Private Versus State Systems for Industrial Accidents and Invalidity Insurance in the U.K.

by Chris Williams *

1. Introduction

The provision for workmens compensation in Great Britain is characterized by the existence of two independently operated systems;

- Industrial Injuries System; a state operated “no fault” system initially created in 1948 following enactment of the National Insurance (Industrial Injuries) Act 1946, but now governed by the Social Security Contributions and Benefits Act 1992.
- Employers Liability System; a compensation system operated by insurance companies and based on common law liability or breach of statutory duty.

2. Groups of persons covered including the issue of compulsory or voluntary insurance

The State Industrial Injuries System (IIS) is currently funded by general taxation and is, to that extent, compulsory. It provides cover to all employed earners, and, therefore does not apply to self-employed persons, nor persons not occupied in paid work. A dependent relative of the injured employee has no right to claim under the IIS.

The Employers Liability System (EL) is supported by compulsory insurance the majority of which is provided by proprietary insurance companies. The Department of Trade and Industry is the regulatory body governing the operation of insurance companies. The legislation applicable to employers liability insurance is the Employers Liability (Compulsory Insurance) Act 1969, with Regulations issued in 1971, 1975 and 1994 governing the operation of the Act. The statutory provisions for compulsory insurance are currently under review. This follows changes in operating practice with insurance companies no longer providing unlimited liability cover under employers liability insurance. The main focus of attention relates to the statutory minimum limit of indemnity which is £2m any one occurrence, any one employer. Insurance practice is to provide a standard limit of indemnity of £10m

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any one occurrence, with additional cover purchased at the discretion of the employer. Insurance market capacity is currently estimated to be £50m any one occurrence, except for offshore oil exploration for which special arrangements exist.

Whilst the compulsory insurance regulations apply only in respect of employees, i.e. persons under a contract of employment, in practice most EL insurance policies will protect the employer in respect of liability for bodily injury sustained by self-employed persons working for the employer under a contract for services. In some circumstances, such a person is placed in the same position as an employee in relation to an alleged breach of duty by the employer resulting in injury or disease. Therefore, it is convenient for insurance companies to treat claims for compensation by self-employed persons in these circumstances as a claim under employers liability insurance.

A dependant relative in the case of a fatal workplace accident is likely to pursue an EL claim against the employer and generally, would be successful, subject to satisfactory evidence of the employer's liability.

3. Range of benefits

3.1. Industrial Injury Scheme

Benefits are payable in respect of:

- Personal injury (physical or mental) caused by an accident arising out of or in the course of employment.
- Prescribed diseases, provided there is a causal link to specific circumstances of occupation.

Conditions applicable to the payment of benefits are:

- Disability must be assessed as a minimum of 14%, except for pneumoconiosis, byssinosis or diffuse mesothelioma for which the minimum assessment is 1%.
- Payment commences after a waiting period of 90 days from the date of the accident or onset of the disease.

For claimants suffering injury or disease after 1st October 1990, there are three types of benefits payable:

- Disablement Benefit, which is subject to the assessment and time qualification described above, and must be payable before payment can be made under the other benefits.
- Constant Attendance Allowance, which is payable additionally to claimants who are receiving benefit at the 100% rate and as a result of their industrial injury or disease are in need of attendance from others. The amount of benefit is dependent upon the level of attendance needed; the levels of gradation are, exceptional, intermediate, normal maximum and part time. The amount of benefits is based on the assessment applicable to the claimant's circumstances.
- Exceptionally Severe Disablement Allowance, which is payable to those claimants receiving one of the two highest rates of benefit under the Constant Attendance Allowance, and whose need for attendance is likely to be permanent.

Current entitlements to benefits were introduced following progressive changes during the 1980s, which for some new claimants resulted in the loss of entitlement to some benefits. Existing claimants entitled to the withdrawn benefits continue to receive

payment in respect of their entitlement. The withdrawn benefits included a Death Benefit payable to widows and a Reduced Earning Allowance.

The amount of Disablement Benefit payable is based on loss of faculty and is not, therefore, earnings related. All benefits are free of income tax liability and, in appropriate cases, can be enhanced by entitlement to other benefits available in other sections of the Social Security Benefit system. A recent survey indicated that on average 73% of IIS beneficiaries receive at least one other social security benefit.

The levels of IIS benefits applicable in recent years are as shown in the following table.

Table 1

INDUSTRIAL INJURY SCHEME BENEFITS					
Type of benefit	Amount of weekly benefit payable				
	1992/93	1993/94	1994/95	1995/96	1996/97
Disablement benefit (100% rate)	£88.40	£91.60	£93.20	£95.30	£99.00
Constant attendance allowance	£70.80	£73.40	£74.80	£76.40	£79.40
Exceptionally severe disablement allowance	£35.40	£36.70	£37.40	£38.20	£39.70

Notes: (a) Amounts shown are maximum payable, actual amount would relate to assessment of disability, and age of claimant except for the Exceptionally Severe Disablement Allowance which is a flat sum payment. Most injury assessments fall into the range from 30% to 40% disability; disease assessment is higher with an average of 50%.

(b) Benefit can be awarded permanently or on a temporary basis. In the latter case automatic review takes place after each period of entitlement has expired.

(c) No death benefit is payable.

