Injury Schemes Seminar

Road to Recovery

8-10 November 2015
Hilton • Adelaide

Actuaries Institute

SYNOPSIS

THE FAIRNESS OF COMPENSATION SCHEMES AND THE EFFECT ON CLAIMANTS' RECOVERY

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Keywords: No-fault / fault-based; Compensation schemes; Fairness; Health outcomes; Lawyer involvement; Medical assessments; Claims management.

Purpose of your paper: The purpose is to inform the audience that injured people perceive the no-fault compensation scheme in Victoria as much fairer than the fault-based scheme in NSW, which could give rise to an evidence-based discussion on legal reform.

Synopsis:

Background: Involvement in a compensation process following a traffic accident is an established predictor of worse health status. Some compensation schemes are hypothesised to be more stressful than others. In particular, fault-based compensation scheme is assumed to be more adversarial than a no-fault scheme and therefore would be associated with poorer recovery. This study compares the perceived fairness and recovery of claimants in the fault-based scheme in New South Wales (NSW) to the no-fault scheme in Victoria, Australia.

Method: 182 participants were recruited via claims databases in Victoria and NSW. Participants were > 18 years old and involved in a transport injury compensation process. The crash occurred 12 or 24 months ago. Perceived fairness about the compensation process, the claims manager, the lawyer, the medical assessor, and the dispute resolution process were measured by items derived from the validated organisation justice questionnaire. Health outcome was measured by the Short Form Health Survey.

Results: In Victoria, 84% of the participants considered the no-fault claims process fair, compared to 45% of NSW participants who were involved in a fault-based scheme. Lawyer involvement and medical assessments were significant predictors for the overall fairness. Overall fairness positively predicted health outcome after adjusting for demographic and injury variables. After including the claim factors, lawyer involvement was the main (negative) predictor for health status.

Discussion: Lawyer involvement seems to be a result of an unfair scheme rather than a cause of perceived unfairness, since the primary reason for involving a lawyer was to be able to deal with the compensation process. Furthermore, participants felt the lawyer made the process easier, and the interaction with the lawyer was evaluated very positively.

The explanation for medical assessments contributing to perceived unfairness is that injured people feel the assessor is biased, being appointed by the insurance company.

Other explanations for lower perceived fairness in NSW compared to Victoria could be the difference in fault/no-fault scheme design (a fault-based scheme involves a stressful liability assessment and not-at-fault claimants seek acknowledgement for the harm inflicted), third-party/first-party insurance (third party insurance could imply less commitment to the injured person), and lump sum/intermittent payments (lump sum payments invoking financial burden).

This study could give rise to an evidence-based discussion about how to eliminate anti-therapeutic aspects in the compensation process in order to improve the injured person's health.