

## UK COURTS FAIL TO COMPENSATE PEOPLE ADEQUATELY FOR LOSS OF EARNINGS FOLLOWING PERSONAL INJURY

The damages that UK courts award to people involved in accidents fail to compensate them fully for the loss of future earnings. That is the conclusion of new research by Professor **Bob McNabb** and colleagues at Cardiff University, published in the November issue of the *Economic Journal*.

The researchers argue that UK courts should move to a US-style system for setting damages, taking more explicit account of labour market information, such as the way people's earnings change over their lifetime and the likelihood that an individual will be in employment in the future.

They researchers find that:

- Adopting a US-style approach would produce higher levels of compensation. Damages could increase by around 25% on average, although compensation would actually fall in about one quarter of cases.
- There would be an important gender effect of employing the new approach. Current court awards for men are consistently lower than those based on the US approach. The differences for women are considerably smaller with actual awards often larger than the predicted ones.
- UK courts currently under-estimate the impact of disability on post-injury earnings potential. As a result, they make inadequate adjustment for lower post-injury earnings potential and award damages that are lower than they should be.
- The current approach to setting damages may under-compensate people from ethnic minorities for future loss of earnings.
- Although judges apply the current approach consistently, they do not always determine the 'multiplier' (which estimates the likely number of years of loss) accurately. But there is no evidence that judges are influenced by gender or ethnic background, nor by region or the attributes of the case.

The research team notes that each year, thousands of people make claims for damages to compensate them for the earnings loss they suffer following an accident. Although most of these claims are settled, those that do go to court establish precedents that are used as guidelines for other awards. Under the current system, to determine the appropriate amount of compensation, UK courts rely on two factors:

- the annual loss of earnings the person will face as a result of the accident;

- and the number of years over which this loss will be sustained.

The annual loss of earnings is based on the person's earnings at the time of the injury less any earnings potential the person may have post-injury. The annual figure is multiplied by a figure that represents the number of years of loss, but this 'multiplier' has to be reduced to allow for early receipt (the person receives the payment now rather than as separate payments over their working life) and the risk of early death. The multiplier thus helps convert the loss of a future stream of income into a lump sum.

Within the legal profession, there has been concern that there is too much uncertainty involved in calculating the multiplier. It has been described as 'an arbitrary process, in which the multiplier is not calculated in a precise or logical manner'. In particular, the multiplier takes virtually no account of the factors that influence the way an individual's earnings change over time. The approach is in marked contrast to the way courts in the United States and Canada assess damages for loss of earnings, which explicitly incorporates labour market analysis and predictions.

The research examines how the levels of compensation would differ if the courts in England and Wales adopted North American practices. A subsidiary analysis considers whether the subjectivity involved in assessing the amount of damages introduces systematic bias in the amounts awarded. In particular, do gender and ethnic background of the injured person affect the amount of damages judges award? Are damages higher in some types of cases, such as medical negligence, than they are in other? And is there a regional bias in the amount of damages awarded?

The research focuses on over 100 personal injury cases that went to court. Detailed information relating to these cases was collected from solicitors' files from across the country, providing a new and unique database on how damages are calculated.

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**Note for Editors:** 'Loss of Earnings Following Personal Injury: Do the Courts Adequately Compensate Injured Parties?' by Richard Lewis, Bob McNabb, Helen Robinson and Victoria Wass is published in the November 2003 issue of the *Economic Journal*.

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