(d) Benefits are payable in respect of either personal injury or prescribed disease.

(e) Assessment will take into account pre-existing disabilities which are cumulative for the purpose of assessment.

(f) Annual increases in benefits are linked to price inflation indices.

Source: Department of Social Security.

The current size of IIS benefits can be measured against earnings, details of which are shown in the following table.

Table 2

Full-time employees on adult rates						
Average gross weekly earning	Male			Females		
	Manual	Non-manual	All	Manual	Non-manual	All
	291.3	443.3	374.6	188.1	288.1	269.8
Distribution						
10% earn less than	166.9	204.1	182	114.8	155.6	141.1
25% earn less than	211.1	280.1	237.1	137.4	194.7	179.5
50% earn less than	271.8	384.6	323.2	171	256.2	237.2
25% earn more than	347.1	519.5	442.7	222.1	355.6	332.5
10% earn more than	437.5	712.7	600.8	282.6	445.3	430.7

Note: All amounts are shown in sterling (£), as at April 1995

Source: New Earnings Survey 1995

Assessment for benefit are completed by an Adjudicating Medical Authority, of which there are about 600 appointed. Rights of appeal against the decision of an AMA exists to a Medical Appeals Tribunal (MAT) on medical matters, or, on matters of law only, the Social Security Commissioner, followed by appeal to the High Court then the House of Lords.

In cases of physical disability a scale of disability assessments exists, but the AMA may vary the percentage depending on the individual circumstances. Examples are shown in the following table.

Table 3

PERCENTAGE ASSESSMENTS	
Description of injury	Degree of disablement
Loss of a hand and foot	100%
Absolute deafness	100%
Loss of thumb	30%
Loss of thumb and its metacarpal bone	40%
Loss of one eye, without complications, the other being normal	40%

Source: Social Security (General Benefit) Regulations

In the case of industrial disease, benefit is payable only in respect of prescribed diseases. There are four categories;

- Conditions due to physical agents (10 diseases).
- Conditions due to biological agents (13 diseases).
- Conditions due to chemical agents (29 diseases).
- Miscellaneous conditions (10 diseases).

As well as suffering from a particular prescribed disease a claimant must establish;

- A disability of at least 14% ; for pneumoconiosis, byssinosis and diffuse mesothelioma the disability need only be 1%.
- An occupational link as indicated in the prescribed disease schedule.

Example of prescribed disease and the expected occupational link are shown below.

A -	Condition due to Physical Agents	
A2 -	Heat Cataract	Frequent or prolonged exposure to rays from molten or red-hot metal.
A4.	Cramp of the hand or forearm due to repetitive movements	Prolonged periods of handwriting, typing or other repetitive movements of the fingers, hand, or arm.
B -	Conditions due to Biological Agents	
B1	Anthrax	Contact with animals infected with anthrax or the handling (including the loading, unloading or transport) of animal products or residues.
B5	Tuberculosis	Contact with a source of tuberculosis infection.

C -	Conditions due to Chemical Agents	
C1	The poisoning by lead or a compound of lead.	The use or handling of, and exposure to the fumes, dust, or vapour of lead, or a compound of lead, or a substance containing lead.
C12	Poisoning by methyl bromide.	The use or handling of, or exposure to the fumes of, or vapour containing methyl bromide.
D -	Miscellaneous conditions	
D2	Byssinosis	Work in any room where any process up to and including the weaving process is performed in a factory in which the spinning or manipulation of raw or waste cotton or of flax, or the weaving of cotton or flax, is carried on.

The prescription of diseases is reviewed on a regular basis by the Industrial Injuries Advisory Council (IIAC). The Council is established and governed by the provisions contained in the Social Security Administration Act 1992. The Council has three roles;

- to advise on the prescription of industrial diseases;
- to advise on Regulations under the Social Security Contributions and Benefits Act 1992 and on matters referred to it by the Secretary of State;
- to advise on the Industrial Injuries Scheme itself.

To assist IIAC in matters relating to the prescription of industrial diseases, the Council established, in 1983, a dedicated Research Working Group. The role of the Group is to monitor and review developments in the field of occupational disease. As well as new areas, the Group monitors existing prescribed diseases as well as diseases which have not been recommended for prescription. The criteria for prescription are;

- a recognised risk to workers exposed to a specific substance or when employed in particular occupations;
- when the link between disease and occupation can be reasonably presumed or established in individual cases with reasonable certainty.

Since 1950, IIAC has published forty-six reports on occupational diseases; some examples are;

Cmnd 8093, 11/1950	- A report on tuberculosis
Cmnd 8350, 9/1981	- A report on vibration white finger
Cmnd 9717, 1/1986	- A report on occupational asthma
Cmnd 2104, 12/1992	- A report on bladder and lung cancer in relation to working in aluminium smelting.

There is no provision under the IIS for payment of,

- medical treatment costs, which would normally be provided free under the National Health Scheme;
- rehabilitation costs, which would normally be payable by the Department of Employment, the responsible government agency;

- employment support costs, e.g. a continuing loss of earnings compared to pre-accident levels attributable to the disability, but the claimant may be entitled to another Social Security benefit.

