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ARTICLE

Reactions to no-fault compensation schemes for occupational diseases in the Netherlands: the role of perceived procedural justice, outcome concerns and trust in authorities

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Abstract
Financial redress for victims of occupational diseases can be offered through no-fault compensation schemes. No-fault compensation schemes have an explicit mission in promoting perceived fairness and justice. The objective is to offer a quick, fair and just procedure and outcome, while preventing civil court procedures and restoring trust. However, the question is whether applicants of these no-fault schemes indeed experience perceived fairness and justice. This paper discusses the result of an in-depth interview study with fifty-eight victims involved in no-fault schemes for occupational diseases in the Netherlands. We focus on the role of perceived procedural justice, outcome concerns and trust in the (former) employer.

Keywords: no-fault compensation schemes; occupational diseases; procedural justice; tort law; compensation law

1 Introduction

In 2014, employees and former employees of the Dutch Ministry of Defence in the Netherlands met at reunions and other social gatherings. There they noticed that many of their current and former colleagues were severely ill or deceased. Research showed that the Ministry of Defence unlawfully exposed its employees to chromium-6 from 1984 to 2006.[1] Worse still, the Ministry had known about the harmful effects of the substance since 1973. As is illustrated in the movie *Erin Brockovich*, exposure to chromium-6 is dangerous. It can negatively affect the environment and lead to a variety of illnesses, including several forms of cancer and eventually death.

As it happens, in the Netherlands, the City of Tilburg also unlawfully exposed some of its benefit recipients to chromium-6.[2] That is, some of the benefit recipients who were unemployed in that city were obliged to paint and polish passenger trains in exchange for receiving their social

[1]Dutch National Institute for Public Health and Environmental Protection (hereafter: NIPHEP), Protection of Defence Personnel Against Health Risks of Chromium-6 Was Inadequate, 6 May 2018. Available at https://www.rivm.nl/en/news/protection-of-defence-personnel-against-health-risks-of-chromium-6-was-inadequate (accessed 2 January 2025).

[2]Court of Rotterdam, 1 February 2023, ECLI:NL:RBROT:2023:600.

security benefits. These events caused great social unrest, especially since victims encountered difficulties in getting access to justice.[3]

In the Netherlands, tort law is the primary compensation system for occupational diseases; there is no (other) form of workers' compensation (Lindenbergh 2012). The employer is obliged to take reasonable care for the safety of its employees (Art. 7:658 Dutch Civil Code). If the requirements of this article are met, there is a right to full compensation (Cane and Goudkamp 2018). Even though the exposure to chromium-6 was in the above-described cases unlawful,[4] it was (and still is) difficult in both cases for workers to hold their employers liable and recover damages from them (Oliphant and Wagner 2012). The major obstacle under Dutch law (and other jurisdictions) is proving causation (conditio sine qua non) between the exposure of toxic substances at the workplace and the injury caused. Even though the Dutch Supreme Court applied the rule of reversal and proportional liability to occupational disease cases,[5] proving causation under Dutch law remains difficult, in part because many diseases caused by hazardous materials have a multicausal clinical picture (Oliphant 2012; Stapleton 1986; Wagner 2012). Unlike in other European Union countries, there is no occupational disease list used in The Netherlands. All of this causes civil court procedures to be lengthy (five years average[6]), expensive (between €15,000 and €70,000) and mentally stressful for victims of occupational diseases (De Groot and Lindenbergh, 2018; Huver *et al.* 2007). One could argue that tort law is, in fact, not working properly for the claim adjustment of occupational diseases. Or, one could argue that tort law is working properly, but that it is just not suitable for the claim adjustment of occupational diseases. Therefore, in literature, there is an ongoing discussion about whether the system of tort law perhaps should be abandoned in occupational disease cases (Hartlief and Klosse 2003).

Partly because of the social upheaval and harm these events caused to the citizens involved, both the Ministry of Defence and the City of Tilburg established no-fault compensation schemes for the damages caused.[7] No-fault compensation schemes are often established as an alternative to tort law, since claim adjustment is, especially in case of occupational diseases, complex (Vanhooff 2020; Vansweevelt and Weyts 2020). Offering victims an alternative for the primary route of tort law is a revolutionary way in the Netherlands of compensating for occupational diseases. This development is a necessary one, given the International Labour Organization's (ILO's) criticism of the Dutch system for having an unfriendly compensation system for victims of occupational diseases (Eshuis 2013; Klosse *et al.* 2015; Waterman 2022).

No-fault compensation schemes are schemes founded by the government and/or (in the case of occupational diseases) by an employer as an addition or alternative to tort law (Watts 2023). The objective is to offer a quick, fair and just procedure and compensation while preventing a civil court procedure (Macleod and Hodges 2017, 615–16). The schemes usually offer a defined group of victims a standardised amount of compensation and often do not allow for full compensation (Oliphant 2012; Wagner 2012). As most compensation systems cherish the idea of restoring the victim to the original state (corrective justice), this is contrary to full compensation as key principle of tort law and damages (Akkermans 2020, 28; Macleod and Hodges 2017, 642).

Furthermore, the schemes function on a no-fault basis. This means that an entitlement is based on the occurrence of the incident as such, regardless of anyone being at fault for it, in contrast to

[3]Dutch Defence Ministry Apologizes for Chromium-6 Exposure, *National Post*, 4 June 2018 and NIPHEP; Possible Health Risks Due to Exposure to Chromium-6 at tROM Project Tilburg. Available at https://www.rivm.nl/en/news/possible-health-risks-due-to-exposure-to-chromium-6-at-trom-project-tilburg.

[4]Supreme Court of the Netherlands, 3 December 2021, ECLI:NL:HR:2021:1806; Court of Rotterdam, 1 February 2023, ECLI:NL:RBROT:2023:600.

[5]Supreme Court of the Netherlands, 7 June 2013, ECLI:NL:HR:2013:BZ1721; Supreme Court of the Netherlands, 31 March 2006, ECLI:NL:HR:2006:AU6092.

[6]This aligns with UK numbers, averaging between three and five years (Lewis 2017, 473).

[7]For the schemes see https://wetten.overheid.nl/BWBR0040982/2021-06-08 and https://www.tilburg.nl/fileadmin/files/actueel/chroom_6/definitieve-regeling-tegemoetkoming-chroom_6-feb-2021.pdf.

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fault-based schemes (Cameron 2020; Lewis 2017, 461–62). In general, no-fault schemes are seen as being less adversarial than fault-based schemes, as claimants do not have to prove liability and causality. Also, no-fault schemes have proven to be more therapeutic than fault-based schemes (Akkermans 2020; Cameron 2020; Elbers *et al.* 2016; Lippel 1999).

Importantly, some no-fault schemes even have an explicit mission of promoting perceived fairness and justice (Akkermans 2020). We refer to the experience of being treated fairly as perceived procedural justice (Lind and Tyler 1988; Tyler and Lind 1992). Perceived procedural justice has already been investigated in both simulated and real-life courtroom settings (Grootelaar and Van den Bos 2018; Thibault and Walker 1975). A fair treatment experience consists of being treated in a polite manner and with respect, being able to voice opinions, and being seriously listened to by professional and component authorities (Van den Bos *et al.* 2014). Being treated fairly is important. We know that people tend to be more satisfied with the outcome obtained when they perceive their treatment as fair (Brockner and Wiesenfield 1996; Lind and Tyler 1988; Thibault and Walker 1975; Van den Bos *et al.* 2014). Experienced fair treatment also has positive effects on trust and perceived legitimacy, compliance with the law and co-operation with authorities (the fair process effect) (Creutzfeldt and Bradford 2016; Grootelaar and Van den Bos 2018; Tyler 2006).

