Occupational Medicine and the Law

The National Insurance (Industrial Injuries) Act

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FROM 1897 onwards, Workmen’s Compensation Acts had sought to make provision for employers and workmen to share the loss to the workmen resulting from an accident. There was, of course, the alternative of an action for damages for negligence at common law, but under the Workmen’s Compensation Acts an employer became liable to make up to a workman roughly half his loss of earnings attributable to the accident, irrespective of negligence. This was done by weekly payments which under certain conditions the employer could commute to a lump sum. Lump sums were also payable to the dependants of workmen killed in accidents. Criticism of the workmen’s compensation legislation was directed against four features:

1. Lump sum payments to incapacitated workmen, which were undesirable for many reasons.
2. The complexities and legal refinements with which the system became overlaid as a result of the large number of disputes which reached the higher courts.
3. The practice of taking post-accident earnings into account in assessing the amount of compensation.
4. The risk of an employer’s insolvency and his consequent inability to meet his liability to his workmen.

The Industrial Injuries Act was an attempt to improve upon the system of workmen’s compensation by making compensation for industrial injuries a social service instead of continuing it as part of the system of employers’ liability. The historical background is necessary for a proper understanding of the Industrial Injuries Act because, on the advice of Lord Beveridge, the Act concerned itself with the consequences of “personal injury by accident arising out of and in the course of employment”; thinking that after the countless decisions of the courts and the House of Lords the meaning of this hallowed phrase would have become clear—a hope which has been sadly disappointed. Hence the distinction between accident and disease which was inherent in workmen’s compensation was written specifically into the new legislation. In 1905 the House of Lords had decided that only if a disease had been contracted by an occurrence which could be called an accident was it covered by the Workmen’s Compensation Act. In 1906 a number of diseases which were regarded as likely to be occupational in origin were introduced into the scheme and provision was made for compensation to be paid in respect of them even though no injury by accident was proved.

The Industrial Injuries Act, passed in 1946, coming into operation in 1948, amended almost annually and last consolidated in 1965, makes nation-wide provision for compulsory insurance against industrial accidents to anybody working under a contract of service in Great Britain. Benefits are paid out of the Industrial Injuries Fund, which is made up of small weekly contributions from employers and employed persons, paid as part of their ordinary national insurance contributions. There are three benefits under the Act—Injury Benefit which is a short-term benefit, Disablement Benefit with various increases which is long-term, even for life, and finally Death Benefit.

The method of deciding claims to these benefits and of determining questions arising in connection with such claims is elaborate but forms an important part of the scheme. Firstly, all claims for benefit and all questions, except those expressly reserved for others and known as special questions, go to what I will call the Statutory Authorities. These consist of insurance officers, local tribunals, and National Insurance Commissioners. The initial determination is usually by the insurance officer, who is to be found in almost all national insurance offices, and from him there is an appeal or he may refer the question direct to a local
tribunal, which consists of a legally qualified
chairman, usually a local solicitor or barrister,
sitting with an employer’s representative and an
employed person’s representative. From their
decision either the claimant or the insurance
officer may appeal to the National Insurance Com-
misioner; there is a Chief Commissioner and
some half-a-dozen other commissioners in London,
with two commissioners in Edinburgh and one in
Cardiff. The commissioners are lawyers of high
standing, usually Queen’s Counsel, whose status,
if we take remuneration as a criterion, falls some-
where between a County Court Judge and a High
Court Judge.

Certain questions, such as whether a person is
employed in insurable employment or whether
contributions have been paid, are for determina-
tion by the Secretary of State. Other special ques-
tions, known as disablement questions (that is
medical questions, arising on claims to disablement
benefit), go to what we call the medical authorities,
which consist of medical boards and medical
appeal tribunals, from whom there is an appeal
on a point of law only to the National Insurance
Commissioners. Medical boards are composed of
two general practitioners, although a single doctor
may act as a board in certain specified circum-
stances, and medical appeal tribunals have a legally
qualified chairman with two medical members of
consultant status chosen from panels nominated
in London by the Royal College of Surgeons and
the Royal College of Physicians, and in the pro-
vinces by the medical faculties of the Universities.

