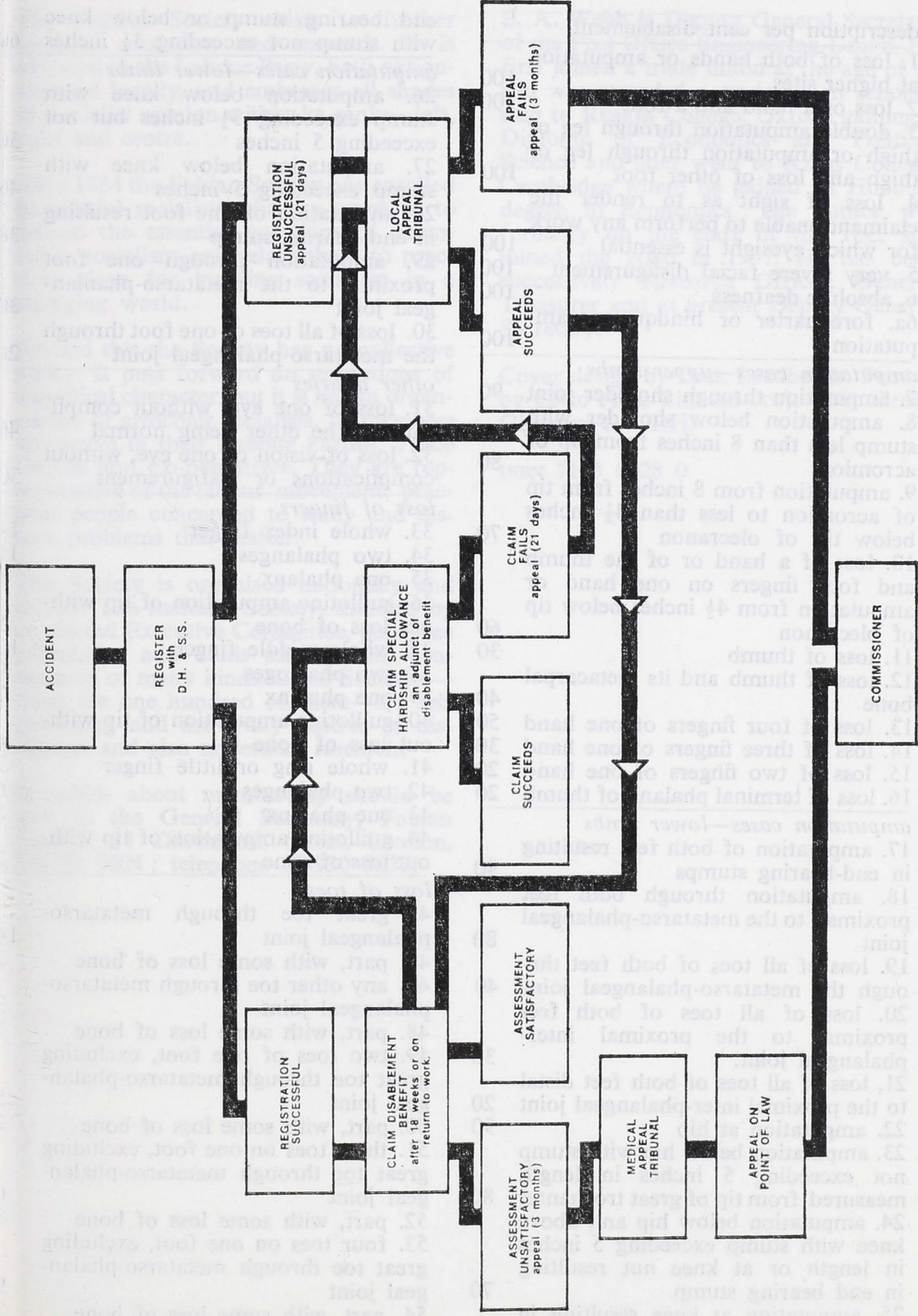
4. *Non economic losses.* There should be payment to victims of industrial accidents and disease to compensate for (a) loss or impairment of any bodily or mental faculty (b) pain and suffering and the loss of amenities or the capacity to enjoy life including loss from disfigurement.

Certain other benefits should also be available to deal with special circumstances : for example, the special expenses obtainable under the present common law system and the constant attendance allowance under the existing State scheme.