Employment support costs were available as a benefit prior to 1st October 1990, known as the Reduced Earnings Allowance. It continues to be paid to persons whose claim for IIS benefit relates to injury or disease suffered prior to 1st October 1990.

3.2. *Employers liability scheme*

All claims are based on common law liability or breach of statutory duty relating to an employers responsibility under appropriate health and safety legislation. The onus of proof of liability rests with the injured employee, the plaintiff, and will be based on the evidence presented supported by legal precedent. It is an adversarially based system for claiming compensation; no proof, no payment. The majority of claims are settled by negotiation without recourse to trial which is in the County Court for most claims, or the High Court in respect of the largest claims. However, negotiations will reflect legal precedent established by decision of the Court.

Claims for compensation are based on bodily injury or disease, which will include death as well as physical or mental injury arising out of or in the course of employment. Unlike the IIS, there are no provisions for the prescription of occupational diseases. EL insurance is intended to automatically indemnify the employer, once the courts have established liability. This requires the plaintiff to show;

- the disease has a clear causal link to workplace conditions or the plaintiff's occupation;
- the employer knew, or ought to have known, of the risk to the plaintiff and failed to take steps to eliminate the risk.

Once a precedent has established the liability other workers, with the same disease linked to the same occupational exposure, will be able to recover compensation from their respective employers where the circumstances are the same. Compensation is awarded recognising that the principle objective is to put the plaintiff in the same financial position as if the injury had not taken place, so the award is notionally aimed at depletion at the time of death. Compensation is calculated taking into account;

- General damages, an amount in respect of pain and suffering and loss of faculty linked to the injuries. The claim is supported by medical evidence. No formal scale exists and the amount awarded is dependent upon the extent of loss suffered by the plaintiff. Examples of the range of awards are as follows;

Loss of both arms	£85,000 to £95,000
Loss of one arm below elbow	£37,000 to £42,500
Minor back injury, e.g. strains, sprains, disc prolapsed and soft tissue injury with full recovery	Up to £5,000
Total loss of middle finger	£6,500
Total loss of both legs	£95,00 to £105,000

- Special Damages, an amount in respect of all consequential financial loss. The sum will take into account the particular circumstances of the plaintiff, including;
 - (a) loss of future earnings,
 - (b) cost of future medical treatment, including rehabilitation costs,

- (c) costs of adapting the plaintiff's living accommodation to reflect the restrictions associated with the disability,
- (d) loss of future pension rights,
- (e) loss of DIY function.

In addition, it is normal legal practice for the successful plaintiff to recover most of his legal costs and other expenses incurred in pursuing the claim.

Generally, compensation is awarded as a lump sum payment and is free of tax, although subsequent interest earned from the investment of the award will be subject to normal tax liability. In cases of severe permanent disability, the plaintiff may seek settlement on the basis of a Structured Settlement. Rather than lump sum settlement, compensation is awarded as an annuity payment which is treated as payment of a lump sum by instalments for taxation purposes and is therefore, free of income tax liability.

In certain circumstances, a payment of provisional damages can be awarded by the Court where the medical prognosis is not stable and further undiagnosable deterioration may be expected. A liability for further compensation may be incurred by the employer in these circumstances. The size of compensation awards varies from one claim to another. Settlements range from £500 or less for minor injuries, with in cases of serious permanent disability, e.g. a paralysed victim, amounts in excess of £2m. Typical average costs per claim during the recent years are shown in the following table.

Table 4

AVERAGE COST PER CLAIM	
Year of origin	ACPC
1990	£4213
1991	£4603
1992	£4609
1993	£4729
1994	£4954

Notes: (a) Data for each year are prepared as at 31st December 1994

(b) The most developed year is 1990, representing four years of development and other years will show further development in later years.

(c) There is little reporting of "long tail" industrial disease/deafness claims for these years to date.

A typical distribution of claims by size of settlement is shown in the following table.

Table 5

DISTRIBUTION BY COST OF SETTLED CLAIMS				
Claim amount			Band %	Cumulative %
£0	-	£2,500	15.3	15.3
£2,501	-	£5,000	15.5	30.8
£5,001	-	£10,000	17	47.8
£10,001	-	£20,000	14.4	62.2
£20,001	-	£50,000	17	79.2
£50,001	-	£100,000	11.1	90.3
Over		£100,000	9.7	100

Note: Data do not include outstanding claims.

3.3. Loss Prevention Measures

Neither schemes of themselves contribute directly to loss prevention. Indeed, it has been argued by some for many years that insurance protection for an employer can be counter-productive to loss prevention since the employer is financially protected from the cost of compensation claims. Therefore, the employer has no incentive to improve the accident record. As compensation costs represent a small part of the cost of accidents the argument is not sustainable but is more illustrative of ill-founded expectations of the role of insurance.

It is a well established principle that an employer can be held liable to pay compensation to an injured employee caused by a breach of statutory duty. Whilst the compensation and associated legal costs and expenses will be settled as a claim under employers liability insurance, the total cost of industrial accidents is a powerful motivator in the field of loss prevention. A study completed by one major employer illustrates the position for one year;

Lost time accidents	13
Number of claims	9
Average cost per claim	£5,172
Total lost working days	500
Cost of lost time accidents	
Operator cover	£ 49,000
Lost production	£ 52,500
Medical costs	£ 19,500
Costs of investigation	£ 3,000
Settlement costs	£ 47,000
	<u>£171,000</u>

The employer estimated they would need to generate sales of £3m to cover the cost of these accidents and to otherwise maintain their profit margins.

