

Industrial Injuries Disablement Benefit Scheme Response to DWP Consultation Paper

1. Introduction

1.1. Amicus is the UK's second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including manufacturing, financial services, print, media, construction and not for profit sectors, local government, education and the health service. The union is in the process of completing a merger with the TGWU to form the UK's largest union of over 2 million members.

1.2. Amicus supports the continuation of the Industrial Injuries Disablement Benefit Scheme which has in the past offered essential compensation to those injured at work based on a no blame format. This, it believes, complements the civil claim system and the majority of other benefits fairly well. However, the scheme needs a complete and major review, and Amicus welcomes the opportunity to respond to this consultation in the hope that it might result in a genuine drive for change and improvement of the system as a whole. Although there may be implications to the cost of welfare benefits to be considered, Amicus would not want this to influence the needs of those injured or made ill at or through their work.

2. Scope of Scheme

2.1. The scheme currently no longer represents in full all the health and safety risks and corresponding diseases in the modern working environment. At present the prescribed diseases are heavily biased to heavy industrial occupations. Whilst these traditional hazards are still very much part of occupational risks, the scheme needs in future to recognise so called "new diseases" occurring mainly from changes to the type of work being undertaken in the UK. These changes are not solely, but predominantly, having an effect by gender, as women are more likely to suffer from stress, Muscular Skeletal Disorders (MSD), communicable diseases, and subjective diseases such as tinnitus from acoustic shock prevalent in call centres. The proof of gender bias is overwhelming, as men achieve a much higher success rate when claiming.

2.2. The present scheme does not recognise fully the effects of the changes in working environment, but neither would Amicus wish to lose sight of traditional occupational hazards found in heavy industry such as engineering, construction and shipbuilding. These traditional occupations are not only still very much alive, but some of the diseases resulting from issues such as asbestos exposure have not yet reached their peak. This is because of the long latency period from exposure to the hazard to the resulting disease. Also disease claims can go back to conditions that existed up to 30 or 40 years previously.

2.3. Whilst Amicus is currently campaigning to ensure that workers are employed directly and not forced to use bogus self-employment, Amicus is equally concerned that health and safety law and successful management of risks are being compromised by these dubious work practices. However the present IIDB system penalises the self employed and Amicus would not want our self employed members to suffer even further detriment and therefore would seek changes to the system to address this aspect.

3. Claim success rate

3.1. At present the success rate of claimants is negatively disproportional to work related ill health and major injuries reported to HSE. The success rate of claimants is around one successful claim out of six. This figure highlights the failure of the system to adequately represent the present array of occupational hazards associated with diseases, and to adequately prescribe diseases against particular occupations or tasks.

3.2. Amicus also feels that, at present, the system for reviewing prescribed occupational diseases is flawed, and that the Industrial Injuries Advisory Council, IIAC, has not been adequately supported when undertaking this type of review. Despite reviewing several diseases based on quality advice, changes have in the main not been implemented, mainly due to inconsistent or lack of research being undertaken.

3.3. There appears to be a difficulty, in disassociating a lot of those diseases under review with those that are prevalent in the community as a whole. A good example is carpal tunnel syndrome, where generally women contract the disease more than men in the community. This prescribed disease is associated with the risks from vibratory tools, yet claims associated with key board work were turned down. Statistics show that men use vibratory tools more than women who are more likely to carry out more key board work. Amicus believes it is reasonable to conclude that the prevalence of the disease in women in the community must be associated with the type of work they do.

3.4. Men in fact make up 80% of successful claims, so, in the example above, women are being prejudiced, by the lack or willingness to accept or associate the type of work they do with the diseases they contract.

3.5. Amicus would want the scheme to also act as a deterrent and a preventative measure, and to that end argues that prescribed diseases should be more easily expanded, and employers should be required to support these changes financially. If employers were made directly accountable then there is a much greater chance that they would wish to prevent harm in the future.

On the following pages Amicus sets out its response to the specific questions contained in the consultation paper.

Q1: What is the case for a “no-fault” occupational injuries and diseases scheme?

As stated previously the scheme complements the civil claims system, but there are many occasions where employers or their insurers cannot be traced, especially in relation to diseases which have a long latency period, or where negligence cannot be established.