In work-related contexts, perceived justice can have a positive impact on the health and recovery of victims of occupational diseases, and eventually can help people to return to work faster (Billias *et al.* 2023). Perceived justice contributes to restoring trust in the (former) employer (Searle *et al.* 2011). Also, there are indications that when a no-fault procedure is perceived as fair and just by victims of occupational diseases, the outcome, even though not fully compensating, will be perceived as fair and just as well (Watts 2020, 20). Additionally, perceiving a no-fault scheme as fair and just might eventually prevent victims of occupational diseases from starting a civil court procedure (Macleod and Hodges 2017).

Relevant for answering these questions is the perception of fairness among applicants of no-fault schemes. This includes the issue of what the effects of no-fault compensation schemes are on feelings of trust in the former employer.[8] However, to our knowledge, whether applicants of these no-fault schemes for occupational diseases indeed experience fairness and justice to be done has not been investigated previously: a significant lacuna, we argue, given that perceived justice lies in the foundation of almost all no-fault schemes.[9] In this article, we speak to this lacuna by examining the perceived procedural and outcome justice of applicants of no-fault schemes for occupational diseases, and their trust in their (former) employer, focusing on the Dutch chromium-6 schemes. Therefore, our overarching research question is:

> 'To what extent do victims of occupational diseases perceive the procedure and outcome of their compensation scheme as fair and just, and how are their perceptions of fairness and justice related to their judgments of trust in their former employer?'

Thus, the current research investigated whether applicants of no-fault compensation schemes for chromium-6 occupational diseases experience perceived procedural justice and outcome concerns,[10] and how this relates to the trust they have in their former employer.

At the time of writing,[11] two schemes for chromium-6 occupational diseases have been established in the Netherlands: one by the Dutch Ministry of Defence,[12] and the other by the City

[8]As written above, experienced fair treatment also has positive effects on trust and perceived legitimacy, compliance with the law and co-operation with authorities (*the fair process effect*).

[9]Macleod and Hodges actually prefer to speak of 'no-blame' compensation schemes (Macleod and Hodges 2017).

[10]See on outcome concerns and their relationship to outcome justice and favourability Brockner and Wiesenfield (1996).

[11]In the meantime, more chromium-6 schemes were established. One by Royal Dutch Airlines (https://www.chroom6klmgroep.com/chroom-6/collectieve-regeling) and one by Dutch Railways (https://www.chroom6ns.nl/regeling-volledig).

[12]https://wetten.overheid.nl/BWBR0040982/2021-06-08 (Scheme 1).

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of Tilburg.[13] The applicants of the schemes carried out the same kind of work and were therefore exposed to chromium-6 in the same way. Also, the established schemes to compensate the damages of the applicants are largely the same and inspired by each other. That is why we collected data on these two sites. Specifically, this paper discusses the result of an in-depth interview study with fifty-eight participants involved in these schemes used in the Netherlands. This paper gives insight into the functioning of no-fault compensation schemes for occupational diseases while focusing on perceived procedural and outcome justice and trust in the former employer.

We outline the no-fault schemes for chromium-6 occupational diseases in the second section. Our study design and methodology are discussed in the third section. In Section 4, we present our findings, including extracts from participant interviews. Before we conclude in Section 6, we discuss the significance and limitations of our findings in Section 5.

2 No-fault schemes for chromium-6 occupational diseases

The no-fault compensation schemes for chromium-6 occupational diseases were founded by the Dutch Ministry of Defence (Scheme 1) and the City of Tilburg in The Netherlands (Scheme 2).[14] The schemes came into force between 2019 and 2021. The schemes are similar; they make use of a list of diseases and occupations, which makes proving causation much easier than for those who sue in tort (Lewis 2017, 463). (Former) employees who have worked at sites where chromium-6 was used can submit an application to claim compensation under the scheme. If their application is considered eligible, they are entitled to a standardised, one-off amount for non-pecuniary loss, varying from €5,338.42 to €42,707.38, which is linked to their illness and the type of work.[15]

For example, if an applicant suffers from lung cancer and worked as a welder, the applicant is entitled to an amount of €19,218.32. In the case where the applicant worked as a welder for at least ten years, the applicant is entitled to an amount of €42,707.38.[16] Or, if the applicant worked as a handyman for three years and suffers from chronic obstructive pulmonary disease (COPD), the applicant is entitled to €8,007.63.[17] In cases where the illness of the applicant is not listed in the scheme, the applicant is entitled to nothing. The Dutch National Institute for Public Health and Environmental Protection (hereafter: NIPHEP) conducted the research underlying the schemes. In its research, illnesses which are assumed to be related to chromium-6 are linked to the standardised allowances applicants are entitled to.[18]

Applicants of the first scheme (Ministry of Defence) who are entitled to an amount of non-pecuniary damages are also entitled to a standardised amount of pecuniary damages of €4,110.59. Applicants of the second scheme (City of Tilburg) receive a standardised amount consisting of both pecuniary and non-pecuniary damages of €7,000. While applicants of the first scheme are only entitled to an allowance when they have an illness which can be related to chromium-6, applicants of the second scheme receive €7,000 regardless of whether they have an illness. Therefore, it is possible that an applicant who is completely healthy and has worked at the site only for a day could also receive this amount. This difference between the schemes is justified by the

[13]https://www.tilburg.nl/fileadmin/files/actueel/chroom_6/definitieve-regeling-tegemoetkoming-chroom_6-feb-2021.pdf and https://www.tilburg.nl/gemeente/actueel/chroom-6/ (Scheme 2).

[14]Op cit. 12 and 13.

[15]On the focus on non-pecuniary damages in no-fault schemes, see Lewis (2017, 467).

[16]See Appendices 1–3 of both schemes.

[17]Ibid.

[18]NIPHEP, Possible Health Risks Due to Exposure to Chromium-6 at tROM Project Tilburg. Available at https://www.rivm.nl/en/news/possible-health-risks-due-to-exposure-to-chromium-6-at-trom-project-tilburg (accessed 2 January 2025); Chroom-6 op Poms-locaties van Defensie Gezondheidseffecten en Verantwoordelijkheden. Available at https://www.rivm.nl/publicaties/chroom-6-op-poms-locaties-van-defensie-gezondheidseffecten-en-verantwoordelijkheden#abstract_en (accessed 2 January 2025).

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fact that the applicants of this second scheme were, unlike the Defence personnel from the first scheme, forced to work on the site in exchange for receiving their social security benefits.

Under certain conditions, relatives of deceased employees may also be entitled to a survivor's benefit, varying from €4,110.59 (Scheme 1) to €7,000 (Scheme 2).[19] Important to note is that the compensation received qualifies as an 'allowance'. An allowance is a financial entitlement granted to the victim of a damaging event, and on account of that event, by a damaging party, without any obligation to compensation (ex gratia) (Schutgens 2022).

An administrative body functions as executor of the schemes. Applicants who disagree with the decision on their application can start an administrative procedure (Scheme 1) or request a reconsideration (Scheme 2). The schemes are no acknowledgement of liability (Art. 2 of both schemes). Therefore, applicants are still allowed to start a civil court procedure after gaining their standardised compensation, if they, for example, believe that full compensation is appropriate in their case. As said, applicants will then have to prove causation between the exposure of toxic substances at the workplace and the injury caused, which is difficult. A few employees have started a civil procedure – some successfully.[20]

3 Methodology

This study focuses on the perspective of the victim. As is assumed in the literature, we aim to analyse whether victims indeed perceive the no-fault procedure as fair and just, also relating to the trust they have in their former employer. In total, fifty-eight in-depth interviews were conducted with Defence personnel (forty-four participants) and Tilburg citizens (fourteen participants) who reported as victims of occupational diseases and who filed an application to one of the two above-described no-fault compensation schemes.