Similar studies by the Health and Safety Executive estimate the total cost to business at £4.5bn per annum.

Loss prevention is fundamentally dependent upon the development of health and safety statutes, since these provide the foundation guidelines of acceptable practice in the workplace. The earliest law relating to health and welfare of employees enacted in 1802 was concerned with regulating working conditions in cotton mills. From that time health and safety law developed in a manner which was:

- Prescriptive in approach.
- Empirical in its development.
- Restrictive in its application.
- Enforced by government sponsored inspectorates.

It was not until the Health and Safety at Work Act 1974 that health and safety law applied to all workplaces. The Act represented a fundamental change in the approach to health and safety in the workplace; its main provisions were:

- The creation of a single safety authority, the Health and Safety Commission.
- The introduction of general safety duties, largely modelled on common law duties and applicable to both employers and employees.
- To create the power to introduce Regulations, Codes of Practice and Guidelines in consultation with appropriate sectors of industry and commerce.

The change introduced by the Health and Safety at Work Act was considered necessary as the old prescriptive system had reached the limits of effectiveness. Even so, the system produced a long-term reduction in fatalities in factories, which fell from 17.5 per 100,000 employees per annum in the first decade of the century to 4.5 per 100,000 employees by 1970. Since the introduction of the 1974 Act, the trend has been one of further improvement, with the fatal injury rate for 1993/94 reported as 1.2 per 100,000 employees.

The main success of the Health and Safety at Work Act has been to change management culture towards health and safety from a prescriptive regulatory system enforced by government inspectorates to one which is more proactive and self-regulatory. Against this background has developed the concept of loss prevention.

A number of insurance companies have the facility to support the loss prevention programmes developed and managed by major employers. This support is generally provided as an additional free service to the provision of employers' liability insurance. An essential ingredient is the employer's management attitude towards loss prevention, which must be positive otherwise a loss prevention programme will be ineffective. Loss prevention must be seen as an integral part of day to day management responsibility. Where this exists, the insurance company can focus on supporting the employer's loss prevention programme by:

- Completing regular audits to measure the effectiveness of the programme.
- Providing guidance and advice on the application of the new regulations.
- Providing analysis of accident and claims data.

A number of the major insurance brokers also offer similar programmes in competition with the insurance companies. In addition, independent management consultants offer similar services. The last two types of organisation will charge for their services.

In recent years, loss prevention services have been linked more and more to self-insurance programmes. This applies especially to the larger employer for whom the cost of conventional employers liability insurance is no longer considered to be cost-effective. This linkage is examined in Section 5.

The position for other employers is less clear-cut. The theory is, of course, simple. The employer, with support from his insurance company, takes loss prevention measures with the expectation that his claims experience will improve resulting in a reduction in premium costs. A number of practical difficulties exist which make the application of the theory unlikely to succeed.

- The premium rate for smaller employers is based on the overall trade claims experience, so loss prevention measures need to be successfully applied to all risks within that trade category.
- The existing frequency and average claims cost for the individual risk may already be low, even at the statistical average for the trade, so measuring the improvement in claims experience is not sufficiently significant when setting future premium rates.
- The random effect of a single large loss for an individual employer could negate the improvement in claims exposure achieved by the loss prevention programme.
- The financial incentive of a premium rate reduction is insufficiently attractive to the employer, when considered as a saving in business overhead costs.
- The cost of an audit programme carried out by the insurance company can be disproportionately high when measured against the employer's insurance premium.
- Conversely, the employer is likely to be reluctant to meet the cost in addition to the insurance premium.

Consequently, for the majority of the EL portfolio, the insurance company can only seek to give general support to loss prevention measures with the expectation that a long-term overall improvement is achieved, which would then lead to lower rates being introduced. This always assumes nothing new emerges, e.g. new types of injury or disease, which negates the financial benefits obtained from the reduction in accident frequency.

Loss prevention programmes are capable of addressing known physical hazards in the workplace, but, inevitably, are less efficient in identifying solutions to emerging problems, which may cause large claims exposures to insurance companies. For example, the problems of RSI associated with computer keyboard work could not be resolved by loss prevention, until there was sufficient evidence on the causes to enable solutions to be developed. By which time, claims for compensation were emerging.

Despite the difficulties described above, there has been a long term improvement in loss prevention awareness, and changing managing attitude. This can be illustrated from a recent survey by the Health and Safety Commission, which identified;

- Only 2% of small businesses felt legislation and regulation was not necessary.
- 81% of respondents had recently spent money on health and safety measures.
- 50% professed some knowledge of the total cost accidents to their firms.

4. Financing, contribution and premium systems

The financing sources for the two system are as follows;

- Industrial Injury System – since 1990 the funding of the scheme has been from general taxation. Therefore, it could be said both employer and employee make a contribution to the cost of the system. Prior to 1990, employer and employees national insurance contributions included a proportion paid into the National Insurance Fund. From the start of the IIS in 1948 until 1975 a separate Industrial Injuries Fund was maintained, with specific contributions made by employers, employees and the State.
- Employers Liability System – for the majority of employers, insurance protection is purchased with no element of self-insurance and, therefore, the premiums charged by their insurance company are used to finance claims. A large employer with an element of self-insurance will make suitable financial provision from his own resources for that element, whilst paying a premium to an insurance company for the insured catastrophe risk.