A basic question for any claim to benefit under
this Act is whether the person has suffered personal
injury by accident arising out of and in the course
of his employment. This is known as the accident
question. It is a question on which medical officers
in industry can be of enormous assistance to the
Statutory Authorities, because the accident and
first aid records in the works are the earliest
medical evidence of the nature and extent of
injuries reported and identified at that time. It is
frequently of vital importance in determining
whether the causation of a particular condition is
industrial to be able to distinguish between con-
ditions observed at the time of the alleged accident
and those which may have been identified later.
It is often difficult to say, even on a balance of
probability, whether or not a particular condition
is attributable to something the workman alleges
happened to him during the course of his employ-
ment.

Once it is accepted that he has suffered an
accident, Injury Benefit is payable up to a period
of six months from the date of the accident.
This is payable at a higher rate than and instead of
sickness benefit. For this question the Statutory
Authorities must be satisfied that the claimant is
incapable of work as a result of the accident. After
the end of the injury benefit period, or if the work-
man is not incapacitated for work as a result of
the accident, he may make a claim for Disablement
Benefit. This is where the Industrial Injuries Act
differs fundamentally from the Workmen’s Com-
pensation Scheme, because the criterion here is
not loss of earnings but loss of faculty or ‘capacity
to enjoy life’. At this point the Industrial Injuries
Act surpasses itself in obscurity, because to estab-
lish title to disablement benefit the claimant has
to successfully negotiate four hurdles. He has to
show (1) an accident arising out of and in the course
of his employment causing (2) personal injury
resulting in (3) loss of faculty from which there
results (4) some disablement. And it is the degree
of disablement assessed which establishes what
payment of disablement benefit he is to get. In
ordinary language ‘loss of faculty’ has the same
meaning as ‘disability’ and disablement was
described by Lord Justice Diplock in one
High Court case as ‘inability to do things’.

But on a proper construction of the Act loss
of faculty is something which results from an
injury and causes disablement. Perhaps a practical
example given in argument before the High Court
by Treasury Counsel in one of our cases is the
best way of illustrating this. If as a result of the
effort of his work a man suffers a myocardial
infarct, the injury is the damage to the heart
tissue resulting from this episode, and the dis-
ablement is the inability to run for a bus or to
play golf, so that the loss of faculty is the impaired
pumping of the heart as a result of the damaged
area of heart tissue.

Although the basic disablement pension is pay-
able in respect of a loss of faculty there are various
increases of benefit, including one known as
Special Hardship Allowance which is payable for
loss of earnings. For this a comparison has to be made with the regular occupation which the workman was engaged in when the accident occurred, and it is often relevant to know whether a worker who has returned to work after an accident has in fact returned to his full pre-accident job or whether he is only able to do it with assistance from his workmates or, indeed, whether the return was merely for a trial period for rehabilitation. Industrial medical officers can frequently assist the insurance officer with answers to questions of this nature. Other increases of disablement benefit such as Hospital Treatment Allowance, Constant Attendance Allowance and Unemployability Supplement are adequately described by their titles without the need for any elaboration. Questions arising in connection with claims to increases of benefit are determined, not by the medical authorities, but by the Statutory Authorities who may, and usually do, seek medical, even specialist medical, advice.