The applicants of the schemes were approached through the chromium-6 website for victims' support, our own research website and personal injury lawyers, and by using the snowball method. More than 1,500 people filed for a compensation from one of the two schemes, but we are uncertain whether our call reached the whole population, simply because former workers had passed away and not every former worker might visit the website for victim support. Also, many of them were benefit recipients who have little access to a computer – sometimes they did not even have access to a phone. Since data collecting took place during the COVID-19 pandemic and face-to-face contact (which proved to be crucial for this population) was lacking, it was often difficult to find participants who were willing to participate.[21]

At first, seventy applicants responded and were willing to participate. Twelve of them withdrew their participation. Reasons for withdrawal were lack of interest, distrust in research in general and sudden unreachability. In the end, we conducted fifty-four interviews with fifty-eight participants. One interview was conducted with two participants, and one interview with three participants.

Fifty-two of the participants worked on the sites themselves as military or civilians. Five of the participants were surviving relatives. One of the participants was a representative of a number of employees who were not proficient in Dutch or English. The age of the participants was between thirty-six and seventy-seven years, with an average age of fifty-eight. The participants worked on the sites for different amounts of time, varying from a few weeks to a few months or even years. Some worked on the sites for almost their whole lifetime and some of them still did. Several of them have had severe types of cancer or lost a relative to one of these types of cancer.

Three participants finished primary school; five secondary school; one domestic science school; eleven junior technical school; one intermediate technical school; twenty-four intermediate

[19]Art. 7 (Scheme 1) and Art. 3 and 4 (Scheme 2).

[20]For a successful example, see Supreme Court of the Netherlands, 3 December 2021, ECLI:NL:HR:2021:1806.

[21]See Bal *et al.* (2022) for the challenges for solidarity and social justice of the COVID-19 pandemic.

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vocational education and eight higher professional education. For five of the participants the level of education is unknown.

Forty of the participants had access to legal assistance in the form of a legal adviser or lawyer. Seventeen of the participants did not have access to legal assistance and for one of the participants it is unknown whether they had access to this.

We conducted the interviews from February 2020 until February 2021. The first author of the article was the interviewer. She is Dutch, female and was at the end of her twenties at the time of interviewing. We continued data collection until saturation was reached (Boeije and Bleijenbergh 2019). The interviews were semi-structured and a topic list was used, which covered the filing of the application, the procedure, the outcome and compensation received and the possibility of starting a civil court procedure. After interviewees had given their informed consent to take part in this study, the interviews were audio recorded. One participant did not grant permission to audio record the interview. The interviews lasted 17–151 minutes, with an average of 56.16 minutes per interview. Thirty-three interviews were conducted in person and took place at the victim's home, a public place or a Veterans Institute in the Netherlands. Twelve interviews were conducted via video and nine via telephone.

We studied fairness and justice perceptions by starting our interview with open-ended questions, thereby leaving room for participants to come up with concepts of fairness and justice themselves. Like in the study of Ansems *et al.* (2020), participants were asked a clear question on perceived justice, without enquiring about predetermined justice components. In this way, we assessed which components of perceived procedural and outcome justice (if any) participants put forward themselves. After that, follow-up questions were asked to find out what these procedural and outcome justice components entailed exactly in participants' views, and how participants constructed their perceptions of these components. Thereby, this study will contribute to the relatively scarce studies using a qualitative design for fairness perceptions (ibid.).

We also asked participants to indicate with a report mark (1–10) how fairly they felt treated, how fair their outcome was, and to what extent they trusted the (former) employer (positively formulated). The report marks followed the format used in the Dutch school system, enabling respondents in our research to indicate whether they thought the fairness of their treatment during the procedure, the fairness of their outcome, and the level of trust in their (former) employer was very good (10), very bad (1) or somewhere in between. Asking for grades not only provided us with explorative and interesting quantitative insights, it was also a way to open conversations and get participants, who sometimes experienced difficulty expressing themselves and understanding our questions, to talk.

We transcribed the interviews verbatim, after which we started coding them inductively in three phases, starting in vivo and open with around 150–200 codes, to axial and finally selective coding, ending up with forty codes (Boeije and Bleijenbergh 2019). Themes emerged from the codes, and the constant comparison method was used to generate and refine categories and subcategories. This means that data saturation was indicated to be reached when no new themes emerged, after which the analysis was completed (ibid.; Boeije 2002). During these phases, all authors critically assessed the code tree. Also, interrater reliability was used (O'Connor and Joffe 2020). In two rounds, we provided a second coder with 10 per cent of randomly selected interview transcriptions. In this way, we assessed the extent to which the second coder assigned text fragments to the same codes as we did. In case of disagreement about how to code a text fragment, coders discussed their views. Coders reached 95 per cent agreement. We believe this result indicates a sufficient degree of intersubjectivity in our coding scheme.

Ethical approval was given by the Ethical Board of the Faculty of Law, Economics and Governance of Utrecht University. Furthermore, we performed a Data Protection Impact Assessment (DPIA) prior to conducting the interviews. This DPIA helped to ensure that appropriate safeguards were in place to minimise any risk to participants' privacy, especially since the collected data contain special personal data as described in the General Data Protection

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Regulation. These special personal data concern information about participants' illnesses and financial situations. Participants gave informed consent to the usage of their citations, in which this information is sometimes shown. We note explicitly that, while every effort was made to anonymise the collected data, there remains a possibility that participants may recognise each other or that one of the two employers involved may recognise their (former) employees. The citations used in this article were all translated from Dutch.

4 Findings

4.1 Introduction

Across our participants, there was a low perception of fairness and justice of the no-fault compensation schemes. For example, the average grade (1–10) participants gave to indicate the fairness and justice of their treatment during the procedure was 3.5 ($SD = 2.84$). The fairness and justice of the outcome received was rated with an average of 3.0 ($SD = 2.66$). The level of trust in the (former) employer was rated with an average of 3.1 ($SD = 2.84$).

The participants raised concerns which relate to both issues of procedural justice and outcome concerns. This fourth section shows which themes of procedural justice (4.2) and outcome concerns (4.3) participants put forward when asked about their perceptions of fairness and justice. We will also shed light on the trust participants reported having in their former employer (4.4).

4.2 Procedural justice

As mentioned earlier, perceived procedural justice has already been investigated in various settings (Ansems *et al.* 2020; Grootelaar and Van den Bos 2018; Thibault and Walker 1975). From research outside the scope of no-fault compensation schemes, we know that fair treatment consists of being treated in a polite manner and with respect, being able to voice opinions, and being seriously listened to by professional and component authorities (Van den Bos *et al.* 2014).

For participants of the no-fault schemes for occupational diseases, the most frequently mentioned components which made them feel unfairly treated and which relate to procedural justice were voice (Section 4.2.1), due consideration (Section 4.2.2) and neutrality (Section 4.2.3). To a lesser extent communication and professionalism of the administrative body was mentioned (Section 4.2.4).

