

## CRIMINAL INJURIES COMPENSATION SCHEME

The British Insurance Law Association appointed a Working Group to consider the Consultative Document. The Committee of the Association now submits the following memorandum which, while reflecting an almost general consensus on the part of the members of the Committee and of the Working Group, does not necessarily represent the view of all members of the Association.

1 There would be merit in the Home Office Working Party considering whether the scheme should be administered in conjunction with the Industrial Injuries Scheme and on some similar basis. Many victims, e.g. policemen and security guards, would already have a claim under the Industrial Injuries Scheme and would be entitled to continuous assessment of the degree of their disablement thereunder.

2 If the scheme continues on its present lines the Group sees every reason why claimants should be entitled to costs for legal representation at hearings. The issues to be resolved in any claim, and the calculation of compensation, are at least as difficult as in common law claims for damages. Already half the claimants are legally represented at hearings at their own expense. There appears to be a case for the payment of taxed costs to successful claimants.

3 Without commenting on the other numerous points raised in the Consultative Document the Committee preferred to concentrate its attention to the question referred to in para. 25 which says

"There may be room for extending the principle of avoiding duplication of payments in a scheme which derives from public funds. For example, it may be that account should be taken of any insurance payments to which the victim or, in fatal cases, his dependents, may become eligible as a result of the injury in question. It is a well-established principle that such payments are not taken into account by the courts but one of the arguments for this, that the tortfeasor should not benefit from the foresight of the injured person, does not have force in relation to a scheme where payments are made from public funds."

4 In passing it should be pointed out that there is no absolute principle of avoidance of duplication, even when public funds are concerned. For example:

- (a) tortfeasors are relieved of their liability for damages to the extent of one-half of sickness and invalidity benefit and industrial injury benefits;
- (b) where a public servant injured in the course of his duty

receives a pension from public funds this does not operate to reduce any common law damages to which he may be entitled from his employer;

- (c) even in the present scheme only four-fifths of such a pension is deducted from compensation.

5 Attention is also drawn to an analogous scheme for the provision of compensation to persons injured in road accidents by the negligence of an unknown motorist. They may recover compensation to the full extent of the damages to which they would have been entitled had an action been possible. This compensation is paid by the Motor Insurers' Bureau and is thus an indirect charge on the whole body of motorists as the cost is borne by insurers and is therefore taken into account in the calculation of premiums. No deduction from the compensation is made for any payments received by the claimant under private insurances.

6 The rationale of the Criminal Injuries Compensation Scheme is (para 4) that the public feels a responsibility for the innocent victim of a crime of violence. Although "the Government do not accept that the State is liable for injuries caused to people by the acts of others" it is noteworthy that they do accept liability for damage to property by rioters under the Riot (Damages) Act 1886. Underlying that Act and the present scheme appears to be the public feeling that the State has a responsibility for keeping the peace and that losses through failures to do so should give rise to compensation in certain limited circumstances.

7 The present scheme has thus grown up on a quasi-tortious footing with the award of compensation on a "damages" basis, albeit with a franchise and a ceiling on the loss of earnings to be compensated. It may be questioned on the following grounds whether the moment is appropriate to import a further divergence into the scheme by making deductions from compensation payments for insurance moneys, despite an understandable aversion from duplication:

- (a) Private insurances are bought and paid for in advance. The victim who was prudent enough to insure beforehand is simply getting what he has paid for and should not have his compensation reduced on the ground of his prudence.
- (b) There would be a disincentive to persons to insure if they should know that it is the State, and not themselves, who will benefit from the insurance.

8 If any general proviso is made that insurance moneys shall be deducted from compensation it will need to be carefully hedged, or

injustice will arise. Two examples will illustrate this, but no doubt more could be given.

- (a) A victim earning four times the national average has effected a personal accident policy that gives weekly benefit at the rate of twice the national average. His claim under the C.I.C. scheme is limited to twice the national average earnings. If the Board deducts the proceeds of the insurance from his compensation he will be left with only half his earnings despite having insured.
  
- (b) The victim of a fatal occurrence may have invested his capital in an equity bond or a property bond expressed as a single-premium life insurance. The payment by the insurers on his death may therefore be expressed as an insurance payment though all, or nearly all, is in fact a repayment of capital. If the Board reduces the compensation to dependants by the amount of the insurance moneys, they will be worse off than the dependants of another similar victim who had used his capital to buy shares.