Employees make no explicit contribution to the costs incurred by the employer for the financing of the employer liability system. The insurance protection is for the benefit of the employer, not for the benefit of the injured employee, although where liability is established he is the recipient of the compensation payment.

The insurance companies in Great Britain are free to set their own premium rate levels, provided the financial performance of the EL class of insurance satisfies the statutory solvency requirements monitored by the Department of Trade and Industry (DTI). As the DTI is essentially concerned with overall financial performance, unless EL as a class of insurance is a dominant segment, a high degree of freedom will exist. An insurance company has no statutory obligation to publish rates, whether for a particular trade or for an individual risk. Consequently, such information will remain commercially confidential to the insurance company.

In practice, the majority of employers for a given trade segment will pay much the same rate when insured by the same insurance company. Rates vary considerably from one insurance company to another and as policy cover is standard for all, cost is the main competitive driver between insurance companies. This is largely the reason business moves from one insurance company to another on average every five years. On the other hand, larger employers pay a rate which is more reflective of their own historical claims experience, rather than that of their particular trade. Generally, the employer's immediate past five years claims data form the basis of the rating assessment. In completing the assessment the insurance company takes into account;

- The overall trend in claims performance, e.g. increasing or falling frequency.
- The general influence of wage inflation on compensation awards.
- Management's health and safety programme.
- Exposure to "long-tail" disease or deafness claims.
- Impact of large loss frequency and cost.
- The insurance company's own management expenses.

5. Relating systems to theoretical insurance models

5.1. Industrial injuries scheme

The funding of this scheme is from general taxation and is not based on any general principles of insurance models. In practice, budgeting is based on estimated expenditure for the forthcoming tax year. This remains possible since the majority of expenditure relates to existing claimants. Benefits are paid for known amounts which makes budgeting relatively straightforward. An amount will be included for expected new claimants, but balanced by a reduction in the number of existing claimants.

5.2. Employers liability scheme

Insurance funding is based on two principles:

- The calculation of financial exposure depends upon the assessment of frequency of loss and the cost of all losses expressed as the average cost per claim. ($\text{Frequency} \times \text{ACPC} = \text{Exposure}$).
- The contributions (premiums) of the many pay for the claims of the few, i.e. most insured do not claim because they do not have a loss.

The application of these principles is particularly difficult in the case of employers liability insurance, because:

- The use of “occurrence” policy wordings means that the exposure for a given policy year can develop for upwards of 30/40 years when “long-tail” disease claims are taken into account. This makes it very difficult to calculate the expected exposure and, thereby, the risk premium for these claims.
- Policy cover automatically applies, retrospectively in certain circumstances, to the emergence of new types of injury or disease claims, e.g. stress related illness, or RSI, which adds to the difficulty of exposure assessment.
- The development period for accident claims is between three and five years, with ultimate settlement not completed for two or more years thereafter.
- Changes in legislation or a new legal precedent can change original perceptions of exposure or cost after the rates have been set. The true change in exposure or cost may not properly emerge until years after the legal change, but in the meantime the premium has been set and the risk is being run.

In practice, in setting benchmark rates for a trade segment an insurance company will take into account:

- Historical claims experience for the trade over as long a period as possible, adjusted for past inflation levels, i.e. to reflect current settlement cost.
- Frequency and cost of large losses.
- Exposure to known “long-tail” claims, trended for the future.
- Future loss expectations, especially in respect of “long-tail” disease claims.
- An assessment of future inflationary impact.
- Known or anticipated changes in exposure i.e. frequency or cost which may impact on the cost of claims.
- Known or anticipated changes in law which may affect exposure.

Significant problems exist in connection with the “long-tail” disease and deafness claims. Historically, either no provision or an inadequate provision was made in premium rates for these claim, largely as the exposure was not known at the time the insurance was transacted.

Consequently, the insurance companies in their current rates seek to reflect the cost of these old claims. In practice, this is not always achievable, due to;

- Some claims coming from employers no longer in business.
- New insurance companies entering the market without the burden of “old years” claims costs, consequently they can be more competitive in their rating levels.
- Insured employers are reluctant to pay twice, as they see it, for the same risk; firstly when the original insurance policy was purchased twenty or more years ago and again in the current premium rates.

The last of these reasons, particularly for the major employer can be linked to loss prevention programmes. An employer will see the current employers liability insurance premium closely related to past experience, with the insurance company reluctant to reflect the expected future improvement from a loss prevention programme when setting current year rates. Generally insurance companies will be willing to share the benefits of an improving claims experience only when the evidence of that improvement has emerged where they are also meeting the cost of old year claims. This attitude can be a major motivator for the employer to change to a self-insurance programme, since the financial benefits to him can be significant. An insurance company which has not got to carry the “old years” exposure can support such a programme, since greater emphasise can be placed on future expectations of performance. The following actual case study will serve to illustrate;

Employer “A” due to significant capital investment in new plant and machinery has changed the business process which has incidentally reduced exposures to accidents, disease and deafness claims. The last two historically have been a major burden with a significant flow of claims.