4.2.1 Voice

Giving people a voicing opportunity about a decision will enhance their judgments of fairness of the decision-making procedure. In the field of procedural justice, this is the most generally and best-documented finding (Van den Bos *et al.* 1997; Van den Bos 2024). People will evaluate the way in which they are treated to be more fair and just when they receive an opportunity to voice opinions than when they are not allowed an opportunity to voice (Van den Bos 1999). On the one hand, no-fault compensation schemes seem to provide for more voicing opportunities than tortious systems (Macleod and Hodges 2017). On the other hand, since no-fault compensation schemes contain more non-adversarial elements, it could be argued that the voicing opportunities are not utilised to their fullest extent (Lind *et al.* 1989; Shuman 1994).

Excerpts that deal with being involved, engaging, contributing, having a say, expressing an opinion and telling a story were given the code *voice*. Many participants considered not being able to voice their opinion, experiences and thoughts as reasons for the feeling of being treated unfairly. Participants experienced lack of voice at various points in the process. First of all, we heard repeatedly that participants experienced lack of voice during the establishment of the scheme:

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> 'What I think is important actually is that the [former employer] should stop whining you know. Really sit down with people. And just ask, what do you need? I understand the need to test whether something is realistic or not. But don't decide for yourself what is realistic. Start talking about it.' (P33)

Applicants of the schemes were invited to 'participation events'. Here, the establishment of the schemes was discussed. However, when there is not much room to voice at the event and/or alter the intended decision, this might lead to the perception of pseudo-participation (Greenberg 1990; Van den Bos 2024). A participant states the following about being involved in such an event:

> 'They have not involved us in what we want. They decided it themselves. There was a city council meeting where we were allowed to tell our story. Everyone indicated that they wanted like 25,000, 20,000 euros. They should have involved us more.' (P37)

Also, participants experienced lack of voice during the process itself. The fact that the schemes contain mainly non-adversarial elements, resulting in the claim adjustment being to a large extent a paper procedure, has not contributed to participants being able to voice their story:

> 'Well then I say . . . In hindsight. Then I would have done it like this. Then I would have approached all the people personally for a while with a phone call or a video call or something. [. . .] I don't feel recognized. I don't feel taken seriously either. It was more of an automatic process, more of a commutation scheme. Most would agree with this. Then we need as little as possible. I don't really know if you couldn't agree with that. All those things . . . If I don't know, it was probably an automatic process.' (P25)

Most participants lacked the feeling of voicing their opinion in person to the administrative body that handled the claims. The next extract shows a participant, suffering from the severe progressive lung disease COPD, saying he would have wanted a personal conversation with the administrative body that handled the claims:

> 'I wish I had [a personal conversation] . . . I know some people have had an interview who had to show up before a committee. The committee consists of a lot of eloquent people, with legal backgrounds and doctors. They talk us down, argue us out. That's not that surprising, right? When there are three or four men sitting in front of you, and you sit there alone. These are often well-spoken people who will argue you out, as if *you* are the guilty party. That's how it goes.' (P3)

Some participants did have in-person contact with the administrative body that handled their claim, and were (in theory) able to voice their opinion, usually by telephone. Two surviving relatives, who lost their husband (participant 50a) and father (participant 50b) from the (assumed) occupational disease of bladder cancer, received €7,000. They stated:

> 'Interviewer: Were you able to tell your story in any way?
>
> Participant 50a: Nowhere. Nowhere. It's just yes, sorry ma'am. I even had an argument on the phone with a woman from the [administrative body]. I don't even remember what it was about. [. . .] I get a big mouth and then, you know, never mind . . .
>
> Interviewer: Was that something you guys would need? That they talk to you, or listen to you better?

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> Participant 50b: Ideally though. Yes, as long as they don't forget and keep remembering what happened. Well, no calls of how things ended, how the court case ended, how we feel personally, how we are doing after all this time. Yes, from colleagues among themselves, but not from the [former employer] itself, not from higher up. Well, what I just said. They hope we forget, so they prefer as little communication as possible.' (P50a and P50b)

Another participant stated they would 'have liked to looked some people in the eyes [. . .] especially when you got certain answers over the phone' (P19). We also heard that 'there is no communication' at all, which made people feel 'like a dog who needs to stay in its place' (P13) and that people just 'wanted to tell [their] story' (P18).

A few participants actually did have contact with the administrative body in person, at a hearing. One participant suffered from (among other things) cancer of the throat. He received €60,000, but stated that he was not able to voice to the administrative body what he wanted. He had sung in choirs since he was young – something which was impossible now due to his illness. The following extract shows that voicing opportunities at a hearing are not always perceived as an actual opportunity to voice an opinion. This could potentially make the involved citizens become frustrated and upset about the system they are part of (Van den Bos 2024):

> 'I didn't get to say what I wanted to say. There was a woman sitting there. Who sat there with that . . . Who understood where I wanted to go, to bring out the emotional story of me as a person. But I didn't get a chance to do that. I used to be, from the age of seven, in choirs. Until I was diagnosed with throat cancer. [. . .] I have a recording [of singing]. [. . .] I wanted to play that at the hearing then too. [. . .] I said, "I want three-and-a-half minutes of your time, mister chairman." "No, there's another customer waiting out there."' (P16)

Another participant who went to a hearing also expressed her concerns about 'getting citizens against you':

> 'Yes, I also told my story there. At the time, everyone was very sorry. Everyone cares. Everyone wants to help you. But you're on your own anyway. You know, the [body] stands behind the decisions that are made. And then you are . . . You get knocked under and shoved. [. . .] Then I think to myself: Deal with it properly. Deal with it properly. In this way you only get citizens who stand against you, instead of doing things with you.' (P55)

As previously stated, victims are still able to start a civil court procedure to hold the former employer liable on the basis of tort – even though the foundation of no-fault schemes lies in avoiding such procedures (Macleod and Hodges 2017). Interestingly, we repeatedly heard participants stating that they would want to go to a judge to tell their story:

> 'I would very much like to bring that to a judge to tell my story. You know. Then you might also get the feeling of gosh, they do want to listen to you once. That you feel heard.' (P43)

> 'I would love to be able to say a story to a judge one day. This happened, this is my view. And being a judge, what do you do then? [. . .] Not just tell the story, a story I can put on paper. He is the judiciary. I hope he will actually take steps.' (P44)

Overall, participants lacked voicing opportunities during the establishment of the scheme and the process itself. When participants objectively did have an opportunity to voice their opinions, for example over the telephone or at a hearing, they did not perceive it as an actual voicing opportunity. Also, the lack of voicing opportunities caused some participants to desire a civil court

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procedure. Naturally, following the lack of voicing opportunities, participants also raised due consideration concerns.

4.2.2 Due consideration

Crucial for voicing opportunities to lead to positive perceptions of procedural fairness and justice is that the body to whom the opinions are voiced listens carefully to what is being said. Only when due consideration is taking place will voice indeed lead to the perception of fair and just procedures (Folger 1977; Tyler 1987; Tyler 1989; Greenberg 1990; Lind *et al.* 1989; Van den Bos 2024). In the literature, being listened to and taken seriously and believed is seen as one of the key principles for a successful no-fault scheme – a key principle which is suggested as being more important in itself than compensation (Macleod and Hodges 2017, 644).

Excerpts that deal with listening, being heard and being seen were given the code *due consideration*. Following the lack of voice, participants did not feel heard or taken seriously during the handling of the procedure. Again, the claim adjustment being to a larger extent a paper procedure seems to have contributed to participants' (negative) experiences.

First of all, participants in both schemes lacked the feeling of being heard during the *establishment* of the scheme. They expressed wanting to be involved in determining what amounts would be suitable for them, indicating that they might have been more willing to accept the decision of the administrative body if they had perceived the establishment of the scheme as fair and just.

