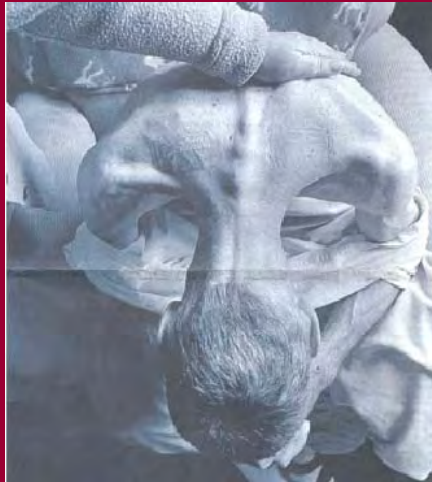


Industrial Injuries Disablement Benefit

The case for disregard

It seems utterly perverse that asbestos victims in receipt of IIDB, dying from mesothelioma, should have their means-tested benefits cut for the short period of their remaining lives."



IIDB—The Case for Means-Tested Benefits Disregard

Industrial Injuries Disablement Benefit (IIDB) State No-Fault Compensation

The Industrial Injuries Scheme is a no-fault compensation scheme, designed to compensate workers suffering from industrial injury or disease.

‘The National Insurance (Industrial Injuries) Act 1946 which came into effect on 4 July 1948, established a new industrial injuries scheme, financed by contributions from employers, employees and the Exchequer. The State, through the scheme, assumed direct responsibility for paying no-fault compensation for injury and diseases.’

This is how the Industrial Injuries Scheme (the scheme) is described by the Industrial Injuries Advisory Council (IIAC) in its many reports. IIAC is a body set up under the above Act to advise government on the scheme.

There is a single benefit paid under the scheme: Industrial Injuries Disablement Benefit (IIDB).

There should, therefore, be no doubt about the purpose of the scheme and the payment of IIDB. However, as we shall see, there is a fundamental misconception about the scheme which has allowed the scheme to be seen as simply one more ‘benefit’, among many others, whose purpose is to supplement or replace lost income.

Over time, this misconception has taken firm hold so that the common misnomer, ‘benefit’, applied to no-fault compensation has resulted in the loss of means-tested benefits for many impoverished people.

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IIDB- Benefit or Compensation?

IIDB is paid as compensation for disablement resulting from loss of faculty caused by an industrial injury or a prescribed disease.

By definition, IIDB is paid for the adverse effect of an industrial injury or a disease, so that a man suffering from asbestosis receives IIDB for the restrictive effect the fibrosis has on his lungs, causing him breathlessness. Yet, if this man receives a means-tested benefit, IIDB is treated as income replacement so that the means-tested benefit is lost, pound for pound of IIDB.

In such a case, IIDB loses its *raison d'être*: it no longer compensates the man with asbestosis for his lack of lung function causing his breathlessness. Instead, it becomes an income replacement benefit. It is treated as income; money to pay for the means to live, such as food and clothing.

The increasing use of means-tested benefits, such as State Pension Credit, to tackle poverty has had the unintended consequence of depriving the poorest, and in some cases the most disabled in society, of compensation for the industrial injury or disease which has had such a damaging effect upon their lives.

This ‘metamorphosis’ of IIDB into an income-replacement benefit is a result of a long-standing uncertainty about the purpose of the scheme.

IIDB– Uncertainty and Confusion

For decades, researchers and academic lawyers have been bemused by the uncertainty and confusion about the purpose of IIDB. Brown J (1982)¹ in a critique of a DHSS Discussion

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Document complained that, ... *'the DHSS Discussion Document sometimes treats disablement benefit as compensation and at other times as income replacement..'* and Ogus and Barendt (1982)² castigated the scheme as *..a jumble of benefit and allowances, some parts directed towards need and others towards income replacement. Yet the system as a whole is consistent with neither objective and seems to have no overall structure.'*

The Pearson Commission³ (1973-1978) had earlier commented on the failure to distinguish between IIDB and Severe Hardship Allowance (later Reduced Earnings Allowance), which provided compensation for loss of capacity to maintain earnings :

"A further unsatisfactory feature of this allowance [Severe Hardship Allowance] is that it combines a benefit for loss of earnings with a benefit for loss of faculty; and, in doing so, blurs the distinction between these fundamentally different forms of compensation."

Here we have it in a nutshell: Reduced Earnings Allowance (REA) which was abolished in 1990, compensates for loss of income, but IIDB compensates for loss of faculty leading to disablement. It was quite proper to reduce means-tested benefits where REA was paid, but it is quite wrong to do so where IIDB is paid.