Historical EL claims cost:	£1m per annum for each of last 5 years
Normal premium:	£1.3 per annum
This would provide insurance indemnity for all claims regardless of costs.	
Self insurance programme	
Deductible:	£250k any one occurrence and £1.75m in the aggregate for the policy year
Premium:	£350k per annum
Claims Reserve Fund created by employer:	£500k per annum
Total cost of programme:	£850k per annum

This represents a saving to the Employer of £450k against the normal premium of £1.3m which is then available to fund the loss prevention programme. However, the employer carries the primary exposure i.e., the cost of claims falling within the deductible. This provides an incentive to make the loss prevention programme succeed. The investment in new plant and machinery which is inherently much safer to operate ensures a high prospect of success. The improvement in claims exposure achieved was over 60% in the first year.

The above case study illustrates one method used by a major employer to fund employers liability claims. There are a number of alternative plans, all of which are built around the objective of achieving a more economical and efficient method of purchasing

employers liability insurance. These plans generally include an element of premium payment by instalment to match claims payment which may be spread over a period of three to five years for each period of insurance. As with the case study, these plans are only suitable for use by major employers. Estimates suggest there are about 2200 employers who could benefit from this kind of funding plan. Recent research indicates that 60% of captive insurance companies underwrite their parent company's EL insurance programme.

6. Insurance providers

6.1. Industrial injuries system

Current provision is solely by the State. This has prevailed since 1948 when the state system was introduced to replace the previously privately financed Workmens Compensation Scheme. There is no facility for an employer to opt out, since claims are made by employees directly to the IIS without involving the employer other than in the provision of suitable evidence in support of the claim.

6.2. Employers liability system

The scheme is supported with a statutory obligation for an employer to insure (Employers Liability (Compulsory Insurance) Act 1969). Employers liability is transacted by:

- Proprietary companies.
- Lloyds Syndicates.
- Captive insurance companies or self-insurance schemes.

Available data does not provide any useful information relating to the third category. The proportions of the business transacted by the first two categories is estimated to be:

- Proprietary companies – 85%.
- Lloyds Syndicates – 15%.

There exists a completely free market with no tariff rating structure, which was abandoned more than 25 years ago, nor is there a monopoly by any one insurance company or group of companies acting in concert.

Most insurance companies transact EL insurance as accommodation business, that is, it is underwritten only when supported by other insurance business from the same employer. Whilst this may seem restrictive, in practice the competitiveness which exists for business other than EL ensures free competition for EL insurance.

7. The evaluation of state versus private systems

The evaluation of both systems can be undertaken from a number of viewpoints:

- The State.
- The Employer.
- The Employee, as claimant.
- The Insurance Company.
- The self-employed.
- Society in general.

As the systems exist to provide a mechanism for the payment of compensation or benefit to an injured employee, probably the most important viewpoint is that of the employee. It would be wrong, however to ignore the other viewpoints, since each of the parties has a role to play in the provision and operation of the systems.

The fundamental question needs to be: why two systems? Prior to 1948, whilst two systems existed, the claimant had to choose that which was best for his needs. The majority opted for the workmens compensation system because success was more certain, although the levels of compensation were likely to fall short of absolute need. Today, an injured employee can, and does, claim under both systems although the compensation received from his employers liability claim is reduced by the amount of Industrial Injury Benefit, plus other Social Security benefits received as a consequence of the accident, when the compensation exceeds a specified threshold, currently £2500. This process is currently under review and new legislation is expected during 1997.

Whilst this creates hardship in certain circumstances a more significant issue is the cost of supporting or administering two systems; approximately £65m in the case of the Industrial Injury Scheme. Comparable figures are difficult to establish for EL insurance claims, partly because legal costs and expenses are met as part of the claim settlement. Generally, such costs have been estimated as 40% of the total settlement cost. A recent survey by Berryman, a London based law firm, has suggested average costs of resolved claims are;

- 43% of settlement cost for claims in the range from £5,000 to £10,000.
- 47% of settlement cost for claims over £10,000.

This perhaps, represents a total cost in the order of £200m per annum.

To the legal cost and expenses must be added the insurance company's own management expenses and brokerage. No reliable data exists for this item, but this may represent as much as 20% of Gross Premium Income.

On grounds of cost effectiveness alone, there seems to be a case to answer on the benefit of the continuing existence of both systems. Certainly, the amount of compensation or benefit received by the injured employee seems relatively small compared to the total cost of administering both systems.

The present Government has a strategy to reduce overall expenditure. The Department of Social Security, which is responsible for the Industrial Injuries System, is a major spender, with an expenditure of £77.2b in 1995/96 out of a total expenditure of £303.0bn. The majority was allocated to state pensions (£40.9bn) and unemployment benefits (£17.7bn). A future Government may seek to return the Industrial Injuries Scheme to the private sector. The financial benefit, however would be obtained longer term. Since benefit is payable by instalments, rather than a lump sum much of current expenditure relates to existing claimants. In the 1995/1996 year, the total number of persons receiving Disablement Benefit was 209,000, out of which the number of initial assessments is probably about 12% to 15%.