> 'In my view, they should have done a lot more adversarial work with the people affected [. . .] We should also not spend an eternity trying to make it into a lawsuit, but if there are people who have become ill from it [chromium-6], we should do something about it.' (P42)

Also, *during* the handling of the claim by the administrative bodies, participants did not feel heard or taken seriously. One surviving relative who lost her husband to cancer stated:

> 'You might as well tell [your story] to a wall. And you actually know that too. Then you tell. Then you get the standard rant from the staff member again about what they should say. Not to tell about the ruling right away. So they do take their time. Only, you don't get a concrete question. In fact, you can call but it's of little use because you have to wait for a written ruling.' (P41)

One participant did not get severely ill, but suffers from minor physical problems. He received €7,000 allowance and is in fact overcompensated, but still feels treated unfairly due to lack of being listened to carefully during the handling of the claim adjustment:

> 'I do think that communication could be better. [. . .] We are taken for granted. [. . .] We do not feel heard or taken seriously. Communication is important for us, for me. A call back is not that much.
>
> That's really just it. It's very simple. People are not that difficult. Money can't make up for that. If they had done this, it would have saved so much I think . . . ' (P25)

We also heard that 'you could tell your story, and that was it. There was no response at all' (P14) and that participants had the feeling they 'had not been taken seriously in the whole thing' (P2). One participant actually said he did not feel the need to be heard, since he had been 'screwed anyway' (P52).

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As mentioned earlier, it is interesting that participants still feel the urge to start a civil court procedure, since the foundations of schemes often lie in avoiding one (Macleod and Hodges 2017). No-fault, non-adversarial systems seem to enhance or give chance to hearing opportunities more often than tortious, adversarial systems. The latter is caused by the missing of 'blame' in the non-adversarial systems, which allows parties to speak more openly about mistakes that were made and prevention (ibid.). What we do know from tortious, civil court procedures is that they can be perceived as fair and just due to (voicing and) hearing opportunities (Grootelaar and Van den Bos 2018).

One participant clearly stated that he expects a judge would seriously hear his story. He suffers from lung cancer, and eventually received an allowance on the basis of the scheme of €21,500. Still, he feels unheard, since the discussion with his former employer about whether his illness was caused by chromium-6 took a lot of time and energy:

> 'I do have the expectation [that the judge would listen to my story], because this case has been playing for a long time. And if you put down a good argument, it is realistic [that the illness is related to chromium-6].' (P14)

Overall, not being seriously heard and listened to during the establishment of the scheme and the process of claim adjustment made participants feel treated unfairly and unjustly. With the lack of voicing opportunities, these are the two most important criteria that people use when forming judgments of procedural fairness and justice (Van den Bos 2024). Therefore, this not surprisingly caused a low perception of fairness and justice. But, as we know from procedural justice literature, another criterion is important for the perception of fairness and justice: the perception of neutrality of the deciding body (Ansems *et al.* 2020).

4.2.3 Neutrality

Next to voice and due consideration, neutrality is also one of the core principles mentioned in procedural justice literature when investigated in courtroom settings (Lind and Tyler 1988; Tyler 1989; Grootelaar and Van den Bos 2018; Ansems *et al.* 2020). For no-fault schemes to be successful as well, Macleod and Hodges argue that the most important criterion is to maximise not just the independence of the deciding body but also the perception of its independency (Macleod and Hodges 2017, 630). Also in Alternative Dispute Resolution (ADR), perceived lack of independence has proven to impact the fairness of the scheme (Williams *et al.* 2020, 291). In these alternatives to classic courtroom settings, presenting a case before an impartial third party is important for litigants (McCoun *et al.* 1988). Not surprisingly, in this study the perceived lack of neutrality was one of the reasons for participants to feel they were treated unfairly and unjustly.

Excerpts that deal with (in)dependency, (im)partiality and neutrality were given the code *neutrality*. The perceived lack of neutrality featured heavily in reasons why participants felt treated unjustly and unfairly. The first level on which perceived lack of neutrality was visible was on the level of claim adjustment. Participants missed an impartial body handling the claims and felt like there was an absence of equality of arms:[22]

> 'Look it is of course not new for the [administrative body] to work for [the former employer]. It's a package. [The former employer] gives orders and the [administrative body] implements it. And then you already have no independence. [. . .] And I suspect they are under heavy pressure from [the former employer] [. . .] it's the [former employer] big shots that decide.' (P24)

[22]See in this context also Hertogh *et al.* (2021).

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'He who pays the piper calls the tune.' (P37)

The second level on which perceived lack of neutrality was visible was at the NIPHEP. By order of the Ministry of Defence and the City of Tilburg, the NIPHEP conducted the research underlying the two schemes. Participants suffering from illnesses not included in the scheme, especially, felt like the list of illnesses was too short and/or that the investigation was too limited by focusing on chromium-6, while they believed they were also exposed to other toxic substances.[23] Participants stated:

> 'In my view, that political thing has been going on in the [NIPHEP] and the [former employer]. Surely one could just . . . it is one's own organisation investigating, how can that be? Surely the [NIPHEP] is not independent? It's not independent, is it? Surely they have to weaken everything? What kind of politics has been played there? It was all discussed in the backroom discussions. As it goes in politics.' (P29)

Other participants said that 'the one you feed, you don't bite' (P2), 'the fox guards the chickens' (P28) and that 'it's a cloak of charity' and 'conflict of interest' (P55). Participants thought that the research conducted was 'a one-sided study' (P54) and that it would have been better if a foreign agency, 'totally independent who had nothing at all to do with the [former employer]' had conducted the underlying research (P51).

Third, medical experts involved in the claim adjustment were perceived as not being neutral. The schemes state that a report from a medical expert is required to substantiate an application for an allowance. Also, both schemes determine that in the event of a dispute about the illness of the applicant, an independent medical expert will be called in.[24] Therefore, medical experts played an important role in the claim adjustments of participants, since they checked whether the participant's illness corresponded to an illness covered by the scheme. Participants, however, felt like the medical experts protected their former employer and also in this context felt like there was an absence of equality of arms:

> '[. . .] the medical examiner was from the [former employer] I thought. [. . .] Then it is actually weird that I have to give data to them. Because that's actually the other party. And then they look in your file. You also have there and there and there. That's actually wrong. Because then they already have a head start there.' (P32)

We heard that the former employer paying for doctors makes it dependent (P7) and that doctors protect the former employer (P1). Others said that inspection by an independent doctor and an independent examination is one of the things which should be changed about the scheme (P45). Also, participants believed that no doctor 'want to burn [their] fingers on [it]' (P24) and that doctors already 'have [their] judgement ready' (P28).

One participant, a surviving relative, linked the perceived lack of neutrality of medical experts to perceived trust in the former employer. She also mentioned the perceived lack of neutrality as a reason why she is relieved that a civil court case is pending. The participant's husband died of intestinal cancer. She is in a dispute with his former employer about the causal link between the unlawful exposure of her husband to chromium-6 and his illness:

> 'I don't trust it one bit and that's why I'm happy . . . That this lawsuit is just there. Now they can't . . . Just look what they did to me. By that independent doctor . . . "independent". People started writing. And that guy who just said like, yes, he was sick before he started

[23]This resonates with Stapleton (1986, 17), who states that the lack of causal proof can still undermine the effectiveness of no-fault compensation schemes.

[24]Art. 7 and 10 of the schemes.