Problems can also occur in establishing that the disease caused the loss, or all of the loss, such as those associated with MSD or stress, which may hinder a claim or result in reduced compensation. That is why Amicus is arguing for the scheme to address those issues. This will be more easily accommodated with a complementary, free for all, no fault system. In some cases it may well be that a no fault scheme like IIDB is the only recompense and acknowledgement that a victim is able to obtain particularly where it proves impossible to trace former employers or their insurer or where negligence is difficult to establish.

Q2: What should the purpose of such a scheme be?

The Scheme must provide adequate financial compensation for injuries and diseases sustained at work. It should act as a deterrent for employers to enable preventative health and safety measures to be put in place.

Amicus believes that this will only be achieved if employers contribute financially to the scheme.

Rehabilitation should be a fundamental part of the scheme. Further comments on this aspect are detailed below in response to question 5.

Q3: Should it be a compensation scheme, a benefit scheme, or both?

Amicus supports the view that the Scheme must provide appropriate financial support to the applicant rather than a system for compensating for fault.

Q4: What support should the scheme offer and how should any support be provided?

Any scheme has to be complemented by a comprehensive rehabilitation programme for those able to return to work, where compensation is combined with help to retrain and gain meaningful employment. Rehabilitation has become an H&S issue with the HSE offering comprehensive guidance.

If a person cannot return to work, support should be given to ensure that the person has a good quality of life, and able to engage in social activities, be provided with access to transport and be able to access recreational college courses.

Q5: How should a new scheme be integrated with measures for the prevention of work-related accidents and illnesses, rehabilitation, retention, retraining and return to work?

Prevention:

Information regarding causes of accidents and incidents of ill health should be readily accessible to all stakeholders. Safety Representatives are allowed by law to a great deal of information but restricted as to how they can use it. These restrictions should be reviewed, together with automatic access to their workplace by union H&S officers to assist and give advice in complicated cases.

There must be some financial link between the scheme and the employer. This however needs careful administering as some long term, latent diseases may have been caused by employers that have long since gone.

Rehabilitation:

All stakeholders should be involved in the process including trade unions, employers, and government departments. Employers should make more of an effort to retrain and redeploy those made disabled by their undertakings' activities. Job Centre Plus staff should have far more training regarding disabilities caused by work and be able to advise their clients on the options available.

Additional benefits, such as disability working allowance, should run together with IIDB to give a good standard of income. Rehabilitation should result in meaningful employment, with an effort to retrain to a skill standard at the level achieved before the injury/illness, with no financial loss.

Amicus would stress the point regarding any rehabilitation scheme that this is a provision of help and assistance to those who feel able, in consultation with their own GPs, to participate. It should not be a system whereby pressure is put on the disabled person to return to work with the threat of withdrawal of benefits if they fail to comply. Also it must be borne in mind that rehabilitation may prove to be a very difficult issue for sufferers who experience a disease many years after exposure.

Q6: How can we ensure that the principles of equity, transparency and simplicity are met?

Amicus frequently receive complaints from members who fail to understand why their benefit has been adjusted when they themselves feel no different. A clear, transparent process for decision making is key to better understanding with leaflets and advice conveyed in plain English and supported by advice helplines for claimants.

Q7: How should inclusion of injuries and diseases in the scheme be decided?

The Industrial Injuries Advisory Council is a tripartite group and therefore should continue to play a role in this process. However, as pointed out previously, the IIAC at present is fairly impotent, with most of its recommendations not being implemented, and this cannot be allowed to continue.

The criteria, which presently govern the IIAC in reviewing prescribed diseases, should be looked at. Amicus argues that the criteria should be based on the balance of probability that a disease is caused by a particular occupation rather than the need for conclusive proof that the risk of disease to workers in a given occupation is substantially greater than the risk to the general population, represented as a doubling of the risk. The probability criteria could be established by using information provided by medical practitioners, and others, as opposed to requiring comprehensive research material.

An example of how the present system has failed to meet the needs of our members is in the printing and paper sector. Amicus has made several attempts to get newspaper pressrooms prescribed for occupational deafness. Whilst there was never any opposition in principle, it fell foul of the rule that there must be a doubling of the risk. Amicus was never given a source for this rule, or any justification. It appears to be a rule of thumb, which was elevated to a requirement. Many printers were being made deaf by their work, and as deaf as other workers who were covered by the scheme in other industries. This inconsistency of approach needs to be rectified.