The new scheme should be administered broadly along the lines of the existing State scheme with similar, but improved, appeal procedures. It should be separately funded and the surplus of the existing scheme should be transferred to the new fund. The new scheme should be financed by employers' contributions fixed as a percentage of their total wage and salary bill. In our view, the proper yardstick by which any system of compensation should be measured is the treatment accorded to those who require assistance. If their interests are not properly safeguarded, then the system is not fulfilling its purpose. Judged by these standards we do not think that present methods can be considered satisfactory ; and, in particular, the common law system fails in this respect. As things stand the law is not concerned primarily with the needs of individuals who have been incapacitated, but with the cause of the incapacity and the liability for it. Such a premise rules out any possibility of the majority of accident victims ever receiving compensation at common law. Many more fail or do not attempt a claim because of the difficulty of proving liability, the possible cost, the delay and the general complexities of such action. It is small wonder that relatively few accident victims ever receive damages under common law.

Basically, it is the premise itself which is wrong. It is no longer defensible that the injured should receive compensation only if they can prove another party's liability for the accident which caused their injury. In our view, the needs of accident victims should be the overriding consideration, and compensation should be given without regard to liability. In this way the real needs of people enmeshed in difficult and unfortunate circumstances can be met fairly and without the prolonged delay and anxiety inherent in the present system. The proposals set out above provide an alternative to present methods, and would establish a basis for equitable treatment in respect of compensation. Clearly, if one comprehensive system is to replace the existing methods the benefits available must be as such to provide reasonable compensation to all who are unfortunate enough to need them. We believe that the benefits outlined in the Union's proposals represent the minimum which a comprehensive system must provide if it is to fulfil its proper function.

appendix 1. the present DHSS claims machinery



appendix 2. prescribed degrees of disablement

description	per cent disablement
1. loss of both hands or amputation at higher sites	100
2. loss of a hand and a foot	100
3. double amputation through leg or thigh or amputation through leg or thigh and loss of other foot	100
4. loss of sight as to render the claimant unable to perform any work for which eyesight is essential	100
5. very severe facial disfigurement	100
6. absolute deafness	100
6a. forequarter or hindquarter amputation	100
amputation cases—upper limbs	
7. amputation through shoulder joint	90
8. amputation below shoulder with stump less than 8 inches from tip of acromion	80
9. amputation from 8 inches from tip of acromion to less than 4½ inches below tip of olecranon	70
10. loss of a hand or of the thumb and four fingers on one hand or amputation from 4½ inches below tip of olecranon	60
11. loss of thumb	30
12. loss of thumb and its metacarpal bone	40
13. loss of four fingers of one hand	50
14. loss of three fingers of one hand	30
15. loss of two fingers of one hand	20
16. loss of terminal phalanx of thumb	20
amputation cases—lower limbs	
17. amputation of both feet resulting in end-bearing stumps	90
18. amputation through both feet proximal to the metatarso-phalangeal joint	80
19. loss of all toes of both feet through the metatarso-phalangeal joint	40
20. loss of all toes of both feet proximal to the proximal inter-phalangeal joint.	30
21. loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
22. amputation at hip	90
23. amputation below hip with stump not exceeding 5 inches in length measured from tip of great trochanter	80
24. amputation below hip and above knee with stump exceeding 5 inches in length or at knee not resulting in end bearing stump	70
25. amputation at knee resulting in end bearing stump or below knee with stump not exceeding 3½ inches	60
amputation cases—lower limbs	
26. amputation below knee with stump exceeding 3½ inches but not exceeding 5 inches	50
27. amputation below knee with stump exceeding 5 inches	40
28. amputation of one foot resulting in end bearing stump	30
29. amputation through one foot proximal to the metatarso-phanlangeal joint	30
30. loss of all toes of one foot through the metatarso-phalangeal joint	20
other injuries	
31. loss of one eye, without complications, the other being normal	40
32. loss of vision of one eye, without complications or disfigurement	30
loss of fingers	
33. whole index finger	14
34. two phalanges	11
35. one phalanx	9
36. guillotine amputation of tip without loss of bone	5
37. whole middle finger	12
38. two phalanges	9
39. one phalanx	7
40. guillotine amputation of tip without loss of bone	4
41. whole ring or little finger	7
42. two phalanges	6
43. one phalanx	5
44. guillotine amputation of tip without loss of bone	2
loss of toes	
45. great toe through metatarso-phalangeal joint	14
46. part, with some loss of bone	3
47. any other toe through metatarso-phalangeal joint	3
48. part, with some loss of bone	1
49. two toes of one foot, excluding great toe through metatarso-phalangeal joint	5
50. part, with some loss of bone	2
51. three toes on one foot, excluding great toe through metatarso-phalangeal joint	6
52. part, with some loss of bone	3
53. four toes on one foot, excluding great toe through metatarso-phalangeal joint	9
54. part, with some loss of bone	3

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