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working at the pumping station. Yes, I know that too. I wrote that myself. I asked for that attention myself. That he was already ill.' (P4)

Overall, the perceived lack of neutrality impacted the fairness of the scheme. The perceived lack of neutrality was visible on three different levels: the administrative bodies that handled the claims; the NIPHEP; and the doctors investigating the applicants for the claim adjustment.

4.2.4 Other procedural justice criteria

In addition to the procedural justice criteria we have elaborated on so far, participants also mentioned other procedural justice criteria that made them feel treated unfairly. The first one relates to respectful and polite communication. Signs of respect and politeness influence the perception of fair and just treatment (e.g. Lind and Tyler 1988):

'In communications, they haven't done so very great. Despite looking like it was hugely well put together.' (P47)

Furthermore, we heard that communication by the administrative body was 'quite gruff and blunt' (P4) and 'purposeless' (P10). Others said there was 'no communication at all' (P13). One participant mentioned that it would have been better if the former employer had communicated that 'they were shocked that this happened. And that it should never have happened or something. [. . .] So that you also indicate that you are guilty. They don't' (P47).

Second, restrictiveness or prescriptiveness is said to be a core element in predicting the fairness or justice of no-fault schemes. As Macleod and Hodges argue, rules are essential for providing a framework, but rules must aid, rather than prevent, the efficient functioning of a scheme (Macleod and Hodges 2017, 650). This also relates to the professionalism of administrative bodies (Van den Bos *et al.* 2014). Participants thought the administrative bodies were mainly executive with little liberty to act in the claim adjustment. One participant told us he was frustrated that the administrative body said that his skin cancer could also have been caused by sunbathing:

'Are they authorized to make such statements? I think they are only executive and only have the claim to fulfil and they should keep that along a list in my opinion. If that disease is on that list, you are not supposed to sit in a doctor's chair.' (P3)

Another participant said that the administrative bodies said themselves that they are 'just executive. You can't do anything with that. You feel so abandoned then' (P46).

4.3 Outcome satisfaction

Participants were dissatisfied with their outcome and perceived the compensation received as unfair/unjust. We believe that participants perceived the procedure as unfair and unjust, and were therefore also less willing to embrace their outcome with satisfaction.[25] The first reason for dissatisfaction with the outcome lies in the core elements of the no-fault scheme, which is the fact that participants were not fully compensated (4.3.1). The second reason for dissatisfaction is found in comparing one's outcome with the outcome of others (4.3.2).

4.3.1 Lack of full compensation

As said, the no-fault schemes in this study offer victims, instead of full compensation, a standardised, abstract amount of compensation in the form of an allowance. While it is not clear

[25]See also about the fair process effect Van den Bos (2024).

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whether no-fault schemes undercompensate victims on a systematic basis, they are said to undercompensate victims who sustained the most serious injuries (Wagner 2012, 586). In other words, standardisation in a no-fault scheme therefore causes victims to sometimes be over-, but more often undercompensated (Cane and Goudkamp 2018). Interesting is that overcompensation in itself is not said to have a negative impact on the experiences of a no-fault scheme (Wagner 2012, 586). However, it remains unclear what is perceived as 'fair' compensation in a no-fault scheme (Macleod and Hodges 2017, 642).

Excerpts that deal with (the lack of) full compensation (not) being fully recovered in damages and damage coverage were given the code (*lack of) full compensation*. In the first place, participants showed a general dissatisfaction with the amount of compensation received:

> 'I say it very derogatorily: it is change.' (P46)

> 'You can't buy health. People who got an amount of money for an illness, that amount runs out. And you don't get any better. The amounts of compensation are so low in The Netherlands.' (P7)

Secondly, participants thought the lack of full compensation was not fair, due to the future income and pension loss they suffer:

> 'Well, I actually want to get a much higher compensation, because my problem is: I can't work anymore. And whether it's because of them or not, I don't know. But they happen to be there, and I've been working for those guys since '79. I almost showered with that toxic substance every day. [. . .] I will be satisfied when I have a decent allowance. One that is mending my pension.' (P5)

> 'Before I worked at the project, I worked full-time, forty hours. At the project, I also worked forty hours. And now I can only work 12 hours. They can figure out how much I miss per month. I just want that back.' (P12)

Third, participants linked dissatisfaction with the outcome to illnesses:

> 'Because what I've got, the compensation I've received and the damage I've got, that's a really big difference. I'm still, I'm in trouble. And I'm still afraid I might be in danger. That risk remains. Maybe I'll get other problems maybe cancer or something like that.' (P1)

Fourth, the dissatisfaction with the amount was related to damages for the family members of the participants:

> 'And what a legal staff of [the former employer] also said to my legal counsel, is that I am overcompensated. I did find some of that. [. . .] But I am not overcompensated. They destroyed my life. [participant cries] [. . .] Well then I had compensation which in my opinion is far too little because they destroyed not only me, but my whole family.' (P3)

Also for surviving relatives, the lack of full compensation made them perceive their outcome as unfair and unjust:

> 'I think [justice would be] first and foremost of proper compensation, because you have to imagine. For 13 years, I didn't have an income. I had my children who were then studying. I had to take out a mortgage for that, because my husband was no longer here.' (P4)

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For participants, the dissatisfaction with the outcome due to the lack of full compensation was also a reason to start a civil court procedure:

> 'The consequential damages, who pays for that? I say, if I get cancer soon and I need those drugs. Who pays for all that? [. . .] I reported myself to a lawyer [for a civil court procedure]. [. . .] But for me the issue is, I want, if I get sick, I want [the employer] to pay for everything too.' (P28)

And surviving relatives also see the lack of full compensation as a reason to start a civil court procedure. The next fragment is from a woman who lost her partner to cancer after he had worked with chromium-6:

> 'I have just received word again from the [former employer], they have deposited a lump sum. And I wanted to know if it's a realistic amount. We had a calculation made. Then you know whether you say it's a lot or it's very little or well you name it. And that turned out to be less than a third of the actual damage. That is quite a big difference. So, we sent the bill of which they say the lump sum has therefore been rejected. So, we are going to the court.' (P33)

Interesting to see is that one participant actually *was* fully compensated, but still feels treated unfairly due to the treatment he received during the procedure:

> 'When you have so many years . . . I have [participant cries] had opposition everywhere. Whereas I just want recognition. Just an affirmation that it's their fault. And not like, is it their fault? Would it be, would it be? How can it be? And why is this happening to me? My lawyer at one point said, you should be happy with the amount you received.' (P18)

Thus, participants' dissatisfaction with the outcome is related to one of the core principles of the no-fault system, namely the lack of full compensation, and is shown on different levels: a general dissatisfaction with the amount; future income and pension loss; the illnesses participants have; and the damage caused to family members. The lack of full compensation was for some participants reason to start a civil court procedure. And sometimes, even when one was fully compensated, the treatment overall was still seen as unfair.

4.3.2 Comparing one's outcome with the outcome of others

Excerpts that deal with the outcome of others within and outside one's own scheme were given the code *outcome of others*.