There is also a need to use information collated by trade unions, and other worker organisations such as Hazards. To this end Amicus would propose that trade unions be consulted about information held about particular diseases affecting given occupations. For example, Amicus in the past had identified an association between bladder cancer and particular substances which was also linked to a specific occupation. This led us to a presumption of entitlement, but we also concluded that the absence of specific knowledge of chemicals and diseases amongst the majority of decision makers led to an inability to deal with the evidence provided, especially when it dealt with past chemical exposures. It is important to remember when making decisions about occupational links to disease that claims can go back to conditions that existed up to 30 or 40 years previously. Very few people can remember the chemicals that were used in the past and employers will almost exclusively base their responses on an incomplete knowledge of the chemicals they currently use.

Q8: How should the decision on entitlement be decided?

The most important issue is that the decision be arrived at as quickly as possible and that it is based on medical evidence. The process should be as informal as possible and the decision based on the balance of probability as described in our response to question 7 above.

Q9: How should the scheme best meet the needs of individuals affected by injury or disease caused through work?

In addition to the comments above on how IIAC should carry out reviews, Amicus believes that claimants should be able to put forward a claim where a disease is not prescribed, and have that claim considered on the basis that it is reasonable to assume a disease is caused by a particular occupation. This type of claim can be assisted by obtaining information from the claimant's own GP and trade union. There have been problems, for example, where a person claims for occupational asthma and the sensitizer presumed to have been responsible is not on the prescribed list. Albeit there is a proviso in the IIDB rules that should cater for this, in practice it remains very difficult to establish that a particular substance is the cause. This is mainly due to either lack of research or the inability of the present system to fully take on board research papers from other countries or organisations.

Q10: Who should be covered by the new scheme?

All workers including some self-employed and agency workers. (See para above)

Q11: How would new scheme be funded?

As stated above in response to question 2, Amicus believes that there should be funding from employers in addition to the employee contributions made through national insurance payments.

Q12: Who would administer a new scheme?

The DWP, advised by a tripartite body, which includes legal and H&S specialists from unions and other relevant bodies.

Q13: How could any new scheme be made simpler, and more cost effective, to administer?

Attention is drawn to our comments in the introduction to this submission where we state that the basis for improvements to the scheme should not be

influenced by savings to be achieved. Amicus believes that the present scheme is already cost effective.

Q14: How should any future scheme relate to other forms of compensation or benefits and ensure that any benefits in the scheme do not conflict with any existing benefits?

At present the benefits system as a whole does not encourage rehabilitation. For example, if someone who is out of work due to a long-standing illness wishes to claim for interest payments on their mortgage, they have to wait about 36 weeks. If an individual is willing and able to return to work but after a very short period succumbs to the same illness they have to wait a further 36 weeks if things don't work out with their new job.

The proviso should either be scrapped altogether, or on returning to work the grace period should be at least a year before being able to claim for mortgage payments.

At present means tested benefits are affected by IIDB payments unlike mobility allowance. For example, council tax and housing benefits would be reduced by the amount of IIDB a person receives. Amicus believes this should not be the case, as the financial burden on those disabled by work activities, through no fault of their own, is already causing extreme hardship.

This issue of hardship and frustration to the sufferer is no more evident than in cases of diseases that are extremely painful and disabling, and result in short life expectancy, such as mesothelioma. Improving claims handling for this particular disease was the subject of a recent consultation and although the outcome produced some excellent improvements the particular issue of means tested benefits was not addressed.

Amicus raised this issue at a recent summit on the outcomes of the mesothelioma consultation with the Secretary of State for Work and Pensions, Amicus called for all state benefits awarded to mesothelioma victims to be ring fenced and not subject to the usual rules on means tested benefits. The Minister invited Amicus to address the issue via this consultation., Amicus would further argue to extend the derogation to encompass all claimants of IIDB.

Q15: What can we learn from international comparison?

Amicus is not convinced that anything will be gained from comparisons with other nation states. The benefit systems particularly in northern Europe are generous and would not provide any meaningful comparison in contemplating reforms to the IIDB Scheme.

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