The division of jurisdiction between the medical and Statutory Authorities presents problems, particularly where there is no identifiable accident, but the question is whether some physiological change has taken place as a result of the effort of the work. The Department seeks to compensate only for disablement which the medical authorities are satisfied is industrially caused; but those acting on behalf of claimants who have been given accident decisions or awarded injury benefit for pathological conditions which the medical authorities regard as unconnected would seek to prevent the medical authorities from exercising their professional judgement to the claimant's disadvantage. The courts first considered this in a case, come to be known as Dowling's case. Mr Dowling was a workman who was lifting a flagstone when he felt a severe pain in his chest which was later diagnosed as a hiatus hernia. The accident question went right up to the National Insurance Commissioner who, faced with conflicting medical evidence as to the causation of the hernia, accepted that which held it to be attributable to the effort of what he was doing at work, and accordingly held he had suffered personal injury by accident. He was awarded injury benefit; but when his claim for disablement benefit came to be considered by a medical appeal tribunal they found that he had no loss of faculty resulting from the relevant accident and recorded the condition of hiatus hernia as constitutional and unconnected with the relevant accident. A challenge that their decision was wrong in law was taken eventually to the House of Lords, who by a majority of four to one held that the medical authorities were precluded from giving any such decision, and that they were obliged to start from the basis that the hernia was a condition attributable to an industrial accident. Subsequently it has been urged that the effect of this decision is to enable a claimant to rely upon acceptance by the statutory authorities of the relevance of any pathological condition for the purpose of the accident or injury benefit decisions when he makes his claim for disablement benefit. The Department has successfully distinguished all but cases where the question of whether a claimant suffered personal injury by accident and the etiology of a single pathological condition are indistinguishable, and two such cases are currently awaiting hearings before the Appeals Committee of the House of Lords. In these the Court of Appeal have upheld the Department's contention that the relevance of particular pathological conditions is not binding on the medical authorities so long as they accept that the claimant suffered some personal injury by accident. From the Court of Appeal downwards, of course, it is necessary to distinguish a decision of the House of Lords. However, the House of Lords has recently held that it has the power to reverse its own judgement and in these cases the Department is going to seek to persuade the House of Lords that their earlier decision was wrongly given, and that the medical authorities should be free to assess the medical consequences of a particular incident or episode without being bound by any express or implied finding on the part of the statutory authorities as to the nature or extent of injury suffered on the relevant occasion. Even if the ruling is confined to the situation where the accident question and etiology of a particular condition are synonymous, there is still a considerable problem for the medical authorities. A little medical learning is a dangerous thing, but I think I am on safe ground in suggesting that a person does not suffer a myocardial infarct with an otherwise healthy heart, or a prolapsed intervertebral disc with an otherwise healthy back; so that, even if it has to be accepted that some part
of the heart or back condition is attributable to an accepted industrial accident, the medical authorities will often not know how much of the pathological condition they are obliged to accept as attributable to the accident or how far they are free to exercise their own expert medical judgment in determining relevance.

The third type of benefit is Death Benefit, which is payable at a higher rate, and in place of National Insurance Widows' Pension, where death is accepted as resulting from the relevant accident. Again this is a question for the Statutory Authorities, often with medical advice, where the accident need not be the sole cause or even the major cause of death. If the results of the relevant accident materially contributed to death, then the conditions are usually held to be satisfied, even though the effect may have been merely to accelerate death by only a matter of days. If it can be said on the balance of probabilities that the workman's death would not have occurred at that time had the relevant accident never happened, then the claim to death benefit may be expected to succeed.

Prescribed Diseases

The provisions of the Act for compensation for the results of industrial accidents are modified so as to extend the cover to a number of specified or prescribed diseases, and there is further modification in respect of the disease known as pneumoconiosis. The expression 'disease' is also coupled in the Act with the phrase 'personal injury caused otherwise than by accident' because of the possibility that on a strict interpretation the term 'disease' might not include conditions such as 'beat knee' which are partly traumatic in origin. These conditions are said to be attributable to process rather than accident. If the Secretary of State is satisfied that a particular disease or an injury not caused by accident ought to be treated as a risk of a particular occupation, rather than a risk common to the general public, and further that it is attributable to the nature of that employment, he causes the disease or injury to be included in a schedule in which the nature of the occupation in respect of which the disease is prescribed is set out. A claimant who is found to be suffering from or to have suffered from such a disease and who has been employed in that particular occupation is entitled to benefits generally similar to those he would have been entitled to had he suffered injury by accident. On a claim for benefit in respect of a prescribed disease there is once more a division of responsibility for determination of the questions arising on that claim. Questions relating to the diagnosis of the disease or as to whether it is a fresh outbreak or a recrudescence are determined by an insurance officer on medical advice, with appeals to a medical board and subsequently a medical appeal tribunal. The question whether the occupation is one prescribed in respect of that disease and whether the disease has been contracted due to the nature of the employment (on which question industrial medical officers can be of great assistance when enquiries are made concerning periods and amounts of exposure to relevant substances) is for the ordinary Statutory Authorities. There is usually a presumption in favour of the claimant, so that he does not have to prove a direct causal relationship between the occupation and the disease.