Participants' judgment of the fairness/justice of their own outcome depends on the outcome that (in their eyes) applicants of the 'other' no-fault scheme received. Even though the schemes are very similar, participants of both schemes consider the other no-fault scheme as more fair and just. That is, participants of the one scheme consider the other scheme as fairer and more just, and the other way around:

> 'There is no difference between what happened [the one scheme] and what happened at [the other scheme], and I think that if you use the law, you should use it as it is. Equal treatment. Don't say "well that's different because that company is different". And that's why I think it's so corrupt. There are only a few people with ideals.' (P2)

Participants' judgment of the fairness/justice of their own outcome also depends on the outcome that (in their eyes) applicants of the same no-fault scheme received. The schemes aim to

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compensate every applicant equally, since every illness listed in the scheme is linked to the same standardised amount. Nevertheless, participants thought of their own outcome as less fair and/or just than the outcome of others. They thought others in the same scheme received a better outcome, whether or not in secret negotiation with the (former) employer:

> 'While I know there are people, who haven't been in touch with that mess at all, got more than we did. [. . .] There is one person [. . .] who got €100,000 hush money. €100,000 hush money. And several of us guys know that. I thought that one was gone.' (P15)

> 'If you have oesophageal cancer, you get nothing. If you have stomach cancer, you do get a benefit. Get it? It has become such a theoretically delineated story, there is no human dimension in it.' (P10)

Others said that the outcome is 'unequal' and that it 'cannot be that [the former employer] makes such distinctions' and that '[the former employer] discriminates like that' (P12).

4.4 Trust in the (former) employer

A fair treatment can have positive effects on, among other things, trust in authorities (the fair process effect) (e.g. Grootelaar and Van den Bos 2018). In a work-related context, perceived justice can contribute to restoring trust in the (former) employer. For no-fault schemes to be successful, widespread trust is said to be of crucial importance (Macleod and Hodges 2017, 648).

Excerpts that deal with having (no) trust, confidence and faith in the former employer were given the code *trust*. Participants showed low levels of trust in their (former) employer:

> 'Just trusting people or the government. That can't be fixed. And I must also say that my trust in the government was also very much lost. Maybe not only because of that. [. . .] The scheme did not help that. What I'm saying, it felt more like a buyout scheme. Because there you can't claim serious amounts that actually apply to this. Yes if that happened in the corporate world there might be very different amounts against it. [. . .] That has my distrust. My distrust of the government was actually already quite . . . Originated much earlier there. Yes quite big. This actually just confirmed how they treat people. They don't give a damn.' (P25)

> 'Anyway, my trust is at Antarctic level. I don't believe in it in that sense. Until they don't charge or try those people who have been at the controls there and still continue on the same footing, then I think to myself, you still don't have my trust. Talk does not fill holes. And at the [former employer], it's more talk.' (P55)

Some participants explicitly linked elements of procedural justice with trust. One participant states he has low trust in his former employer, since he has not been seriously listened to:

> 'I rate [my trust with] a 4. They just don't listen to you. That's what I also said to [the former employer]. [The former employer] and the trade unions didn't listen to the shop floor. They just had their own opinions. Blinkers on, we know.' (P9)

Another participant linked the low level of trust with the fairness of the treatment when asked to rate the latter:

> 'Interviewer: Could you rate the fairness of the treatment?

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> Participant: 1. Because you no longer have confidence in the [former employer]. The trust is completely gone. The trust is really completely gone.' (P12)

Overall, there was a low level of trust in the former employer among participants. We believe that the perceived unfairness of the procedure and outcome has probably not contributed to this perception of trust in the former employer.

5 Discussion

The purpose of this article was to consider whether applicants of no-fault schemes for occupational diseases experience perceived justice and how this relates to their feelings of trust in the former employer. Our overarching research question was:

> 'To what extent do victims of occupational diseases perceive the procedure and outcome of their compensation scheme as fair and just, and how are their perceptions of fairness and justice related to their judgments of trust in their former employer?'

Thus, we focused on perceived procedural and outcome concerns of applicants of no-fault schemes for occupational diseases and their trust in their (former) employer, focusing on the Dutch no-fault schemes established for chromium-6 victims. In the above, we presented data from semi-structured in-depth interviews with fifty-eight applicants of the schemes.

Overall, the qualitative data show that perceived justice is important for applicants of no-fault schemes. The most frequently mentioned components which made participants of the no-fault schemes for occupational diseases feel treated unfairly and which relate to procedural justice were voice, due consideration and neutrality. To a lesser extent, but also mentioned, were communication and professionalism of the administrative body.

First, our findings support the widespread idea in procedural justice literature that voice is one of the most important components for applicants of the schemes (Bornstein and Poser 2007; Van den Bos 2024). The lack of voice opportunities in our study made participants feel treated unfairly and unjustly. Participants lacked voicing opportunities during the establishment of the scheme and the process itself. When participants did have an opportunity to voice, for example over the telephone or at a hearing, they did not perceive it as an actual voicing opportunity. Also, the lack of voicing opportunities caused some participants to desire a civil court procedure. An initial conclusion is that voicing opportunities in no-fault schemes, whether or not due to non-adversarial elements, are not always utilised to their fullest extent – at least in the schemes we have researched.

Second, in line with the lack of perceived voice opportunities, the data show that not being seriously heard and listened to during the establishment of the scheme and the process of claim adjustment made participants feel they were treated unfairly and unjustly. In line with the notion that voice and due consideration are generally considered to be two important criteria that people use when forming judgments of procedural fairness and justice (Van den Bos 2024), our findings suggested rather low perceptions of fairness and justice among our participants.

Third, the perceived lack of neutrality impacted the fairness of the scheme. The perceived lack of neutrality was visible on three different levels: the administrative bodies that handled the claims; the NIPHEP; and the doctors investigating the applicants for the claim adjustment. For no-fault schemes to be successful, Macleod and Hodges (2017, 630) argue that the most important criterion is to maximise not just the independence of the deciding body, but also the perception of its independency. Also, in ADR, perceived lack of independence has proven to impact the fairness of the scheme (Williams *et al.* 2020, 291). In these alternatives to classic courtroom settings, presenting a case before an impartial third party could be important for litigants (Bornstein and

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Poser 2007; Lind *et al.* 1989; McCoun *et al.* 1988). Not only for victims, but also for employers in the case of occupational diseases, the neutrality of the deciding body is of relevance. The Dutch Institute for Asbestos Victims (IAS) has for instance been criticised by employers for being too much of an advocate for victims, which seems to have influenced the trust employers have in the IAS (Peeters 2007, 211). Even though this is from an employers' perspective, the latter does align with our study where the perceived lack of neutrality was one of the reasons for participants to feel treated unfairly and unjustly.

Fourth, the overall low perception of perceived fairness of the scheme procedure has probably not contributed to participants being willing to accept the outcome received.[26] The dissatisfaction with outcome firstly relates to one of the core principles of the no-fault system, namely the lack of full compensation. Our data show a general dissatisfaction with the amount; future income and pension loss; the illnesses participants have; and the damage caused to family members. The lack of full compensation was for some participants a reason to start a civil court procedure. And even when one was fully compensated, the overall treatment was still seen as unfair. Our results correspond with the idea that it is important for victims to recover past losses and expenses with the compensation received (Genn 1994; 1999, 254; Huver *et al.* 2007; Rijnhout *et al.* 2020).

Also, participants were unsatisfied with their outcome, since they compared their outcome with those of others and felt they were disadvantaged. When asked about whether participants perceive their outcome as fair/just, participants who related their dissatisfaction with the outcome of others distinguished between comparing their outcome with that of applicants in the same no-fault scheme and applicants of the other no-fault scheme.

