

Better routes to redress

Guy Thomas considers the Better Regulation Task Force's report on accident compensation.

IN DECEMBER 2002, the actuarial profession promoted a GIRO paper 'The cost of compensation culture', which made a number of remarks about accident victims and compensation paid to them for negligence. The evidence for some of these remarks was questioned in Tony Silverman's article 'Justice culture?' (*The Actuary*, September 2003) and in my own letter to *The Actuary* (letters, October 2003). The GIRO paper was subsequently highly commended by the Institute Council. According to documents on the profession's website, its conclusions now constitute a 'line to take' for the actuarial profession.

Compensation culture: an urban myth?

In this context it was interesting to read the recent report 'Better routes to redress' published in May 2004 by the Better Regulation Task Force. This is an advisory group comprising business people, members of various professions, citizen and consumer groups, and trade unions. It produces recommendations to ministers for ensuring that regulation is 'proportionate, accountable, consistent, transparent, and targeted'. The taskforce's report addresses similar issues to that of 'The cost of compensation culture', but reaches very different conclusions.

A first impression of the difference between the two reports is their respective titles: 'Better routes to redress' suggests solutions, whereas the title 'The cost of compensation culture' appears pejorative of accident victims, implying that there is something blameworthy about them seeking compensation. (This interpretation is not just my own, it is explicitly noted in the taskforce's report.)

The taskforce describes the alleged compensation culture as an 'urban myth', stating its findings as follows:

Almost everyone we spoke to in the course of this study told us that they did not believe that there is a compensation culture in the UK. They argued that the reality is somewhat different, because the number of accident claims, including personal injury claims, is going down...

While the taskforce considered contributions from around 100 organisations, the words 'actuary' and 'actuarial' are nowhere to be found in its report. But this does not necessarily mean that members of the taskforce failed to understand the impact of commentary by organisations such as the actuarial profession. In my opinion they understood it well enough to write the following:

Senior commentators, who are frequently reported, also perpetuate the perception of the 'compensation culture'. They make speeches decrying the 'compensation culture' without offering any solutions. Such speeches also give the impression that there are dual standards being applied to people litigating. Commentators are fond of criticising 'ordinary' people, but rarely criticise big companies or well-known figures for litigating. This gives the impression that there is something wrong if 'ordinary' individuals exercise their rights.

The taskforce has some suggestions for the 'commentators':

It would be helpful if those in positions of influence could resist talking about the 'compensation culture'. Doing so only perpetuates the problem. It would be more beneficial to educate people to understand that compensation is minimal in most cases, and to educate those litigated against that the best way to avoid litigation is to be aware of the risks and to have taken cost effective measures to manage them.

Making the system better

In a chapter titled 'Making the system better for genuine claims', the taskforce makes suggestions relating to the following areas:

- ◆ claims management companies (regulation, consumer advice, and advertising);
- ◆ the possibility of raising the limit under which personal injury can be taken through the small claims track;
- ◆ improvements to ombudsmen schemes (removal of jurisdictional overlaps and better publicity);
- ◆ promoting mediation (strengthening of pre-action protocols);
- ◆ research on potential impact of contingency fees in securing access to justice;
- ◆ rehabilitation (research on economic benefits and mechanisms for earlier access);
- ◆ promoting better management of occupational health (eg better publicity for employer tax breaks);
- ◆ better risk management by public bodies (including insurer-facilitated sharing of best practice).

It is not the purpose of this article to evaluate these suggestions, but I hope that actuaries will consider them, and put forward other constructive suggestions to support the task of 'making the system better for genuine claims'.

What can actuaries do?

My suggestion for the actuarial profession is to act on the recommendation from the Better Regulation Task Force: 'It would be helpful if those in positions of influence could resist talking about the "compensation culture". Doing so only perpetuates the problem.'

Actuaries could also avoid remarks that appear to suggest that there is something blameworthy about injured individuals seeking compensation for negligence and avoid asserting as professional policy statements such as 'The profession believes that a more litigious society would be a bad thing because the costs, both financial and in terms of restricting activities, outweigh the benefits of providing better compensation to accident victims'. This is a transparently political attack on accident victims, which has no prospect of objective justification.

Finally, actuaries should consider the needs and perspectives of injured individuals, not just those of insurance companies and privileged individuals. □

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The report 'Better routes to redress' is available at www.brta.gov.uk