In the meantime, changes to the minimum disability assessment required to receive benefit has produced a substantial reduction in the number of successful initial assessments, as the following table illustrates.

Table 6

DISABLEMENT BENEFITS – INITIAL ASSESSMENTS						
Analysis by year for all industries						
1981	1986	1987	1988	1989	1992	1993
63350	61740	14750	12980	15090	16000	22500

Note: The increase in 1993 is attributable to a large increase in deafness claims.

Source: Department of Social Security Statistics.

Government may view the Employers Liability Systems as an acceptable alternative, with the following advantages;

- It is a well established system for handling claims.
- Supported by financially secure insurance companies.
- Insurance Company Regulations provide the framework for insurance company financial stability, monitored by the DTI.
- Unprofitable results for EL insurance do not seem to affect insurance company performance; with the exception of Municipal Mutual Insurance Company Limited, no significant companies have stopped underwriting EL business or have gone into liquidation.
- Government would be more remote from adverse political effects in the operation of the system.

For the most part insurance companies have an uneasy relationship with EL insurance; to illustrate:

- EL insurance business is consistently unprofitable, with accumulated losses of £588m for the period 1987/1992 inclusive incurred by major companies.
- Performance is affected by “long-tail” disease and deafness claims spanning 30 years; a liability with no income.
- Future prospects for financial performance look less than positive with the possible introduction of
 - (a) compensation valuation to include greater use of actuarial tables (Ogden Tables);
 - (b) changes to the rules for IIS compensation recovery by the Department of Social Security, switching the cost to the employer and his insurance company;
 - (c) possible development of contingency fee system of payment for plaintiff’s lawyers, which would reduce the financial risk to the plaintiff of pursuing a claim for compensation;
 - (d) the possible transfer by Government to EL insurance of Social Security and other expenditure for benefits paid consequent upon industrial injury or disease;
 - (e) proposed changes in tort law made by the Law Commission.
- The continuing use of an “occurrence wording” makes future liability assessment a matter of guess work; financial evaluation of unknown future exposures is the major problem.
- The use of “claim made” policy wording would require a change in compulsory insurance law and may require in the creation of an uninsured loss fund to cover potential deficiencies.
- The “claims made” solution may not prove to be valid, i.e. there is no significant improvement in performance in the long term.

Insurance companies, whilst holding many, if not all of these views, nevertheless continue to compete fiercely for EL business although generally only as an accommodation with other business from the same employer. Looked at from the viewpoint of the employer, and perhaps, Government, this competitive attitude somewhat undermines the seriousness of the genuine problems identified above. In any event, many major employers have largely deserted the standard approach to employers liability insurance. As the case study described earlier illustrates, more beneficial solutions to the problem of the cost of employers liability insurance are available to the major employer and as well as being more cost effective, release funds for financing loss prevention programmes.

Smaller employers, who are unable to self-insure for reasons of financial exposure, buy EL insurance at the lowest possible price balanced against a satisfactory level of security. As major insurance companies have solvency margins well above the statutory minimum level, there is no significant problem associated with security.

Employers also see little to satisfy them in the handling of claims, viz:

- They have no influence on the settlement strategy.
- Insurance companies often do not tell the employer what is happening, especially when settlement is reached well after the event.

The injured employee, for his part, knows little about either system until after the accident, or the onset of the disease. Research completed recently by the Social Research Branch of the Department of Social Security established:

- Over 50% of IIS claimants had no prior knowledge of the system.
- The major source of information was the employee's trade union, not the employer, and also, in the case of prescribed disease claims, local or national newspapers.
- No similar data exists for EL claims, although empirical evidence over many years would support these findings.

The success of an injured employee in claiming under either scheme can be illustrated by the following:

- In 1992 there were reported 140,550 workplace accidents resulting in absence from work of more than three days; non-fatal major injuries were reported as 16,870.
- In the same year, 90,000 claims were submitted under the IIS of which 16,000 resulted in assessments leading to payment of benefits.
- For the same year, major EL insurance companies had received about 50,000 claims by the end of 1994. Of these 40% were settled with no payment to the injured employee. Current average cost of all EL claims is just under £5,000 including costs and expenses.
- EL claims settlements averages 3/5 years from date of notification; interim payments are rarely made, unless liability is not in dispute and the injured employee has suffered severe permanent disability, e.g. paraplegia.

The main reasons driving the claimant to seek compensation are:

- Financial need, usually loss of earnings following the accident.
- Influence or recommendation of the employee's trade union.
- Availability of legal aid, or trade union support in meeting legal costs.

An injured employee can, perhaps, consider neither system meets his needs and may, indeed, find they work against his interests, viz.:

- IIS benefit qualifications mean only the seriously disabled succeed.
- IIS benefit is based on assessment of loss of faculty and is not earnings related. The probability is there will be a shortfall to be funded by the injured employee, unless he is entitled to another social benefit.
- The failure rate is high, over 80% of submissions in 1992 with the risk of no financial support being available unless the injured employee is entitled to another benefit, e.g. sickness benefit.
- EL claims are slow and costly to pursue and need support of other agencies; legal aid or trade union.
- 40% of claimants under the EL system receive no compensation.
- When comparing the number of EL claim notifications to the number of reported accidents, 65% of injured workers do not attempt to seek compensation at all.