We argue that the low perception of perceived procedural fairness of the scheme has not contributed to participants being willing to accept the outcome received. This finding confirms that in many situations people actually find it difficult to assess whether their outcome is fair or unfair and satisfying or unsatisfying because they only have information about their own outcome and they do not know the outcomes of others. In these situations, people use the fairness of the procedure as a heuristic substitute to assess how to judge their outcome (Van den Bos, *et al.* 2014). Furthermore, our results match the idea that where there are parallel streams which compensate at different levels, problems arise and people will be unsatisfied.[27]

Fifth, while research in courtroom settings shows that procedural justice can be positively associated with trust in judges (Grootelaar and Van den Bos 2018), in this context the perceived unfairness of the schemes on a procedural and outcome level might have influenced the level of trust in the (former) employer in a negative way. Our data confirm the idea that no-fault systems typically use claim adjusters or governmental administrators who are not chosen by or directly answerable to the public. Consequently, no-fault schemes might sometimes lack those attributes of trust that are found in courtroom settings – at least in the two schemes we have studied (Shuman 1994).

Contrary to expectations often raised in doctrinal literature about no-fault schemes, the schemes we researched are not perceived as fair and just and were associated with a low level of trust in the (former) employer. We believe that these findings are relevant and important for understanding perceived justice and trust judgments among victims of occupational diseases. But our findings may also touch upon broader societal issues. While professionals operate within the structured system of a no-fault compensation scheme, which operates by rules and a formal process, the victims involved often struggle to navigate the complexities of their situations.[28] This touches upon the restrictiveness or prescriptiveness of rules, which is frequently identified as a core factor influencing the perceived fairness or justice of no-fault compensation schemes. As Macleod and Hodges (2017, 650) argue, while rules are essential for providing a coherent

[26]See also Bornstein and Poser (2007).

[27]Bornstein and Poser (2007) and Macleod and Hodges (2017, 642).

[28]Also see on 'system' vs. 'lifeworld', Habermas (1988).

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framework, they should aid rather than hinder the efficient functioning of such schemes. However, participants in our study expressed the view that administrative bodies primarily functioned in an executive capacity, exhibiting limited discretion in the claim adjustment process. This challenge reflects larger societal issues, particularly as the increasing complexity of regulatory frameworks can lead to unintended consequences. A pertinent example from the Netherlands is the childcare benefit scandal, wherein parents received government subsidies for childcare, known as childcare benefit. Between 2005 and 2019, the Tax Authority made significant errors, leading some parents to be wrongly informed that they owed thousands of euros in repayments, despite being entitled to these funds. This situation resulted in substantial financial hardship and debt for many families, prompting the establishment of two no-fault compensation schemes that have faced significant criticism for their effectiveness in addressing the damages incurred.[29] Another notable case is the British Post Office Horizon scandal, during which, from 1999 to 2015, over 900 sub-postmasters were wrongfully convicted of theft, fraud and false accounting based on flawed data.[30] These two examples show that restrictiveness of rules is a fundamental aspect of predicting fairness and justice. Returning to our findings, this is also the case in no-fault compensation schemes. As noted earlier, while rules are crucial for establishing a framework, they must support the efficient operation of the system rather than obstruct it. In our study, participants indicated that administrative bodies were predominantly executors of rules. These bodies had little liberty to act in the claim adjustment process.

We would like to highlight that perceived justice and trust among victims of occupational diseases may also be shaped by what can be described as 'opposing rationalities'. In the context of no-fault compensation schemes, both victims and professionals engage in the process of claim adjustment, yet their priorities often differ fundamentally. For victims, participating in the process might require them to disclose potentially damaging information to the adversarial party. For example, a victim of lung cancer might be compelled to acknowledge a history of smoking, which could be seen as an alternative cause of their illness, aside from exposure to chromium-6. On the other hand, professionals tasked with evaluating claims in the no-fault compensation scheme must navigate decisions about causality. This involves determining whether the illness in question, which is listed under the no-fault scheme, can be plausibly linked to exposure to chromium-6 at the workplace (Macleod and Hodges 2017, 631–32). This discrepancy between priorities can create significant risks for victims, as well as the employer. Information provided during the claim adjustment process can later be used against the information provider, particularly in cases where a civil legal route is pursued. A striking example occurred in a case adjudicated by the Supreme Court of the Netherlands. Four victims had initially received compensation under the no-fault compensation scheme of the Ministry of Defence, but subsequently sought full compensation through a civil lawsuit. While the lower courts did not award these damages,[31] the Supreme Court did.[32] Ultimately, the Supreme Court even ruled that receiving compensation under the no-fault scheme could be used to establish the causal link in civil proceedings between the employee and the employer.[33] This is noteworthy because proving such causality is notoriously difficult in occupational disease cases. All in all, disclosing information during the claim adjustment in the no-fault compensation scheme may influence one's position in future civil litigation.

Even though there is court success for some victims, we would like to stress that our findings do not imply that victims are overall better off by filing a tort law claim or by going to court. The

[29]See on this matter, for example, 'The Dutch childcare benefit scandal, institutional racism and algorithms', https://www.europarl.europa.eu/doceo/document/O-9-2022-000028_EN.html.

[30]See, for example, 'Post Office Horizon scandal: Why hundreds were wrongly prosecuted', https://www.bbc.com/news/business-56718036.

[31]This was due to inadmissibility issues. See Court of Limburg, 14 February 2018, ECLI:NL:RBLIM:2018:1464 and Court of Appeal 's-Hertogenbosch, 10 March 2020, ECLI:NL:GHSHE:2020:871.

[32]Supreme Court of the Netherlands, 3 December 2021, ECLI:NL:HR:2021:1806.

[33]Ibid.

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average number of potential occupational disease claims per year in the Netherlands is 4,500, of which only 600–700 claims are actually filed, and even fewer will end up in Dutch courtrooms (Eshuis *et al.* 2011). And *if* victims file a claim, it could lead to secondary victimisation and is said to have anti-therapeutic effects (Elbers and Becx 2020; Lippel 2007). Nevertheless, it must be said that procedural and outcome justice elements were reasons for participants to sometimes desire a civil court procedure.

There are, of course, examples of no-fault schemes that *do* work well in terms of victim satisfaction. Some schemes measure satisfaction of their applicants through surveys.[34] Since these surveys do not seem to investigate perceived justice and fairness from a social psychological perspective, it makes it difficult to compare these results to ours. Therefore, elaborating further on these surveys falls outside the scope of this paper.

In line with the above-mentioned, an important limitation of our research is that we did not undertake research on other no-fault schemes for occupational diseases. It would certainly be interesting to do so in future research. Also, it would be interesting to research how applicants of schemes who *do* perceive procedures as fair and just would feel about the outcome received and trust in the (former) employer. Furthermore, worth mentioning is that we have collected data on two schemes and analysed the data together. As said, the schemes are very similar, but there are, of course, (albeit quite small) differences in the schemes as well. However, the data did not give us significant different impressions.

6 Coda

To conclude, we believe there are lots of opportunities for fairness and justice in the non-adversarial character of no-fault schemes. In the schemes that we studied in this paper, these opportunities are not always utilised to their fullest extent when it comes down to perceived fairness and justice of the victims involved. This suggests that it is important to understand the role of perceived procedural justice and outcome concerns and their relation to trust in the (former) employer, and we hope the current findings have contributed to more insight on these important issues.

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[34]For example, the Dutch Institute for Asbestos Victims (IAS), see www.asbestslachtoffers.nl/general-information-about-compensation-for-asbestos-victims-in-the-netherlands/ and its Annual Report IAS (2022) 20. Even though the 2020 survey shows that the IAS is highly appreciated, a methodological note should be taken into account, since the survey can only be answered with three response categories, namely bad, neutral and good. Also, the items used contain elements which are open to interpretation and, therefore, could make the results less reliable. Thus, without further statistical analysis or other methodology, little can be said about these results. See Laarman *et al.* (2016, 60).

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