Incredibly, this confusion and uncertainty persists today as evidenced in the 2007 DWP consultation paper⁴ on IIDB which asked such questions as: what is the purpose of the no-fault scheme? and should it be a compensation scheme, a benefit scheme, or both? Responding to the DWP consultation on improving claims handling for mesothelioma cases the Industrial Injuries Advisory Council had no doubt about the purpose of the no-fault scheme⁴:

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“Cases of mesothelioma who receive IIDB should not lose means-tested benefits because IIDB is compensation for personal injury not income replacement.”

Many mesothelioma sufferers, e.g. those who worked in the construction industry, lack the advantage of an occupational pension scheme and have to rely on State Pension Credit. They effectively lose their compensation as Pension Credit is withdrawn. Those who were lucky enough to be in an occupational pension scheme are fully compensated. This unsatisfactory situation is a direct result of the misunderstanding about the purpose of the scheme.

IIDB- Effect on industrial injury victims

Sixty four percent of IIDB claims put into payment are for industrial injuries. Fortunately, many of these payments are made for injuries which are not long-term and many such claimants will receive IIDB in addition to occupational sick pay during their recovery (65% of companies have sick pay schemes). But, clearly some claimants will be forced out of work due to the severity of their injuries, or have their earnings capacity reduced, and many will have to rely on means-tested benefits which will be adversely affected by an IIDB payment.

IIDB- Disproportionate effect on asbestos victims

The majority of new claims for prescribed diseases put into payment each year are for asbestos related diseases. In 2007, there were 4,090 new IIDB prescribed disease claims put into payment. Of these, 70% were for asbestos-related prescribed diseases. Due to the long latency of asbestos related diseases, asbestos victims are mostly elderly and their diseases are chronic and many will rely on means-tested benefits. Consequently, the majority of people in receipt of IIDB for a

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prescribed disease and also in receipt of means-tested benefits will be asbestos victims

IIDB- effect on mesothelioma sufferers

Mesothelioma is a fatal cancer caused almost exclusively by asbestos. Life expectancy from diagnosis is usually less than a year.



In 2007, mesothelioma represented over half (57%) of all IIDB asbestos related prescribed disease claims in payment and 40% of all prescribed diseases claims in payment.

It seems utterly perverse that asbestos victims in receipt of IIDB, dying from mesothelioma, should have their means-tested benefits cut for the short period of their remaining lives.

What are the cost implications for disregarding IIDB?

In 2005 we were advised by the DWP Information Centre (DSU1) that the number of IIDB recipients also in receipt of means tested benefits represented 0.7% of all those on means tested benefits. This equates to about 17% of IIDB recipients also in receipt of means tested benefits. Forum estimates for asbestos disease IIDB recipients are similar -18%.

As we know, 70% of prescribed diseases are for asbestos conditions. Of those, 48% are for mesothelioma, a disease which usually kills within a year. Consequently, of the 18% whose means tested benefits are affected, nearly half receive IIDB for a very short time. We believe that the cost to Government in remedying a serious benefits anomaly will be extremely small.

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Conclusion

The introduction of a national, contributory-based insurance scheme in 1948 established the framework for today's social security system. Much has changed since that time, so that contributory-based benefits are often insufficient and are supplemented by means-tested benefits for people of working age and for those in retirement. At the same time, uncertainty about the purpose of IIDB has allowed IIDB to be treated as an income replacement benefit. The result is that many people lose part, or all, of the advantage of their state no-fault compensation.

Asbestos victims, who account for such a high percentage of those in receipt of IIDB, and who are elderly, often in poverty, are most vulnerable to the loss of their compensation. Many simply refuse to claim IIDB because they would be worse off in doing so.

Worst affected are mesothelioma sufferers who lose a significant proportion of their compensation despite the fact that they have lost their health and their lives to an industrial disease.

The Asbestos Victims Support Groups Forum - UK is calling on the government to disregard IIDB where means-tested benefits are paid. There is no justification for depriving workers suffering industrial injury or disease of compensation for loss of health or life.

¹ Brown, J. (1982) *Disability Income: Part 1 Industrial Injuries*, Policy Studies Institute, p226

² Ogus A and Barendt E (1982) *The Law of Social Security*, 2nd Ed. London Butterworths, p297

³ Royal Commission on Civil Liability for Personal Injury 1973-978, (Pearson Commission), Cmd. 7054, Vol. 1, para 187.

⁴ DWP- Improving Claims Handling for Mesothelioma Cases Consultation Report, paras. 17– 19.

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