15 Social Security as No-Fault Compensation

Even after the Pearson Report [1], it is still quite usual for social security benefits not to be regarded as compensation and as though "no-fault" would be a complete novelty in this country (Lord Allen of Abbeydale, a member of the Pearson Commission). The social security system is undoubtedly complicated and much of the available resources are frittered away in comparatively small payments. Small payments may result in greater equity for more cases, especially for those whose employers have gone out of business.

The Pearson Report recommended the retention of civil liability based on negligence to co-exist with a no-fault scheme. They have complementary roles to play. By proposing the deduction in full of social security benefits from any damages awarded under Common Law, the Report recognises that an award of damages should be in addition to the benefits [2].

With respect to noise, a no-fault system already operates through the DHSS though the State criteria for compensation are far too stringent [3]. In out-of-court settlement schemes with trade unions, proof of an employer's negligence is virtually non-existent and in this sense there is no fault. As with the DHSS scheme, there remains a basic requirement that the hearing loss was caused by the effects of noise.

In the DHSS scheme, a paradox exists. Where a V shape can be identified in the audiogram, the hearing loss is usually insufficient to qualify for compensation. When the hearing loss is severe enough, the graph flattens out sufficiently to lose the V shape configuration bearing a high degree of resemblance to the classical audiogram showing noise-induced damage. Medical referees should, in line with judicial practice, give the benefit of the doubt to claimants, especially when a flattened graph could have accommodated an obliterated V shape.

The quantum of damages resulting from accidents is higher than that resulting from long-term occupational noise exposure. Where the action causing the injury is more blameworthy, the level of damages tends to be higher for the same degree of hearing loss. The law may be more lenient in human activities where there has to be more give and take on all sides, such as prevention of hearing loss.

Economic analysis shows that a no-fault system shifts some of the costs of injurious activities from injurers to their victims. This is more than off-set, it is claimed and indeed a major finding of the Pearson Report, by savings in administrative and other costs. One

[1] The Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054, 1978, 3 volumes).

[2] Like much of the Pearson recommendations, this is aspirational. The law has not been changed. Section 2(4) of the Law Reform (Personal Injuries) Act 1948 provides that all NHS benefits shall be disregarded by the court. So the cost of an NHS hearing aid is not deducted from compensation, nor sick leave, treatment and investigations.

[3] The best summary of DHSS compensation is by John Ballantyne (1984) Noise and the Law, in Deafness 4th edition, Churchill Livingstone 212-213. To qualify for compensation, a claimant must show that he has worked 20 years or more in specified occupations. Occupational deafness is defined as a substantial permanent SNHL at least 50 dB in the better ear on PTA over 1, 2 and 3 kHz. This minimum hearing loss is rated at 20% disablement (cf disability) with 2% increase for each dB to 100% at 90 dB. Claims must be made within one year after leaving employment. These restrictions do not apply to court cases. Settlement contracts are not obliged to have them.

study of the effect of a no-fault system done after the Pearson Report points out the possible increase in injurious activities. This is a significant factor which has not been thrown into the balance.

Between 1971 and 1976 in the United States, 16 states adopted "no-fault" automobile laws. They elected to remove or restrict liability for motor vehicle accident injuries. Those states with tort restrictions have experienced significantly increased fatal accident rates. The number of fatal accidents was related to the extent of restriction of negligence law-suits, some states having 10 to 15% more fatal accidents. Where the insurance industries have tended to be more centralised in fewer companies, resulting in more uniform settlement procedures, the accident rate was also higher. [4] The social cost-benefit arguments should take into account the results of this type of study.

The Coles-Worgan classification

Description of the handicaps associated with the Auditory Handicap Groups

Group 0
No significant auditory handicap.

Group I
The hearing is not sufficiently impaired to affect the perception of speech, except for a slight (additional to normal) difficulty in noisy backgrounds.

Groups II and III
Slight (II) to moderate (III) difficulty whenever listening to faint speech, but would usually understand normal speech. Would also have distinctly greater difficulty when trying to understand speech against a background of noise.

Groups IV and V
Frequent difficulty with normal speech and would sometimes (IV) or often (V) have to ask people to "speak up" in order to hear them, even in face-to-face conversation. Great (IV) or very great (V) difficulty in a background of noise.

Group VI
Marked difficulties in communication since he would sometimes be unable to clearly understand even loud speech. In noise he would find it impossible to distinguish speech.

Groups VII and VIII
Would only understand shouted or amplified speech, and then only moderately well (VII) or poorly (VIII).

Group IX
Minimal speech intelligibility even with well amplified speech.

Group X
Virtually totally deaf with respect to understanding of speech.

Note. In Groups II to IX some benefit could potentially be gained from a suitable hearing aid.

Disability ratings

Sensorineural hearing level averaged over 500-1000-2000 Hertz (binaural assessment) (decibels)	*Sensorineural hearing level at 4000 Hertz* (binaural) (decibels)	*Auditory handicap group*	*Brief description of handicap*	*Suggested disability rating*
up to 25	up to 25	0	Not signif.	0%
up to 25	over 25 up to 50	I	Just signif.	5%
up to 25	over 55	II	Very slight	10%
over 25, up to 30	n/a	II	Very slight	10%
over 30, up to 40	n/a	III	Slight	20%
over 40, up to 50	n/a	IV	Mild	35%
over 50, up to 60	n/a	V	Moderate	50%
over 60, up to 70	n/a	VI	Marked	65%
over 70, up to 80	n/a	VII	Fairly severe	80%
over 80, up to 90	n/a	VIII	Very severe	90%
over 90, up to 100	n/a	IX	Extremely severe	95%
over 100	n/a	X	Total	100%

[4] Elisabeth Landes (April 1982) Insurance, Liability, and Accidents: A theoretical and empirical investigation of the effect of no-fault accidents, Journal of Law and Economics, University of Chicago. Massachusetts 1971, Florida 1972, Connecticut 1973, New Jersey 1973, Hawaii 1973, Michigan 1973, Utah 1974, Kansas 1974, New York 1974, Colorado 1974, Nevada 1974, Pennsylvania 1974, Minnesota 1975, Kentucky 1975, Georgia 1975, North Dakota 1976.