Pneumoconiosis seems always to have been accepted as medically in rather a special position. Claims in respect of this disease are dealt with by members of pneumoconiosis medical panels, made up of doctors engaged by the Department who specialise in this and similar diseases. They deal with claims for disablement benefit (there is no injury benefit in respect of pneumoconiosis) and advise the Statutory Authorities on claims to death benefit. There is no appeal to an ordinary medical appeal tribunal, but there is a central pneumoconiosis panel consisting of senior departmental specialists and outside consultant specialists to whom the more difficult cases are referred.

The list of prescribed diseases is kept constantly under review by a body known as the Industrial Injuries Advisory Council. This is composed of representatives of employers' and employees' organisations, with at least one lawyer and a number of medical members. The Council has power to initiate recommendations for prescribing a particular disease or to invite the Secretary of State to make a formal reference to them for advice on any topics in the field of industrial diseases which they think they can profitably pursue with a view to recommending prescription or further research. Prescription may come about in a number of ways, as for example where informa-
tion is obtained by the Department through its own medical officers or from published material sufficient for immediate prescription without reference to the Industrial Injuries Advisory Council. The Council may recommend prescription of a disease without any formal reference to them, or prescription may follow a formal reference which may itself have been initiated by the Council. Following a formal reference to them of a question of prescription, the Council advertise an enquiry in the national Press and in appropriate journals and periodicals, inviting evidence in writing from interested persons and organisations. It is open to anybody to make representations or to submit evidence. The actual enquiry is usually undertaken by the Council’s Industrial Diseases Sub-Committee. At the moment the Council has before it formal references of five diseases: vibration syndrome, noise-induced hearing loss, a review of pneumoconiosis, lung cancer in chromate workers, and brucellosis.

Research

Section 71 of the Industrial Injuries Act enables the Secretary of State to promote research into the causes, incidence and method of prevention of accidents, injuries and diseases against which persons are insured under the Act. Although this section is couched in very wide terms, the Department’s responsibility is compensation for the results of accidents or diseases, not their prevention. Accordingly the section is used to promote research on matters for which the Department is directly responsible. There are at present three research projects being promoted by the Secretary of State under this section:—

1. An enquiry carried out at the request of the Industrial Injuries Advisory Council into certain aspects of diseases of the hand or arm (e.g. vibration-induced white fingers) associated with the use of vibratory machines;

2. an investigation of the possible industrial relationship of pulmonary infections due to the so-called anony- mous mycobacteria, of which the mycobacterium kansasii is the most frequently encountered;

3. a prospective study of the mortality of asbestos workers in relation to their smoking habits.

These are the main features of the Industrial Injuries Act. I hope that I have made it intelligible, although I am afraid that any attempt at popular exposition would be doomed from the start because of the complicated nature of the legislation. The main concern of all those responsible for its administration is that nobody to whom the Industrial Injuries Act might apply should be deprived of its benefits by reason of any failure to comprehend its involved technicalities and dry verbiage.

The Design of Laboratories for Work with Toxic and Biological Materials.

A short course on the Design of Laboratories for Work with Toxic and Biological Materials will be held on 5-7 January 1972 at the University of Leeds.

The course will deal with the design of laboratories for universities, hospitals, small industrial users and similar institutions where the experimental work involves the use of flammable, poisonous, carcinogenic, microbiological or radioactive material. It is an extended version of the course given in July 1971 which was attended by over seventy people. The new topics include the requirements for microbiological experiments and for the administration of large activities of radioactive substances to animals, and the provision of automatic fire protection equipment. Some of the University’s laboratories will be visited in order to illustrate points made in the lectures.

The course will provide information for laboratory users who have to prepare specifications, safety and radiation protection officers who have to advise on requirements, and architects and consulting engineers who have to design and construct such laboratories. It will be organised by the Special Courses Division of the Department of Adult Education and Extramural Studies in conjunction with the University’s Radiation Protection Officer and the University’s Safety Officer, with assistance from the staff of the Planning Office and of the Office of the Surveyor of the Fabric and also of the Microbiological Research Establishment, Porton.

Applications should be made before 17 December 1971 to:

DIRECTOR OF SPECIAL COURSES,
Department of Adult Education and Extramural Studies,
The University, Leeds LS2 9JT.