The self-employed person is in a worse position. He has no entitlement under the IIS, and he is left to pursue a claim against his “employer” who will generally have lesser statutory duties and, therefore, legal liability. In practice, the injured person is unlikely to make a claim due to the need to fund the action; legal aid is unlikely to be forthcoming. He needs to arrange alternative means of protection, viz.:

- Accident and Sickness Insurance.
- Private Medical Insurance, although he would be entitled to use of the NHS services.
- Permanent Health Insurance for long-term disability.

The cost of purchasing these insurance schemes would be met by the individual and would generally be tax deductible as a business expense. There are, currently, a total of 3,850,000 self-employed persons in Great Britain with an income of £43m per annum. Research by the IIAC suggests the case to include this category within the IIS is particularly strong for construction and agricultural industry sectors.

When taking a broader view by including the effectiveness of support services, it is reasonable to conclude the hospital emergency treatment provided by the NHS is of a high standard and is freely available. Subsequent treatment, for example, physiotherapy, is subject to the normal constraints of hospital budgeting and, therefore, the injured employee is likely to be assessed on the basis of relative need, rather than absolute need. Consequently, where possible, this treatment will be obtained from the private sector more particularly when an EL claim is being made and the cost of treatment is included in the compensation. However, continuing medical treatment is more likely to be obtained through the NHS. On the other hand, long-term attendance, when not involving further medical treatment is not provided satisfactorily by the NHS. Again such costs would form part of the compensation under the EL claim.

Rehabilitation of an injured employee with the objective of his return to work has not been a successful feature of accident after care. A recent trial funded by the ABI and completed over a five year period (1988/1992) drew the conclusion there was scope for a new improved approach which could increase the successful return to work of many more

injured employees. Whilst the trial did not seek to evaluate the cost associated with the delayed, or none return to work of the injured employee, it concluded these may be considerable. Some of the conclusions drawn from the trial were:

- The co-ordination of all interested agencies as part of the trial was seen to work successfully.
- Previously unmet needs could be identified and be met by the service.
- More is required than co-ordination of services, e.g. practical assistance in job search.
- The service was valued by participants and an improvement in the return to work was achieved.

The better management of rehabilitation services is an aspect worthy of further consideration. The pilot study has illustrated the possibility of creating an improved rehabilitation service which should encourage support for further practical and professional development in the very complex field of what might be more accurately described as Vocational Rehabilitation Case Management. It may also open up the possibilities of a more proactive approach to the case management of medical treatment by insurance companies or their representatives.

The overall effectiveness of the two systems leaves something to be desired from the viewpoint of all the interested parties.

- The State is concerned with containing or reducing the cost of the Industrial Injuries System as part of its strategy to reduce expenditure.
- The major Employers have serious reservations on the cost effectiveness of the Employers Liability System.
- The Employee receives low levels of compensation from the IIS, relative to the actual pre-earnings.
- The Employee experiences long delay in the settlement of his employers liability claim.
- The Insurance Companies have strong reservations about the future viability of employers liability insurance and the continuing unprofitability of current business.

There is currently no common vision for the operation of an injury or disease compensation scheme. There is, perhaps, a need to review the whole approach to compensating injured employees. As a starting point, it is useful to consider the following extract from an article in the Periodic Report 1993 prepared by the Industrial Injuries Advisory Council and titled: *“Is there still a place for the industrial injuries scheme?”*;

“The case for maintaining the scheme began from the proposition that work is necessary for our society, since it provides the resources on which the functioning of society depends.

Some work is acknowledged to be dangerous and in spite of many efforts, those risks cannot be eliminated altogether. Some work carries risks which are believed to be under control. But controls applied in good faith may prove to be inadequate and occupational injury or illness may occur. Accidents are always a possibility and risks from new substances and processes are not always recognised until injury has actually occurred.

It could be seen to be the duty of society to have in place a system which could deal with the consequences of occupational injury, including both compensation for the actual injury and provisions to meet the financial consequences of the injury for the individual and anyone

dependent upon him/her. While common law remedies and general social security provision has a part to pay, the requirements of a scheme for injured workers could only be met in full through a scheme designed for the purpose."

This vision, which could be said to represent Society's viewpoint is capable of being shared by all interested parties and supports the conclusion that the present systems, individually and collectively, fall short in effectiveness. This suggests an alternative more holistic approach is needed to fulfil the vision and meet the legitimate concerns of all parties but especially those of the injured workers. The fundamental structure of a new system is a matter for consideration and consultation but may include:

- A "no fault" system of compensation payments.
- Abandonment of the common law system.
- Applicable to injury and specified diseases linked to occupation.
- Lump sum payments for loss of faculty, calculated on the basis of assessed percentage disability benefit payable in instalments.
- Payments linked to pre-accident or disease earnings but reduced by post accident or disease earnings.
- Rehabilitation case management.
- Medical treatment case management.

This sets aside for the moment, issues relating to financing, administration, regulation and supervision. Given the total costs incurred in administering the current system, this may be more a case of redistribution of that sum rather than additional expense. Also, drawing together all of the support systems into one system, should create the opportunity to consider the overall cost effectiveness of compensating the injured worker. Clearly, there is a need for further more detailed research, but there appears to be a case to support this action.

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